SELECTED TOPICS IN ELECTION PROCEDURES

CONNECTICUT REGISTRAR OF VOTERS
CONTINUING CERTIFICATION PROGRAM
RICHARD P. ROBERTS

TOPICS TO BE DISCUSSED

- Voter Identification Requirements
- Supervised Absentee Balloting
- Management of the Polling Locations
- Minority Representation
- Eligibility of “Voters” to Participate in Municipal Referenda
VOTER IDENTIFICATION

- Voting at a polling place – CGS 9-261
- HAVA voters – CGS 9-23r
- EDR Voting – CGS 9-19j and 9-20
VOTER IDENTIFICATION

CGS 9-261(a): "In each primary, election or referendum, when an elector has entered the polling place, the elector shall announce the elector's street address, if any, and the elector's name to the official checker or checkers in a tone sufficiently loud and clear as to enable all the election officials present to hear the same. …"

VOTER IDENTIFICATION

CGS 9-261(a): "... Each other elector shall (1) present to the official checker or checkers the elector's Social Security card or any other preprinted form of identification which shows the elector's name and either the elector's address, signature or photograph, or (2) on a form prescribed by the Secretary of the State, write the elector's residential address and date of birth, print the elector's name and sign a statement under penalty of false statement that the elector is the elector whose name appears on the official checklist."
VOTER IDENTIFICATION

FAQ’S FROM SECRETARY OF STATE:

Is a driver's license or photo ID required to vote in Connecticut?

No. When you arrive at the polling place the poll worker will request that you present ID but if you do not have any then in most cases, you may sign an affidavit in lieu of presenting ID. There are several options for identification and they do not need to be a driver's license or have a photo.

My new driver's license indicates that it is NOT FOR FEDERAL IDENTIFICATION. May I use it as identification at the polling place?

Yes. You may continue to use your current driver’s license at the polling place when you vote. When you check-in to vote, in lieu of the driver’s license, you may also show a credit card with your name and signature, an ID with your name and photograph, or any document with your name and address such as a checkbook or a utility bill.
VOTER IDENTIFICATION

FAQ’S FROM SECRETARY OF STATE:

Does my ID need to have the address printed on it?
No. If your ID includes a photo, it does not need to include your address.

VOTER IDENTIFICATION

FAQ’S FROM SECRETARY OF STATE – STATE ELECTION (NON-HAVA)

You must present:
Your social security card, or
Any pre-printed form of identification that shows your:
- name and address, or
- name and signature, or
- name and photograph
*Or

Sign a statement under penalty of false statement on Form ED-681 entitled, "Signatures of Electors Who Did Not Present ID", provided by the Secretary of the State that the elector whose name appears on the official check list is the same person who is signing the form.

CGS 9-261(a) – HAVA voters:

“… Each elector who registered to vote by mail for the first time on or after January 1, 2003, and has a “mark” next to the elector's name on the official registry list, as required by section 9-23r, shall present to the official checker or checkers, before the elector votes, either a current and valid photo identification that shows the elector's name and address or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the elector.”
VOTER IDENTIFICATION
HAVA

If the HAVA voter does not present the required identification when seeking to vote in person for federal office:

CGS 9-23r(d): "If an individual does not meet the requirements of this subsection in an election for federal office, such individual may cast a **provisional ballot** prescribed under sections 9-232i to 9-232o, inclusive."

VOTER IDENTIFICATION
HAVA

If the HAVA voter wishes to vote for federal office by absentee ballot:

CGS 9-23r(e): the individual shall enclose in the outer absentee ballot envelope, and not in the inner envelope with the ballot: (1) A copy of a current and valid photo identification, or (2) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. If an individual does not meet the requirements of this subsection in an election for federal office, such individual’s absentee ballot shall be processed in accordance with the provisions of subdivision (2) of subsection (d) of section 9-150a and treated as a **provisional ballot for federal office only**, pursuant to sections 9-232i to 9-232o, inclusive.
VOTER IDENTIFICATION
HAVA

FAQ’S FROM SECRETARY OF STATE (HAVA):

First time voters who: registered by mail after January 1, 2003, and
are voting for the first time in a primary/election with federal candidates on the ballot and
have a "mark" next to their name on the official registry list:

You must present: A copy of a current and valid photo identification that shows your name and address;

Or

A copy of a current utility bill, bank statement, government check, paycheck or government document that shows your name and address;

Or

Cast a provisional ballot
VOTER IDENTIFICATION
SOTS

http://portal.ct.gov/-
/media/sots/ElectionServices/LEAD_Communications/2015/11315
VoterIDPostereNGLISHpdf.pdf?la=en

VOTER IDENTIFICATION
EDR

EDR VOTERS – CGS 9-20 and 9-19):

CGS 9-20(a): "... Each such applicant shall present his birth
certificate, drivers' license or Social Security card to the admitting
official for inspection at the time of application."
VOTER IDENTIFICATION
EDR

EDR VOTER – CGS 9-20 and 9-19j

CGS 9-20(b): “… Upon the request of any elector, or if the applicant does not present a birth certificate, drivers’ license or Social Security card as required by subsection (a) of this section, at the time an application is made in person to an admitting official or prior to the approval of such an application, any admitting official shall require the applicant to prove his identity, place of birth, age and bona fide residence by the testimony under oath of at least one elector or by the presentation of proof satisfactory to such admitting official.”

