

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

In the Matter of a Referral by the Secretary of the State

File No. 2019-013

**AGREEMENT CONTAINING A CONSENT ORDER**

The parties, The Office of the Southington Registrars of Voters (“Respondent”) and the undersigned authorized representative of the State Elections Enforcement Commission (the “Commission”), enter into this agreement as authorized by Connecticut General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance with those provisions, the parties agree that:

1. On November 6, 2018, the State of Connecticut held a general election for the election of candidates for executive and legislative branch state office.
2. For the November 6, 2018 general election, Respondent had designated the Southington Town Hall Basement as the Election Day registration location for the Town of Southington.
3. On or about February 19, 2019, the Commission received the instant referral from the Secretary of the State.
4. The instant referral alleged that there was a “[f]ailure to properly set up the IVS Accessible Voting Equipment within the Town of Southington pursuant to CGS §9-247. Local officials indicated that the IVS equipment was not set up and operational at the Election Day Registration beat within town until approximately 11:30 a.m.”
5. The question of whether AVS machines are required at EDR locations has not previously been addressed by the Commission. As this is a novel issue of elections administration, the Commission requested, pursuant to General Statutes § 9-3, an opinion from the Secretary of the State on the question “whether it is a violation of any provision of Title 9 of the General Statutes of the State of Connecticut for a registrar of voters to fail to have an operational alternative voting system available at Election Day registration locations.”
6. The Secretary of the State provided the following opinion:

Although Connecticut General Statutes says nothing about an operational alternative voting system available at Election Day registration – EDR locations, the legal framework created by a combination of both State and Federal laws requires that these sites do have a procedure that allows individuals with

disabilities to vote. Section 9-19j(e)(1) states that:

Sec. 9-19j. Election day registration; confirmation procedures; counting of ballots. Activities prohibited near location of election day registration.[...] (1) If the registrars of voters determine that the applicant is not already an elector, the registrars of voters shall admit the applicant as an elector and the privileges of an elector shall attach immediately.

That means that once an applicant is admitted as an elector, all his or her privileges attaches immediately. Among its privileges, there is the right for a voting device compliant with the Help America Vote Act – HAVA. That is established by section 9-247 which states:

Sec. 9-247. Preparation of tabulators. The registrars of voters shall, before the day of the election, cause test ballots to be inserted in each tabulator to ensure that each tabulator is prepared and read and cause each other voting system approved by the Secretary of the State for use in the election, including, but not limited to, voting devices equipped for individuals with disabilities that comply with the provisions of the Help America Vote Act, P.L. 107-25, as amended from time to time, to be put in order in every way and set and adjust the same so that it shall be ready for use in voting when delivered at the polling place. Such registrars of voters shall cause each voting system to be in order and set and adjusted, to be delivered at the polling place, together with all necessary furniture and appliances that go with the same, at the room where the election is to be held, and to be tested and operable not later than one hour prior to the opening of the polling place.

Section 21081 of title 52 of the U.S. Code defines the voting systems standards for the voting systems to be used in elections for federal office. Among these settings, paragraph (3) of subsection (a) states that:

(a)Requirements - Each voting system used in an election for Federal office shall meet the following requirements:[...] (3)Accessibility for individuals with disabilities - The voting system shall— (A) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters; (B) satisfy the requirement of subparagraph (A) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place; and [...]

Even supposing that HAVA only applies if the equipment was purchased with funds made available under this provision, the section establishes a set of parameters that serve as a reference for accessibility for individuals with disabilities.

Lastly, the American with Disabilities Act – ADA states, under section 12132 of Title 42 of the U.S. Code that:

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

Title 2 of the ADA is one of the federal laws enforceable by the Assistant Attorney General – AAG of the Civil Rights Division of the Department of Justice – DOJ. Also, in a document issued by the Disability Rights Section of the Civil Rights Division entitled *The American with Disabilities Act and other federal laws protecting the rights of voters*, the DOJ states that:

The Americans with Disabilities Act (ADA) is a federal civil rights law that provides protections to people with disabilities that are similar to protections provided to individuals on the basis of race, color, sex, national origin, age, and religion. Title II of the ADA requires state and local governments (“public entities”) to ensure that people with disabilities have a full and equal opportunity to vote. The ADA’s provisions apply to all aspects of voting, including voter registration, site selection, and the casting of ballots, whether on Election Day or during an early voting process.

