

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

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

File No. 2019-015

AGREEMENT CONTAINING A CONSENT ORDER

The parties, Barbara Reisner and Anne Wall (“Respondents”) 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. At all times relevant hereto, Respondents Barbara Reisner and Anne Wall were the Registrars of Voters for the Town of Bloomfield.
2. On November 6, 2018, the State of Connecticut held a general election for the election of candidates for executive and legislative branch state office.
3. The instant referral alleged that there was a “[f]ailure to properly set up the IVS Accessible Voting Equipment within the Town of Bloomfield . . . It was alleged that the accessible ballot marking system at the Election Day Registration site was not operational as there was no ballot information downloaded on the system.”
4. 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.”
5. The Secretary of the State provided the following opinion:

While it has been suggested that the absence of direct reference to alternative voting systems or HAVA required voting equipment at EDR locations as conclusive evidence that no such equipment is required, we do not believe this to be the case. Instead, we believe that 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 privately and independently, and further, that such voting can only take place with the presence of HAVA required voting equipment.

To begin, the path to accessible voting systems was created in the Help America Vote Act. 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 [...]

While HAVA prepared the way for accessible voting by supplying money to purchase equipment and by demanding that such equipment be used whenever a federal office was on the ballot, state law followed suit by mandating the use of this equipment in all state and local elections. This requirement was 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.

At this point, the use of HAVA equipment has been focused upon the polling place. EDR locations are not polling places in any conventional sense of the word. Clearly, polling places are voting locations for registered voters and anyone seeking to utilize election day registration, by definition, is not an elector. Yet, EDR locations are not merely locations wherein voter registration occurs, but location where individuals gain the status of electors and where voting occurs. 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.

We must take from this language that, once an applicant is admitted as an elector, all of his or her privileges attach immediately. Further, we must conclude that among

those privileges are the ones contained in the Voter's Bill of Rights as specified in Section 9-236b. Included in these rights is the ability to "Vote independently and in privacy at a polling place, regardless of physical disability." We note that this right was created by the General Assembly in 2004, well before the creation of election day registration in 2012. While it is certainly true that an EDR location is not a polling place in the conventional sense of that phrase, we are left with the question of whether the use of the words "polling place" by the General Assembly in 2004 meant to deny individuals the ability to vote privately and independently at EDR locations that did not exist until 2012? We cannot conclude this to be the case. Moreover, in this opinion, we do not draw that conclusion.

Rather, we think that the 2004 language reflected the then electoral reality that voting took place only at a controlled location under the direction of election officials, such as a polling place, or in the unsupervised world of absentee ballots where the elector could take the ballot with them and vote wherever they wish. If we were to consider the circumstances under which a vote at an EDR location occurs, the structure is far more like that of a polling place than an absentee ballot situation. An absentee ballot may be taken with the voter, but a ballot must remain in the polling place or EDR location. An EDR location and a polling place both have a zone of privacy that avoids political activity within 75 feet of any entrance, however no such zone surrounds an absentee ballot. Most significantly, under section 9-19j, a ballot at an EDR location must be marked in the presence of the election officials, but "in such a manner that the registrar of voters shall not know how the election day registration ballot is marked." Obviously, there is no such restriction that surrounds absentee voting, but moreover, the language clearly indicates the intention of the General Assembly that privacy be applied to the marking of ballots at an EDR location. It is ultimately the natural extension of this language that such privacy be applied to all voters at an EDR location, including those that may wish to employ HAVA style voting equipment to assist them in the private marking of their ballot.

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.

In light of this description, considering that the EDR is a procedure that would be voters might use, and considering that individuals with disabilities have the same right to vote as individuals without disabilities; and considering that accessible HAVA style voting equipment exists and is available in every municipality, when a municipality does not provide an alternative voting system to individuals with disabilities, it may be concluded that they are discriminating those individuals by excluding their private and independent participation in the elections by reason of their disability.

Since the ADA requires that these public entities guarantee the right to vote of individuals with disabilities, their procedures, in this case voting at an EDR location must be adapted in order to allow those individuals to vote privately and independently. The mechanism exists to allow those persons to vote and that is by providing alternative voting system following the requirements set forth in 52 U.S.C. §21081 and the Connecticut General Statutes.

Finally, we believe that by failing to comply with these standards, the municipality 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.

6. 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.

7. In response to the instant referral, Respondents acknowledged the violation and indicated that they had taken all possible steps to remedy the situation that day and since. Neither Respondent is currently a Registrar of Voters.

8. Accordingly, it is the determination of the Commission that the Respondents violated General Statutes § 9-19j.
9. The Respondents admit 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.
10. The Respondents waive:
 - 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.
11. Upon the Respondents' agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against the Respondents regarding this matter.
12. 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 § 9-19j.

The Respondents:

For the State of Connecticut:

By: Ann E. Wall
Ann E. Wall
6 Marguerite Ave.
Bloomfield, CT 06002-3334

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

Dated: 2/26/2020

Dated: 2/28/2020

By: Barbara Reisner
Barbara Reisner
43 Cliffmount Drive
Bloomfield, CT 06002

Dated: 2/26/2020

Adopted this 4 day of MARCH, 2020 at Hartford, Connecticut by vote of the Commission.

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