VOTER IDENTIFICATION
EDR

EDR VOTERS – CGS 9-20 and 9-19j:

CGS 9-19j(d): “Any person applying to register on election day under the provisions of subsections (a) to (i), inclusive, of this section shall make application in accordance with the provisions of section 9-20, provided (1) on election day, the applicant shall appear in person at the location designated by the registrars of voters for election day registration, (2) an applicant who is a student enrolled at an institution of higher education may submit a current photo identification card issued by said institution in lieu of the identification required by section 9-20, and (3) the applicant shall declare under oath that the applicant has not previously voted in the election.”
EDR VOTER – CGS 9-20 and 9-19j:

CGS 9-19j(d): “If the information that the applicant is required to provide under section 9-20 and subsections (a) to (i), inclusive, of this section does not include proof of the applicant's residential address, the applicant shall also submit identification that shows the applicant's bona fide residence address, including, but not limited to, a learner's permit issued under section 14-36 or a utility bill that has the applicant's name and current address and that has a due date that is not later than thirty days after the election or, in the case of a student enrolled at an institution of higher education, a registration or fee statement from such institution that has the applicant's name and current address.”

SOTS 9/15/2015 COMMUNICATION:

"Under the act, applicants must appear in person at the designated EDR location and declare under oath (by signing a certification provided with the EDR envelope) that they have not previously voted in the election. They must complete the application for voter registration and provide the same information CGS §9-20 currently requires from anyone seeking to become an elector in person in the state. This means they must provide their birth certificate, driver's license, or Social Security card."
VOTER IDENTIFICATION
EDR

SOTS 9/15/2015 COMMUNICATION:

“If the person does not have any of these forms of identification the applicant can prove their identity under the testimony of another elector or by the presentation of other satisfactory proof to the registrar of voters. The act also allows college and university students to present a current photo identification (ID) issued by their higher education institution in lieu of a birth certificate, driver’s license, or Social Security card.”

VOTER IDENTIFICATION - EDR

SOTS 9/15/2015 COMMUNICATION:

“Under the act, if an applicant's identification does not also include proof of their residential address, he or she must also submit another form of identification showing their residential address in the municipality.”
VOTER IDENTIFICATION
EDR

SOTS 9/15/2015 COMMUNICATION:

“The additional identification may include, but is not limited to a motor vehicle learner's permit, utility bill due no later than 30 days after the election, for a college or university student, a current college or university registration or fee statement, a lease, library card with residential address, paycheck, property tax bill, naturalization documents, passport (assuming it is recent and includes residential address).”

VOTER IDENTIFICATION
EDR

SEEC File No. 2015-157

The Complainant alleges that he showed the Respondents a copy of his lease for a property in the City of ……, as well as his driver's license, in order to prove residency and identification.

The Complainant alleges that he was turned away at the EDR location because his driver's license did not contain his new address.
“Pursuant to §§ 9-17j and 9-20, any person registering to vote, including those registering at an EDR location, must show proof of identity and of residence. And, while those statutes do enumerate only certain forms of identification as acceptable, this is not an exclusive list of what a registrar may accept. Indeed, the Secretary of the State’s Office provided a nonexhaustive list of other acceptable forms of proof of residence.”

“Here, had there been a requirement to keep a log of events at the ……. EDR location akin to the moderator’s diary, the fact in this matter may very well have been more easily sorted. However, since we do not have such evidence available in this situation and since the Complainant took no further action, such as contact the Election Day Hotline manned by Commission staff, the Commission is left with little choice.

“Considering the aforesaid, and without any corroborating support in this instance for the Complainant's allegations, the Commission cannot conclude at this point that it was more probable than not that the Respondents incorrectly applied the EDR voter identification rules as alleged by the Complainant.”
SUPERVISED ABSENTEE BALLOTING

Definitions

- **Supervised absentee voting** – absentee balloting by all electors' institutions conducted under the supervision of ROV's or their designees (§9-159q and r)
- **Institution** – veterans' health care facility, residential care home, health care facility for the handicapped, nursing home, rest home, mental health facility, alcohol or drug treatment facility, an infirmary operated by an educational institution for the care of its students, faculty and employees or an assisted living facility
- **Designee** – elector of the same town and political party as the appointing registrar who is not an employee of the institution at which supervised voting is conducted
SUPERVISED ABSENTEE BALLOTING

- Discretionary
  - institutions with fewer than 20 electors
  - Any street address in the town from which 20 or more absentee ballot applications are received
- Requested by:
  - The administrator of the institution. Requests go to town clerks and registrars of voters of the several towns wherein the patients are registered, or
  - Either of the registrars of the town wherein an elector is registered.
- Conducted by both registrars for all electors from their town who are in the institution requesting absentee ballots
- ROV’s other than in town where institution located can opt out in writing

SUPERVISED ABSENTEE BALLOTING

General

- If a registrar or a spouse, child or dependent relative residing in the registrar’s household is a candidate, the registrar shall not supervise absentee voting
- In a primary the registrar shall designate a representative of the party endorsed candidate and one for the contestants from lists submitted no later than 10 days before the primary.
- The registrar shall give party endorsed candidates and contestants notice of right to submit lists
- No power of attorney or proxy valid for voting
SUPERVISED ABSENTEE BALLOTING

Mandatory

- Application
  - 20 or more patients in the institution who are electors in any town.
  - Conducted by the registrars, or their designees, of the town in which the institution is located.
  - Applies to all electors who are patients in the institution and who request an absentee ballot

