

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

In the Matter of a Referral by the West Haven Democratic Registrar of Voters File No. 2018-013

**FINDINGS AND CONCLUSIONS**

The Referring Official, the West Haven Democratic Registrar of Voters at all times relative to instant matter, alleged that Respondents Anjum and Sana Mushtag may have improperly utilized the services of the West Haven Police Department to pick up their executed absentee ballots and deliver them ahead of the March 6, 2018 Democratic Town Committee Primary.<sup>1</sup>

**Background**

1. The following facts are not in dispute.
  - a. On or about March 6, 2018 the West Haven Democratic Town Committee (“DTC”) held a primary.
  - b. Respondents Anjum and Sana Mushtag, a husband and wife, were out of town during all the hours of voting for the DTC Primary
  - c. The Respondents voted in the DTC Primary by absentee ballot.
  - d. The Respondents’ absentee ballot applications contained the information and signature of Karen Passaro as an assistor.
  - e. On or about Monday, March 5, 2018, the day before the Primary, a uniformed on-duty police officer from the West Haven Police Department picked up sealed and executed absentee ballots directly from the Respondents’ at their place of work at a Krauszer’s convenience store in West Haven and delivered the ballots directly to the West Haven Town Clerk on that day.

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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 Commissions jurisdiction.

## Allegations

2. The Referring Official, West Haven Democratic Registrar of Voters Sherri Lepper, alleged that the manner of delivery for the absentee ballots, via use of a police officer, may have been improper and in violation of the rules regarding the return of absentee ballots contained in General Statutes § 9-140b.

## Law

3. General Statutes § 9-135 provides:

(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.

4. General Statutes § 9-140b provides:

(a) An absentee ballot shall be cast at a primary, election or referendum only if: (1) It is **mailed** by (A) the ballot applicant, (B) *a designee of a person who applies for an absentee ballot because of illness or physical disability*, or (C) a member of the immediate family of an applicant who is a student, so that it is received by the clerk of the municipality in which the applicant is qualified to vote not later than the close of the polls; (2) it is returned by the applicant

in person to the clerk by the day before a regular election, special election or primary or prior to the opening of the polls on the day of a referendum; (3) it is **returned** by a designee of an ill or physically disabled ballot applicant, in person, to said clerk not later than the close of the polls on the day of the election, primary or referendum; (4) it is returned by a member of the immediate family of the absentee voter, in person, to said clerk not later than the close of the polls on the day of the election, primary or referendum; (5) in the case of a presidential or overseas ballot, it is mailed or otherwise returned pursuant to the provisions of section 9-158g; or (6) it is returned with the proper identification as required by the Help America Vote Act, P.L. 107-252, as amended from time to time, if applicable, inserted in the outer envelope so such identification can be viewed without opening the inner envelope. A person returning an absentee ballot to the municipal clerk pursuant to subdivision (3) or (4) of this subsection shall present identification and, on the outer envelope of the absentee ballot, sign his name in the presence of the municipal clerk, and indicate his address, his relationship to the voter or his position, and the date and time of such return. As used in this section, "immediate family" means a dependent relative who resides in the individual's household or any spouse, child or parent of the individual.

*(b) As used in this section and section 9-150c, "designee" means (1) a person who is caring for the applicant because of the applicant's illness or physical disability, including but not limited to, a licensed physician or a registered or practical nurse, (2) a member of the applicant's family, who is designated by an absentee ballot applicant and who consents to such designation, or (3) if no such person consents or is available, then a police officer, registrar of voters, deputy registrar of voters or assistant registrar of voters in the municipality in which the applicant resides.*

(c) For purposes of this section "mailed" means sent by the United States Postal Service or any commercial carrier, courier or messenger service recognized and approved by the Secretary of the State.

*(d) No person shall have in his possession any official absentee ballot or ballot envelope for use at any primary, election or*

referendum except the applicant to whom it was issued, the Secretary of the State or his or her authorized agents, any official printer of absentee ballot forms and his designated carriers, the United States Postal Service, any other carrier, courier or messenger service recognized and approved by the Secretary of the State, any person authorized by a municipal clerk to receive and process official absentee ballot forms on behalf of the municipal clerk, any authorized primary, election or referendum official *or any other person authorized by any provision of the general statutes to possess a ballot or ballot envelope.*

(e) No (1) candidate or (2) agent of a candidate, political party or committee, as defined in section 9-601, shall knowingly be present when an absentee ballot applicant executes an absentee ballot, except (A) when the candidate or agent is (i) a member of the immediate family of the applicant or (ii) authorized by law to be present or (B) when the absentee ballot is executed in the office of the municipal clerk and the municipal clerk or an employee of the municipal clerk is a candidate or agent. (Emphasis added.)

