

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Norman Gauthier, Preston

File No. 2018-076A

AGREEMENT CONTAINING CONSENT ORDER

This agreement by and between Cheryl Roberts (hereinafter “Respondent”) and the authorized representative of the State Elections Enforcement Commission (hereinafter “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. In this matter, Complainant alleges that the Town of Preston held a primary at a polling place that was not compliant with applicable accessibility standards.

Factual Background

2. At all times relevant hereto, Respondent Roberts was the Democratic Registrar of Voters in the Town of Preston.
3. At all times relevant hereto, Desiree Majcher was the Republican Registrar of Voters in the Town of Preston.¹
4. At all times relevant hereto, Lynwood Crary, Michael Sinko, and Robert Congdon were members of the Preston Board of Selectmen.²
5. On August 14, 2018, the Republican and Democratic parties held primaries to select their candidates for statewide and general assembly offices in the State of Connecticut.
6. The ground level of Preston Town Hall served as the sole polling location for both the Republican and Democratic primaries on August 14, 2018.
7. The run of the ramp to the ground floor of the Preston Town Hall was 81 feet long with a six foot rise.

Law

8. Connecticut law requires that polling places comply with the state building codes concerning accessibility unless a waiver from the appropriate authority has been granted. General Statutes § 9-168d provides:

¹ Allegations concerning Desiree Majcher shall be addressed in a separate document

² Allegations concerning Lynwood Crary, Michael Sinko, and Robert Congdon shall be addressed in a separate document.

(a) On or before July 1, 1980, each polling place shall be made accessible to and usable by persons with physical disabilities by complying with the following standards of accessibility: (1) Doors, entrances, and exits used to gain access to or egress from the polling place shall have a minimum width of thirty-one inches; (2) temporary ramps shall be made available or curb cuts provided where necessary for accessibility to the entrance; (3) any stairs necessarily used to enter the polling place shall have a temporary handrail and ramp; (4) in the polling place, no barrier shall impede the path of a person with physical disability to the voting booth.

(b) The registrars of voters in each town, or the legislative body of the town, shall select as polling places only those sites which meet the standards of accessibility required under the State Building Code, as revised pursuant to section 29-269, if applicable, or this section. The registrars of voters in each town shall file with the Secretary of the State either: (1) A certification, as prescribed by the Secretary of the State, that states that each polling place selected complies with the provisions set forth in this subsection, or (2) an application for waiver, as described in subsection (c) of this section.

(c) The registrars or such legislative body may select a site not meeting such standards if no available site within the voting district or town can reasonably be made accessible if an application for waiver is filed with and approved by the building official of the town who shall file a copy of such approval with the Secretary of the State. An application for waiver shall be filed at least sixty days prior to the date on which the primary or election will be held. The Secretary of the State shall, not later than thirty days after the waiver application is filed, file a written objection to such waiver if the Secretary has reason to believe such waiver should not be granted.

9. General Statutes § 29-252 directs the building inspector to adopt a nationally recognized model building code. Pursuant to that provision and Public Act 16-215, the State of Connecticut adopted the 2016 Connecticut State Building Code based upon the 2012 International Building Code.³
10. The International Building Code §1010.5 provides that the rise for any ramp shall be 30 inches (762mm) maximum.^{4, 5}
11. While General Statutes § 9-168d provides that registrars or selectmen may apply for waivers from the requirement, no such application was submitted in this case.

³ The 2016 Connecticut State Building Code was the building code in effect at all times relevant to this case. Subsequently, the State adopted the 2018 Connecticut State Building Code that went into effect October 1, 2018 and uses the 2015 International Building Code.

⁴ This the same standard as detailed in the ADA Standards for Accessible Design as detailed in section 405.6.

⁵ The 2016 Connecticut State Building Code amended the 2012 International Building Code to allow for accessibility exemptions and historic structure exemptions. 2016 Connecticut State Building Code §§ 104.10.2 & 104.10.3. However, the Respondent's made no application to

12. General Statutes § 9-7b empowers the Commission to levy a civil penalty of not more than “two thousand dollars per offense against any person the commission finds to be in violation of . . . [§] 9-168d.”

Discussion

13. In this case, it is undisputed that the ramp access to the polling location in Preston did not comply with the applicable building code.
14. It is also undisputed that no waiver application had been submitted with regard to the ramp.
15. Moreover, unlike most election law violations concerning elections administration, the registrars of voters and the legislative body of the municipality share responsibility and liability for election law violations.
16. Accordingly, the Commission concludes that Respondent Roberts violated General Statutes § 9-168d.
17. With regard to the Commission’s determination of an appropriate penalty, the Commission notes that failure to have an accessible to polling location is a matter the Commission has previously considered to be serious. However, when a § 9-168d violation is not the result of knowing conduct, the Commission has previously declined to issue a civil penalty. See *In the Matter of a Complaint by Nancy Alisberg, Hartford*, File No. 2014-039 (this reduced penalty also reflected the cooperation and compliance with the investigation after the filing of the Complaint); *In the Matter of a complaint by Matthew Alterio, Trumbull*, File No. 1992-209.
18. Moreover, after this complaint was filed, the Town of Preston formed a committee which has selected a new polling location that Preston officials believe complies with the accessibility requirements of the General Statutes.
19. In light of the foregoing, the Commission declines to assess a civil penalty in this matter.

Terms of General Application

20. Respondent admits 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. Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
21. It is understood and agreed that this agreement will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondent and may not be used by either party as an admission in any subsequent hearing, if the same becomes necessary.

22. 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.

ORDER

IT IS HEREBY ORDERED THAT Respondent Cheryl Roberts shall henceforth strictly comply with the requirements of General Statutes §9-168d.

The Respondent:

For the State of Connecticut:

By:

By:

Cheryl Roberts
Cheryl Roberts
1631-1 Middle Road
Preston, CT 06365

Michael J. Brandi
Michael J. Brandi, Esq.,
Executive Director and General Counsel
Authorized Representative of the State
Elections Enforcement Commission
20 Trinity Street, Suite 101
Hartford, CT 06103,

Dated: 8-4-19

Dated: 8/4/19

Adopted this 20 day of November, 2019 at Hartford, Connecticut
~~4~~ day of ~~August~~

Anthony J. Castagno
Anthony J. Castagno, Chairman
By Order of the Commission