SUPERVISED ABSENTEE BALLOTING

Mandatory

- Methodology
  - Registrars of Voters and the administrator of the institution agree on the date and time for supervised balloting - no later than last business day before election.
  - A registrar cannot supervise balloting if his/her spouse, or child, or a dependent relative residing in the registrar's household is a candidate. Registrar may designate the deputy registrar or an assistant registrar.
  - Town clerk of the elector's town delivers the absentee voting set to the town clerk of the town in which the institution is located.
  - The town clerk receiving absentee voting sets delivers them to the registrars of voters on the date when supervision of absentee balloting is to occur and get receipt
SUPERVISED ABSENTEE BALLOTING

Mandatory

Process

- All activity at the institution is done jointly by both registrars/designees.
- Ballots are delivered directly to the patients who have applied. Registrars do not take any applications or blank ballot sets with them.
- It is not required that registrars actually watch each voter mark his/her ballot. However, if one registrar believes it necessary to watch the actual process of voting by each elector (patient), then both registrars should do so together.
- CGS § 9-159q: "Nothing ... shall limit the right of an elector to vote his ballot in secret."
- Elector places completed ballot into inner envelope, signs and seals inner envelope, places inner envelope into serially-numbered outer envelope, seal and gives to the registrars.
- Registrars/designees jointly deliver or mail all ballots to the appropriate town clerk.

Voter Assistance

- Elector can have assistance of person of own choosing, but not candidate, employer or his agent, or representative of his union
- If any elector asks for assistance in voting his/her ballot, both registrars/designees must be present and jointly furnish the assistance deemed necessary and appropriate to enable the elector to vote ballot.
SUPERVISED ABSENTEE BALLOTING

**Mandatory**

- **Ballot Rejection**
  - Registrars/designees may reject a ballot when:
    - The elector (patient) declines to vote.
    - The registrars/designees are unable to determine how the elector who has requested their assistance desires to vote the ballot. (Both registrars agree elector is incapable of voting.)
  - Mark the rejected ballot "rejected" on the outer envelope and note the reasons for rejection and sign their names.
  - Return the ballot to the appropriate town clerk.

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**SUPERVISED ABSENTEE BALLOTING**

- **SEEC File No. 2013-151** (insufficient evidence of improper influence of electors and other claims; however decision reiterates that applications for AB’s should be processed by town clerk prior to supervised balloting)

- **SEEC File No. 2012-009** (insufficient evidence that candidate was discouraging electors from participating in supervised AB voting)
SUPERVISED ABSENTEE BALLOTING

Keeley v. Ayala, Supreme Court of Connecticut, April 3, 2018

Supervised absentee balloting was mandated by statute at Northbridge, a nursing home that had at least eighty residents. See General Statutes §§ 9-159q and 9-159r. Such balloting was scheduled to take place on November 8, 2017, for the November 14, 2017 Democratic special primary.

In the days preceding the earlier Democratic primary held on September 12, 2017, ..., director of therapeutic recreation at Northbridge, and representatives of the Democratic registrar of voters, had gone door to door at the facility to determine which residents wanted to vote in that primary. They distributed absentee ballot applications to those who did and later returned with their absentee ballots. Several residents then voted in the September 12, 2017 primary.

“... The plaintiff campaigned at Northbridge prior to the September 12, 2017 primary and again before the November 14, 2017 special primary. Prior to the latter event, he went door to door on all four floors of the facility, speaking to residents, and a number of those residents indicated that they intended to vote. In contrast to the assistance that they had rendered to Northbridge residents in advance of the earlier primary, however, neither ... nor the registrar's representatives visited residents individually in the days prior to the scheduled supervised balloting session on November 8, 2017, to determine whether they sought to vote and, if so, to distribute absentee ballot applications to those voters.”
SUPERVISED ABSENTEE BALLOTING

Keeley v. Ayala, Supreme Court of Connecticut, April 3, 2018

At 9:30 a.m. on November 8, 2017, Medina arrived at Northbridge as part of his moderator duties. He spoke with the individual working at the front reception desk, who had no knowledge of the scheduled supervised balloting. Printed signs announcing the balloting were posted, however, in each of two elevators used by the residents.

The scheduled supervised balloting session occurred between 10 a.m. and 12 p.m. in a second floor reading room, where the Democratic registrar’s two representatives awaited residents who wished to cast absentee ballots. Although the representatives had brought absentee ballot applications with them that day, they made no efforts to distribute them to residents. Medina remained at Northbridge throughout the voting period. Residents were seen in the area but did not vote. Ultimately, no Northbridge residents voted at the supervised absentee balloting session on November 8, 2017.

The trial court found that the procedure employed in anticipation of and at the November 8, 2017 supervised absentee balloting session was “in sharp contrast” to the procedure that had been employed prior to the September 12, 2017 primary. After observing, without elaboration, that §§ 9-159q and 9-159r “put affirmative obligations on the [town] clerk and [the] registrar [of voters] with respect to the preparation and delivery of absentee ballot applications and absentee ballots,” the trial court concluded “that the proper procedure was not followed here.” In particular, the court explained, “the [Democratic] registrar [of voters] and [her] designees failed to take reasonable steps to deliver the applications and ballots, and failed to post reasonable notice of the supervised absentee balloting so as to inform the potential voters at Northbridge such that Northbridge residents were unaware that the supervised absentee balloting was taking place.” The court also stated that the November 8, 2017 session was “[s]tealth supervised balloting [rather than] supervised balloting,” and that it was “fundamentally unfair to the Northbridge residents and the candidates . . . who, along with the residents of Bridgeport, [were] entitled to cast their votes in a fair and honest election.”
SUPERVISED ABSENTEE BALLOTING