## **Response**

5. The Respondents here were prompt and thorough in their responses.
6. The Respondents asserted as an initial matter that this was their first time utilizing the absentee ballot process and that they traditionally voted in person at a polling place.
7. The Respondents asserted that:
  - a. Sometime prior to the DTC Primary they were approached while at Krauszer's by an individual whom they only knew as Patrick<sup>2</sup> who represented that he was from the DTC.
  - b. "Mr. Patrick" asked them if they were registered Democrats, which they confirmed, and asked if they were voting in the Primary.

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<sup>2</sup> The investigation was unable to confirm whether this was Patrick Egolum, a candidate for the 6<sup>th</sup> District in the DTC Primary.

- c. They told "Mr. Patrick" that they would be out of town visiting a sick relative all day on the date of the Primary.
- d. "Mr. Patrick" told them that they were eligible for absentee ballots and they assented to him bringing them each an absentee ballot application.
- e. The same individual brought them applications, which they filled out and signed and gave back.
- f. They had never met Karen Massaro, the person who signed their applications as an assister.
- g. shortly thereafter they received absentee ballot sets that they then executed.
- h. They became confused as the address to which to return the executed ballots.
- i. "Mr. Patrick" returned on or about the Saturday or Sunday prior to the primary to ask if they had mailed the executed ballots and upon hearing that they had not, asked them if they would assent to him arranging for a police officer to pick up the ballots and deliver them.
- j. They told "Mr. Patrick" that they assented to having a police officer pick up the ballots from them, but only at their place of work, as they had an infant at home and did not wish to be disturbed there.

### **Investigation**

8. As an initial matter, the investigation revealed that the Respondents had never voted by absentee ballot prior to the Primary at issue here.
9. The investigation revealed that West Haven Chief of Police John Karajanis' department received an absentee ballot pick up request on behalf of the Respondents from Peter V. Massaro who was at the time the former Fire Chief, a current City Councilor, and, importantly, a 6<sup>th</sup> District DTC Primary candidate.
10. Chief Karajanis asserted that it was the past practice of the West Haven Police Department to honor requests to "retrieve absentee ballots for individuals who are unable to return the ballots to City Hall for physical reasons in a timely way."

11. However, Chief Karjanis asserted, he does not instruct the members of his department to question whether or not the claim to “physical reasons” has any merit; he asserted that he merely instructs them to pick up and deliver the ballot.
12. Chief Karjanis asserted that he assigned Officer Audrey Jefferson to the task of delivering the Respondents’ absentee ballots.
13. Chief Karjanis asserted that since the filing of this referral, his department has contacted the Office of the Registrars of Voters in order to develop policies to avoid any impropriety or appearance of impropriety.
14. An examination of the absentee ballot applications track with the assertions of the Respondents, insofar as the applications checked off that the Respondents would be out of town and Karen Massaro signed as the assistor.
15. The applications appear to have been filled out in the same hand, but the signatures appear distinct and the investigation did not reveal any question as to their authenticity.
16. The investigation also revealed that Peter V. Massaro was at all times relevant to the instant investigation a candidate in the primary, as well as a member of the West Haven City Council.
17. Additionally, the investigation revealed that Karen Massaro, the person who signed the absentee ballots as an assistor, lives at the same address as Mr. Massaro.

### **Analysis**

18. Most of the material facts here are undisputed.
19. The Respondents voted by absentee ballot and at the urging and advice, and with the assistance of partisan third parties associated with primary campaigns.
20. The Respondents requested an absentee ballot for a legitimate reason—they were going to be out of town during all hours of voting on the day of the Primary.
21. Karen Massaro, the wife of Peter V. Massaro, signed the absentee ballot application as an assistor.

22. The Respondents agreed to have said third parties contact the West Haven Police Department on their behalf so that the police could deliver their ballots.
23. Former Fire Chief, current City Councilor and current 6<sup>th</sup> District DTC Primary candidate Peter V. Massaro contacted the West Haven Police Department and placed the request on behalf of the Respondents.
24. Turning to the question here, as an initial matter there is no question here that the Respondents were eligible for an absentee ballot under the facts of this case due to the fact that they were out of town.
25. The question here was whether it was appropriate for them to turn their ballots over to the West Haven Police Department for delivery to City Hall.
26. The circumstances under which an individual may turn their ballot over to anyone other than “immediate family” for in-person delivery are very narrow and detailed above in General Statutes § 9-140b.
27. The circumstances under which a police officer may take responsibility for the delivery of an absentee ballot are even narrower.
28. A voter may designate a police officer only if such voter is: A) sick or disabled and B) no one in the voter’s “immediate family” or anyone on the list enumerated in General Statutes § 9-140b (b) (1) & (2) consents or is available.
29. A police officer may only take possession if such officer is designated by the voter lawfully under General Statutes § 9-140b (a) & (b).
30. Importantly, a police officer may not take possession if they have not been designated by the voter directly or through one of the registrars.
31. This was confirmed recently by the Connecticut Supreme Court in Keeley v. Ayala, 328 Conn 393 (2018).
32. In Keeley, the Chair of the Bridgeport Democratic Town Committee directed the Bridgeport Police Department to send an officer to homes at which they knew absentee ballot sets had been sent but not yet returned by the voter. There was no evidence on the record that the voters had made such requests and/or even knew prior to the visit by the officer that such officer would be there to collect such voters’ executed absentee ballots.