For these reasons, considering that the EDR is a procedure that voters might use, and considering that individuals with disabilities have the same right to vote as individuals without disabilities; when a public entity does not provide an alternative voting system to individuals with disabilities, they are discriminating those individuals by excluding their participation on the elections by reason of their disabilities.

Since the ADA requires that these public entities guarantee the right to vote of individuals with disabilities, their procedures (including ERD) should be adapted in order to allow those individuals to vote. The logical way to allow those persons to vote would be by providing alternative voting system following the requirements set forth in 52 U.S.C. §21081 as the Connecticut General Statutes § 9-247 require compliance with HAVA.

Finally, by failing to comply with these standards, the public entity that excludes an individual of its voting right for not having that equipment in an EDR location is violating § 9-19j since it is violating one of the privileges (established by the ADA) of the applicant that has been admitted as an elector, that is to have access to such equipment set forth by HAVA.

7. Moreover, General Statutes § 9-3 (a) provides:

The Secretary of the State, by virtue of the office, shall be the Commissioner of Elections of the state, with such powers and duties relating to the conduct of elections as are prescribed by law and, unless otherwise provided by state statute, the Secretary’s regulations, declaratory rulings, instructions and opinions, if in written form, and any order issued under subsection (b) of this section, shall be

presumed as correctly interpreting and effectuating the administration of elections and primaries under this title, except for chapters 155 to 158, inclusive, and shall be executed, carried out or implemented, as the case may be, provided nothing in this section shall be construed to alter the right of appeal provided under the provisions of chapter 54. Any such written instruction or opinion shall be labeled as an instruction or opinion issued pursuant to this section, as applicable, and any such instruction or opinion shall cite any authority that is discussed in such instruction or opinion.

8. In response to the instant referral, Respondent stated:

In Summary, we acknowledge that the IVS machine was not available for the full day in the EDR area because of it being overlooked in the set up process, but thankfully, no voter was impacted because of it. And that shortcoming was immediately corrected when the ROV office was notified. Southington takes these matters very seriously and intends to stress this area of concern to all of its poll workers at all polling places to insure that a full and complete set up is done to insure that no voters are disenfranchised.

9. Accordingly, it is the determination of the Commission that the Respondent violated General Statutes § 9-247.

10. The Respondent admits to all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and order entered into after a full hearing and shall become final when adopted by the Commission.

11. 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 to contest the validity of the Order entered into pursuant to this Agreement.

12. Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against the Respondent regarding this matter.

13. It is understood and agreed by the parties to this Agreement that the Commission will consider this Agreement at its next available meeting and, if the Commission rejects it,

the Agreement will be withdrawn and may not be used as an admission by the Parties in any subsequent hearing, proceeding or forum.


**ORDER**

It is hereby ordered that the Respondents shall henceforth strictly adhere to the requirements of General Statutes § 9-247.

**For the Respondent  
Office of the Southington  
Registrars of Voters:**

**For the State of Connecticut:**

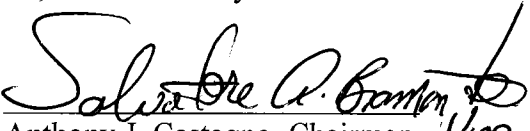
By: \_\_\_\_\_

By:   
Michael J. Brandi  
Executive Director and General Counsel and  
Authorized Representative of the  
State Elections Enforcement Commission  
20 Trinity St.  
Hartford, CT 06106

Dated: \_\_\_\_\_

Dated: 7/15/2020

Adopted this 15<sup>th</sup> day of July, 2020 at Hartford, Connecticut by vote of the Commission.

  
Anthony J. Castagno, Chairman - Vice  
By Order of the Commission  
Salvatore A. BRAMANTE

**ORDER**

Mr. Thomas Janik and Mr. Robert Sherman are no longer under the employ of the Town of Southington. As such, the Town of Southington has no authority to compel their agreement to signing this attached consent order.

In lieu of Mr. Janik and Mr. Sherman signing, the Town Manager will sign the attached agreement on behalf of the Town of Southington affirming the contents of this agreement. In addition, the Town of Southington confirms that once made aware of the issue it was remedied in a timely fashion and that no one had requested and was denied access to an IVS Accessible Voting machine during this time. The new registrars of the Town of Southington are, and will be, in compliance with all proper IVS Accessible Voting Equipment within the Town of Southington voting locations in the future.

**The Respondent:**

By: 

Mark Sciota

75 Main Street

Southington, CT 06489

Dated: 7-7-20