**Keeley v. Ayala, Supreme Court of Connecticut, April 3, 2018**

The defendants claim that the trial court incorrectly determined that the supervised absentee balloting held at Northbridge was not compliant with the statutes governing that process. They contend that the applicable law did not require the Democratic registrar of voters or her representatives to notify the Northbridge residents of the scheduled supervised absentee balloting and did not mandate that the officials approach residents to discern their voting intentions and to offer them ballot applications. Rather, the defendants argue, the onus is on a voter to apply for an absentee ballot, and only when an application is submitted is the registrar of voters required to deliver an absentee ballot. They emphasize that, “in this case, because no voter at Northbridge applied for an absentee ballot for this election, there was nothing to be delivered.” (Emphasis in original.) Our review of the statutes governing supervised absentee balloting leads us to conclude that the defendants’ claim is meritorious.

SUPERVISED ABSENTEE BALLOTING

**Keeley v. Ayala, Supreme Court of Connecticut, April 3, 2018**

In light of the foregoing, we agree with the defendants that, under our absentee balloting statutes, the onus was on the residents at Northbridge to request absentee ballot applications if they wanted to cast absentee ballots for the November 14, 2017 Democratic special primary. If they had done so, the registrars or their representatives would have been obligated to deliver those ballots to them on November 8, 2017, to be cast in the supervised absentee balloting session that was scheduled on that date. To the extent that those representatives, prior to the September 12, 2017 Democratic primary, made efforts to ascertain whether residents at Northbridge wanted to submit applications for absentee ballots, we conclude that those efforts, while commendable, were not statutorily required and did not give rise to any obligation to repeat the process in a later primary.
SUPERVISED ABSENTEE BALLOTING

**Keeley v. Ayala, Supreme Court of Connecticut, April 3, 2018**

Similarly, nothing in our statutes required town officials to provide notice of the scheduled supervised absentee balloting session to the residents of Northbridge. It appears, to the contrary, that such notice typically is provided by the administrator of an institution where supervised balloting is to occur, or by his or her agents, as those individuals are in the best position to communicate with the residents. Although, in the present case, that notice likely was ineffective, leading to confusion among the residents, that circumstance does not constitute a violation of a statutory duty by a town official sufficient to warrant a new special primary. Consequently, the trial court's conclusion to the contrary cannot stand.

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SUPERVISED ABSENTEE BALLOTING

- **SEEC File No. 2013-130B** (fact that more than 20 electors applied for AB from a public housing complex did not require supervised AB because it was not an "institution")

- **SEEC File No. 2010-039** (primary challenge slate unaware of specific right to participate in supervised AB; ROV's letter was sufficient to put them on notice)
SUPERVISED ABSENTEE BALLOTING

- Refer to the 2017 Fall ROVAC Conference outline prepared by Bunny Lescoe


MANAGEMENT OF POLLING LOCATIONS
MANAGEMENT OF POLLING LOCATIONS

- Who can be present at the polling place?
- Establishing the 75' location
- Activities within the 75' perimeter
- Cases and SEEC decisions

WHO CAN BE PRESENT AT THE POLLS?

CGS 9-236(c): “No person except those permitted or exempt under this section or section 9-236a and primary or election officials and party checkers appointed under section 9-235 shall be allowed within any polling place except for the purpose of casting his vote....”
WHO CAN BE PRESENT AT THE POLLS?

CGS 9-236a – “Spare voting tabulator or ballot box for educational use of students. Any town, on its own initiative or upon a request by the Secretary of the State, and with the approval of the legislative body of the town or, in the case of a town in which the legislative body is a town meeting, the board of selectmen, may require a spare voting tabulator or ballot box to be provided inside any polling place or in a room adjacent to the polling place, for the educational use of students from kindergarten to grade twelve, inclusive. Upon such approval, the registrars shall establish procedures for the use of the tabulator or ballot box, including but not limited to: (1) Location and preparation of the tabulator or ballot box, (2) duties of tabulator or ballot box tenders, and (3) canvassing the returns. Any such tabulator shall be in addition to the demonstrator or spare voting tabulator required by section 9-260. Ballots completed by students under this section shall be unofficial, and polling place officials shall not be required to handle or count such ballots. Each student who will be using such tabulator or ballot box inside a polling place or a room adjacent to the polling place shall be accompanied by an adult. The supervisor of such students for the purposes of this section shall submit the names of all adults who will be working with such students to the registrars at least forty-eight hours before the election.”

WHO CAN BE PRESENT AT THE POLLS?

CGS 9-236(c) – continued: “Representatives of the news media shall be allowed to enter, remain within and leave any polling place or restricted area surrounding any polling place to observe the election, provided any such representative who in any way interferes with the orderly process of voting shall be evicted by the moderator.”
WHO CAN BE PRESENT AT THE POLLS?

CGS 9-236(c) – continued – “A number of students in grades four to twelve, inclusive, not to exceed four at any one time in any one polling place, may enter any polling place between twelve o'clock noon and three o'clock p.m. for the purpose of observing the activities taking place in the polling place, provided there is proper parental or teacher supervision present, and provided further, any such student who in any way interferes with the orderly process of voting shall be evicted by the moderator.”

WHO CAN BE PRESENT AT THE POLLS?

CGS 9-236(c) – continued: “An elector may be accompanied into any polling place 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.”
WHO CAN BE PRESENT AT THE POLLS?