33. The Court in Keeley held that the absentee ballot voter must himself or herself, either personally or through the registrars, request that a police officer act as a designee for purposes of returning the ballot and that General Statutes § 9-140b “prohibits partisan individuals from doing so on a voter’s behalf.” Keeley at 409-410.
34. The Court held that “[w]ith respect to who may choose a ‘designee’ for an absentee voter, the language used in § 9-140b manifests an intent on the part of the legislature that a ‘designee’ be a person whom the absentee voter, himself or herself, selects to return his or her ballot.” Id. at 412.
35. The Court went further to hold that “the language describing permissible designees for absentee ballot returns-makes it abundantly clear that the legislature intended for partisan individuals . . . **to be excluded from the process.**” Id. at 414 (emphasis added).
36. Finally, the court held:

We glean two clear intentions from the foregoing legislative history. First, it is an absentee voter himself or herself, and not a third party, who must appoint or select a designee, from within the approved categories of persons, to return his or her absentee ballot on the voter's behalf. Second, similar to the mandatory procedures pertaining to in person voters, partisan individuals are required to distance themselves from absentee voters when those voters are in the process of casting their ballots, that is, when they are returning them to the town clerk for submission pursuant to § 9-140b.

Id. at 416.

37. Turning to the question here, the Respondents here should not have allowed their absentee ballots to be delivered by the police, as they were neither “sick” nor “disabled,” which are the only two circumstances under which a voter may appoint a designee who is not a member of their “immediate family,” as that term is defined in General Statutes § 9-140b.
38. Moreover, while the Commission does not expect a designee to verify whether or not a voter is “sick” or “disabled,” the West Haven Police Department should never have agreed to the assignment as they had no first-hand knowledge at the time they sent the officer as to whether the assignment had been lawfully requested by the voter.



39. Accordingly the Commission concludes that both the Respondents and the police department failed to correctly follow the prescriptions in General Statutes § 9-140b regarding the delivery of absentee ballots by someone other than the voter.
40. However, the Commission also recognizes factors that mitigate the issues here as well as differentiate this case from the facts found in Keeley.
41. In Keeley, the Court found that there was no proof that the voters were aware ahead of time that a police officer would be showing up and requesting their absentee ballot. Moreover, in many instances in Keeley the police officer collected multiple ballots from single addresses without receiving consent from the voters or even knowing the identity of the voters.
42. Here, while the Respondents were uninformed regarding the law surrounding the delivery of absentee ballots by someone other than the voter, it was clear from the facts found in this case that they had consented to the designation.
43. Additionally, the Respondents here were first-time absentee ballot voters. It is not clear from the facts here that they were even aware that absentee balloting was an option available to them—it is unsurprising that they would not be up to speed on the finer points of absentee ballot delivery designation.
44. Finally, the biggest factor in this case that led to the issues here was the involvement of the partisan candidates and/or their supporters/relatives, including but not limited to the Massaros.
45. Both the voters and the police took it on faith that these individuals knew the law and acted according to their ill-informed representations.
46. Had they understood the law, they would have advised the voters that their options were: A) Dropping the ballots in the mail on Monday; B) making an appropriate designation under § 9-140; or C) delivering the ballots personally to the Town Clerk.
47. As far as primary legal liability is concerned, the responsibility to know the law fell squarely on the shoulders of the voters and the police department, but it is important to note that but for the clear misunderstanding of the absentee ballot designation rules by a few over-eager and over-involved partisans, this case would not be before us.
48. The Commission will give the partisans here some slight leeway under this case only, as the Keeley case was not decided until about one month after the facts of the case here.


49. However, going forward, there should be no question after Keeley that those individuals identified in General Statutes § 9-140b (e) and Keeley need to take pains to stay well out of the absentee ballot collection business.
50. Considering the aforesaid, while the situation here was both unfortunate and avoidable, the Commission does not believe that any further corrective and/or punitive action is necessary here.

ORDER

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

That no further action is taken.

Adopted this 21<sup>ST</sup> day of August, 2019 at Hartford, Connecticut.

  
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Anthony J. Castagna, Chair  
By Order of the Commission