CGS 9-264: “Assistance to elector who is blind, has disability or is unable to write or to read the ballot. 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.

WHO CAN BE PRESENT AT THE POLLS?

CGS 9-140b: “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.”
WHO CAN BE PRESENT AT THE POLLS?

CGS 9-235e: “Except as otherwise provided in this section, the Secretary of the State, or the Secretary's designee, shall be allowed access to each polling place within the state during any municipal, state or federal election, primary or recanvass for the purpose of reviewing each polling place and recanvass for compliance with state and federal law. If the Secretary is a candidate on the ballot for any election or primary at a polling place, only the Secretary's designee may access such polling place pursuant to the provisions of this section.”

ESTABLISHING THE 75’ LINE

CGS 9-236(a): “On the day of any primary, referendum or election, no person shall solicit on behalf of or in opposition to the candidacy of another or himself or on behalf of or in opposition to any question being submitted at the election or referendum, or loiter or peddle or offer any advertising matter, ballot or circular to another person within a radius of seventy-five feet of any outside entrance in use as an entry to any polling place or in any corridor, passageway or other approach leading from any such outside entrance to such polling place or in any room opening upon any such corridor, passageway or approach.”
ESTABLISHING THE 75’ LINE

CGS 9-236(b)(1): “The selectmen shall provide suitable markers to indicate the seventy-five-foot distance from such entrance. Such markers shall consist of a board resting on an iron rod, which board shall be not less than twelve inches square and painted a bright color and shall bear the figures and letters “75 feet” and the following words: ‘On the day of any primary, referendum or election no person shall solicit in behalf of or in opposition to another or himself or peddle or offer any ballot, advertising matter or circular to another person or loiter within a radius of seventy-five feet of any outside entrance in use as an entry to any polling place or in any corridor, passageway or other approach leading from any such outside entrance to such polling place or in any room opening upon any such corridor, passageway or approach.’”

WITHIN THE 75’ LINE

CGS 9-236(a): “Nothing contained in this section shall be construed to prohibit (1) parent-teacher associations or parent-teacher organizations from holding bake sales or other fund-raising activities on the day of any primary, referendum or election in any school used as a polling place, provided such sales or activities shall not be held in the room in which the election booths are located…”
WITHIN THE 75’ LINE

CGS 9-236(a): “Nothing contained in this section shall be construed to prohibit … (2) the registrars of voters from directing the officials at a primary, referendum or election to distribute, within the restricted area, adhesive labels on which are imprinted the words “I Voted Today”, …”

WITHIN THE 75’ LINE

CGS 9-236(a): “Nothing contained in this section shall be construed to prohibit … or (3) the registrars of voters in a primary, election or referendum from jointly permitting nonpartisan activities to be conducted in a room other than the room in which the election booths are located. The registrars may jointly impose such conditions and limitations on such nonpartisan activity as deemed necessary to ensure the orderly process of voting.”
WITHIN THE 75’ LINE POLLING PLACE

SEEC File No. 2007-350:

- “Respondent [Moderator] permitted the candidate, …, to enter and remain in the polling place at least five (5) times throughout the day for periods lasting up to 20 to 30 minutes, for purposes other than casting her vote.

- “At times, candidate sat in a chair by the door in the polling place where she greeted and talked to electors coming to cast their votes.

- “Respondent was aware of the candidate's presence at her polling place but neglected her duties as a moderator by allowing the candidate to enter and remain within the polling place on numerous occasions.”

WITHIN THE 75’ LINE POLLING PLACE

SEEC File No. 2007-350:

“It is concluded that Respondent, by allowing a candidate to remain within the polling place on numerous and repeated occasions at the September 11, 2007 Democratic primary, for a purpose other than to cast her vote, violated Conn. Gen. Stat. §9-236.

“Ironically, the Respondent clearly enforced Conn. Gen. Stat. § 9-236 against the Complainant's sister when she entered the polling place wearing a t-shirt bearing the Complainant’s name. Such selective enforcement of the same provision suggests that the Respondent may have been less than impartial in the performance of her responsibilities as an election official.”
WITHIN THE 75’ LINE POLLING PLACE

SEEC File No. 2012-096:

“Respondent was the First Selectman of the Town of … and the incumbent candidate for the 2011 municipal election, at which she was re-elected to an additional term.

“Respondent … was observed at the District 2 polling place “(walking) past the voting area and down the hallway into the First Selectman’s office.” It states that the window to the First Selectman’s office faces the main entrance to the District 2 polling place and that Respondent … was observed during voting hours working at her desk, including but not limited to using her work telephone.

WITHIN THE 75’ LINE POLLING PLACE

SEEC File No. 2012-096:

“As concerns the Complainant’s allegation that the Respondent walked into Town Hall- that is, the building housing the polling place - and worked in her office during voting hours, the Commission finds as an initial matter that merely walking by the entrance to the polling place on the way to another part of the building in which a person has official, non-election related business is not per se a violation of General Statutes § 9-236(a). If a polling place is located within a building that houses other activities, such as a town hall, school or community center, § 9-236(a) does not foreclose all other activity in the building on that day.”
WITHIN THE 75’ LINE POLLING PLACE

SEEC File No. 2012-096:

“However, the Commission notes that any person with other business in the building must take care to avoid triggering § 9-236 (a), especially the clause on loitering within the statutory zone. This danger is particularly acute for candidates.

“Turning to the specific facts of this case, the Commission finds that the location of Respondent's office was within the 75’ distance of the outside entrance leading to the polling place. Immediately to the right of the front door of Town Hall is a floor-to-ceiling exterior window that looks into the First Selectman's office. If the Respondent were in her' office, especially at night, she would be clearly visible to anyone entering Town Hall, including voters.”

WITHIN THE 75’ LINE POLLING PLACE

SEEC Files No. 2012-164 and 2012-193

- Respondent was a candidate for State Representative and also served as Town Chairman

- Complainants here allege that they separately witnessed the Respondent loitering within the restricted area outside 2 of the 5 polling places in the Town of ... on Election Day, November 6, 2012 in violation of General Statutes § 9-236 (a).
WITHIN THE 75’ LINE POLLING PLACE

SEEC Files No. 2012-164 and 2012-193

“Complainant alleges that the Respondent did not enter the polling place, but called over one of the unofficial checkers for the Democratic party who walked out of the polling place and into the hall to speak with him. After the Respondent was finished speaking with the unofficial checker, the Complainant alleges that he spoke with the Respondent and the Respondent stated that his reason for being there was to pick up the voting numbers for that polling place and take them back to Democratic Town Committee headquarters. He did not tell the Respondent to leave nor did he complain to the moderator. He stated that while he was unclear exactly how long the Respondent remained outside in the hallway, he estimates that it was for approximately 5-10 minutes. He did not observe the Respondent engaging any voters while out in the hallway or wearing any paraphernalia promoting his or any other candidate and/or question on the ballot that day.”

WITHIN THE 75’ LINE POLLING PLACE

SEEC Files No. 2012-164 and 2012-193

“Respondent asserts that at all times relevant to the instant matter his particular reelection was not in question; his mindset was that of a DTC Chair and not a candidate. The DTC had multiple shifts of unofficial/party checkers in every polling place. Many of the unofficial/party checkers were elderly. He further asserts that his purpose for being at polling areas on that day was primarily to collect the voter information from the unofficial/party checkers and to take it back to headquarters so that volunteers could make "get-out-the-vote" calls to those who were not yet crossed off. He was also there to check on the health and fitness of the unofficial/party checkers and bring them provisions of food and water, if necessary.”
“Respondent impermissibly acted as a runner for the Bloomfield Democratic Town Committee, a position that placed him within the 75’ restricted area outside polling places on Election Day in 2012. There are statements by both Complainants placing him in 2 different polling place buildings in a restricted area in which voters would necessarily need to pass him on the way into the polling place.

“However, … there is no allegation here that he actually entered any of the polling places. Further, there is insufficient evidence to show that he remained in the restricted area for a period of time beyond which was necessary to assess his unofficial/party checkers and get the latest voter numbers. There is also no allegation that he made any overt solicitations on behalf of his candidacy such as oral advocacy, distribution of literature, or wearing campaign paraphernalia. Finally, the results of the election support his claim that his personal candidacy was not in question.

“Importantly, the Respondent here was swift in admitting that he made a mistake in acting as the runner for the DTC on that day. He stated that while he believed that he had a good faith basis for being in the restricted area, he should have thought more carefully about his profile in town, his status as a candidate, and the restrictions that attach to even those candidates who are unopposed.”

- SEEC File No. 2013-089 (allegations not proven)
- SEEC File No. 2015-161 (allegations not proven)
- SEEC File No. 2012-165 (video photography by journalist should have been permitted)
- SEEC File No. 2012-117 (candidate reprimanded for entering polling places during primary in which he was not a candidate)
WITHIN THE 75’ LINE POLLING PLACE

- SEEC File No. 2006-167 (candidate entered polling place other than his own, handed out fudge, reprimanded)

- SEEC File No. 2013-150 (registrar’s daughter allegedly sat on a sofa eating a cupcake given to her by her mother for her birthday, insufficient evidence to prove a violation)

WITHIN THE 75’ LINE POLLING PLACE

SEEC File No. 2011-141

“The Complainant alleges that at approximately noon on Election Day, an unidentified individual approached the first exit and asked if he could cross the polling place and utilize the bathroom outside the second exit. She alleges that she informed him that it was occupied and that he would not be able to cross until the rest room was available. She alleges that she gave him the alternative option of going outside and getting to the rest room from a different exit. She alleges that the individual became very agitated, caused a “ruckus,” and left.

“The Complainant further alleges that shortly after the unidentified man left, the Respondent, ..., came into the polling place and questioned her about her treatment of the unidentified man’s request to cross the polling place to use the rest room.”
WITHIN THE 75’ LINE POLLING PLACE

SEEC File No. 2011-141:

“The Complainant further alleges that the Respondent entered the polling place with a group of approximately 6 other men all of who were threatening her and berating her.

“The Complainant further alleges that she asked the Respondent to leave three times and each time he refused. She alleges that the Respondent did not leave until he was escorted from the polling place by a security guard. The unidentified individuals who were with him left at this time as well.

“The Complainant recorded the above incident in the moderator’s diary and filed a complaint with the … Police Department.”

WITHIN THE 75’ LINE POLLING PLACE

SEEC File No. 2011-141:

“After investigation, including statements by witnesses to the allegations here and contemporary records such as the moderator’s diary, the Commission finds that there is sufficient evidence in this matter to establish that the Respondent did enter the polling place and also that he was not a voter, polling place worker or any other enumerated individual allowed in the polling place during the hours of voting.

“While, the Respondent has no record of prior violations of General Statutes § 9-236, the Commission finds that the Respondent did not show good faith here.”

* $200 civil penalty
WITHIN THE 75’ LINE POLLING PLACE

SEEC File No. 2011-081:

“Complainant brought this Complaint pursuant to Connecticut General Statutes § 9-7b and alleged that during a budget vote held in the Town of … the Respondents unlawfully prevented voters from using the restrooms at the polling place. The Complainant alternately alleges that, inter alia, General Statutes § 9-236 did not apply to such vote and, as such, members of the public should have been permitted to use the restrooms.”

WITHIN THE 75’ LINE POLLING PLACE

SEEC File No. 2011-081:

“As such, during the hours of voting, no one except those individuals specifically exempted may enter a polling place for any other purpose, even if such purpose is to use a restroom whose access and/or entrance is located within the polling place, if by doing so the individual must enter the polling place.”
WITHIN THE 75’ LINE POLLING PLACE

SEEC File 2011-081:

“Moreover, even if such bathroom entrance and/or access is not located within the polling place, but is located within 75’ of "any outside entrance in use as an entry to (such) polling place or in any corridor, passageway or other approach leading from any such outside entrance to such polling place or in any room opening upon any such corridor, passageway or approach, except as provided in section 9-294," any individual accessing such bathroom must take care not to "solicit on behalf of or in opposition to the candidacy of another or himself or on behalf of or in opposition to any question being submitted at the election or referendum, or loiter or peddle or offer any advertising matter, ballot or circular to another person” within the restricted area or such individual will be in violation of General Statutes § 9-236 (a).”

WITHIN THE 75’ LINE POLLING PLACE

Substitute House Bill 5459 – 2018 Session

- Proposed to amend CGS 9-236 to add to exceptions in (a): “members of the public from using a public restroom in the building where any such polling place is located, subject to the restrictions set forth in this subsection, except that in the case of a school, no member of the public may use such restroom pursuant to this subdivision when such school is in session…”

- Opposed by ROVAC; Failed to pass
WITHIN THE 75’ LINE
EDR

CGS 9-19(j):

“No person shall solicit in behalf of or in opposition to the candidacy of another or himself or herself or in behalf of or in opposition to any question being submitted at the election, or loiter or peddle or offer any advertising matter, ballot or circular to another person within a radius of seventy-five feet of any outside entrance in use as an entry to the registrars' of voters designated location for election day registration balloting or in any corridor, passageway or other approach leading from any such outside entrance to such registrars' of voters designated location or in any room opening upon any such corridor, passageway or approach.”

WITHIN THE 75’ LINE
EDR

SEEC File No. 2014-160:

- Respondent entered EDR polling location with a jacket embroidered with candidates’ names

- Referring official alleges that respondent was asked to remove the jacket and failed to do so
WITHIN THE 75’ LINE
EDR

SEEC File No. 2014-160:

- The Commission notes that unlike General Statutes § 9-236, § 9-19(j)(j) does not place affirmative responsibilities upon the registrars and moderators to notice individuals of the 75’ zone and to police the polling area.

- Insufficient evidence that respondent was warned to remove jacket

WITHIN THE 75’ LINE
EDR

SEEC File No. 2017-081

*Community Center Gym within Town Hall was used as EDR location

- Mayor, a candidate for reelection, “walked past my table…in the EDR Dept, continued on his way out a side door. He was approached by the Moderator … who informed him that he was not supposed to be here. His response was ‘I am the Mayor, I can do anything I want.’ No other conversation was conducted, and the day proceeded without incident.”

- “After he said hello to …, he asserts that she told him that he could not be in the area, at which time he immediately left without incident.”
WITHIN THE 75’ LINE
EDR

SEEC File No. 2017-081:

“The Commission notes that unlike General Statutes § 9-236(c), § 9-19j lacks language expressly prohibiting anyone who is neither a voter nor an election worker from entering the room in which the voting machines are being used during the hours of voting. As such, any analysis of § 9-19j(j) may only look to matters involving § 9-236(a) as relevant precedent.”

WITHIN THE 75’ LINE
EDR

SEEC File No. 2017-081:

“As noted above, because § 9-19j(j) does not include the language of § 9-236(c), a brief incursion by a candidate (or any other person) into the room housing the EDR location would not constitute a violation as it might if it were a polling place regulated under § 9-236. However, looking the precedent concerning § 9-236(a), a candidate’s mere presence either in or within the 75’ zone could constitute a violation of the prohibition on electioneering and/or loitering depending on the intensity and duration of the candidate’s presence.”
SEEC File No. 2017-081:

“Turning then to the basic facts here, the Respondent was the sitting mayor, whose office was located in the same building. There was a reasonable expectation that the Respondent would travel around the building and even within the 75’ leading to the entrance to the EDR location in the service of his duties as the mayor.

“The Respondent here went further and actually entered not just the 75’ zone, but the actual EDR room in which the electors would register and vote during the hours of voting.”

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SEEC File No. 2017-081:

“However, the Respondent was promptly informed by the registrars’ EDR designee, ..., that he needed to leave. By the account of both the Complainant and the Respondent, he did so after being asked.

“Considering the aforesaid, the Commission concludes that facts in this matter do not support a conclusion that it was more likely than not that the Respondent's visit to the EDR location constituted either electioneering or loitering under § 9-19j(j). There is no claim that the Respondent interacted with any potential elector and no claim that his visit was anything other than brief. The intensity and duration of this particular incursion did not rise to the level of a violation. Accordingly, this matter should be dismissed.”
WITHIN THE 75’ LINE

- Refer to the 2018 Spring ROVAC Conference outline prepared by Kevin M. Ahern, Staff Attorney at SEEC

- Presentation link – https://citi.uconn.edu/Portals/0/PDF/ROVAC_2018_03.pdf?ver=2018-06-01-125201-697

MINORITY REPRESENTATION
MINORITY REPRESENTATION

CGS 9-167a

- Sets maximum number of members of any state or local board, commission, legislative body, committee or similar body, whether elective or appointive
  - Except any body whose members are elected wholly or partially on the basis of a geographical division of the state or political subdivision

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MINORITY REPRESENTATION

CGS 9-167a

- Limitations

<table>
<thead>
<tr>
<th>Total Membership</th>
<th>Maximum from One Party</th>
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<tr>
<td>3</td>
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<td>6</td>
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<tr>
<td>More than 9</td>
<td>Two-thirds of total membership</td>
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</tbody>
</table>
MINORITY REPRESENTATION

- Once a party hits its limit, highest vote getter with affiliation not majority party wins, even if he has fewer vote than next majority party member

- Applies to legislative bodies of municipalities (originally interpreted NOT to apply to those entities)

MINORITY REPRESENTATION

- "Minority Representation" merely limits the number of seats that can be held by the majority party

- Does NOT guarantee seats to any minority party

- Once the majority party reaches its maximum number, the balance of the seats can be filled by people of any other affiliation: major party, minority party or unaffiliated
MINORITY REPRESENTATION

- Town Charter or Ordinances can provide for greater minority representation than CGS 9-167a
- Does not apply to truly nonpartisan elections
- Does not apply to regional boards of education
- Regular members and alternates counted separately for minority representation purposes

MINORITY REPRESENTATION

- Newly created entity – fill terms in order listed in establishing ordinance
- If election includes deferred term (i.e., one which starts at some point in the future), fill terms that begin immediately first
- Other than for Selectmen, votes cast for a candidate for a particular office and term do not count as votes for such candidate for a different office or term
MINORITY REPRESENTATION

Does not apply to a board or agency with fewer than three members

E.g., East Windsor has only two Board of Finance alternates, so they may be members of the same political party – March 3, 1995 letter from SOTS. See also SEEC File No. 2016-053 addressing same issue.

MINORITY REPRESENTATION

The provisions of CGS 9-167a shall not apply (A) to any such board, commission, committee or body whose members are elected wholly or partially on the basis of a geographical division of the state or political subdivision, (B) to a legislative body of a municipality (i) having a town meeting as its legislative body, or (ii) for which the charter or a special act, on January 1, 1987, provided otherwise, (C) to the city council of an unconsolidated city within a town and the town council of such town if the town has a town council and a representative town meeting, the town charter provides for some form of minority representation in the election of members of the representative town meeting, and the city has a city council and a body having the attributes of a town meeting, or (D) to the board of directors and other officers of any district, as defined in section 7-324, having annual receipts from all sources not in excess of two hundred fifty thousand dollars.
### MINORITY REPRESENTATION

#### CGS 9-167a(b):

“Prior to any election for or appointment to any board, commission, legislative body, committee or similar body of the state or any political subdivision thereof, the municipal clerk, in cases of elections, and the appointing authority, in cases of appointments, shall determine the maximum number of members of any political party who may be elected or appointed to such body at such election or appointment. Such maximum number shall be determined for each political party in the following manner: From the number of members of one political party who are members of such body at the time of the election or appointment, subtract the number of members of such political party whose terms expire prior to the commencement of the terms for which such election or appointment is being held or made and subtract the balance thus arrived at from the appropriate number specified in column II of subsection (a) of this section.”

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### MINORITY REPRESENTATION

#### CGS 9-167a(d):

“If an unexpired portion of a term is to be filled at the same time as a full term, the unexpired term shall be deemed to be filled before the full term for purposes of applying this section. At such time as the minority representation provisions of this section become applicable to any board, commission, committee or body, any vacancy thereafter occurring which is to be filled by appointment shall be filled by the appointment of a member of the same political party as that of the vacating member.”
MINORITY REPRESENTATION

VACANCIES:

- Vacancies are filled before regular terms

- Watch out for full terms beginning shortly after the election. If the vacancy term begins on election day and the full term begins two weeks later, for example, you must look at the party of the members left on the board whose terms expire two weeks after the election.

MINORITY REPRESENTATION

VACANCIES (EXAMPLE):

- 3 Board of Finance alternates (6 year terms)
  - 1 R ends 11/16/2023
  - 1 R ends 11/20/2019 – R wins full term 11/20/2019 to 11/21/2025
  - Vacancy for term ending 11/19/2021 – R wins vacancy term 11/6/2019 to 11/19/2021

- Here, the R who received the most votes for the vacancy term cannot be declared elected because for two weeks there would be three R’s on the Board. Consequently, the D candidate for the vacancy term is declared elected to the vacancy term. Therefore, the R who won the full term may be declared elected for the full term.
MINORITY REPRESENTATION

If multiple vacancies in different terms, fill in the order that vacancies occurred

Under CGS 9-167a(d), a vacancy filled by appointment must be filled with a member of the political party of the person who vacated only when the board has already achieved maximum majority representation, and then only when the vacating member is of the minority party. (Chapman v. Tinker; Grodis v. Burns)

MINORITY REPRESENTATION

CGS 9-167a(g):

“For the purposes of this section, a person shall be deemed to be a member of the political party on whose enrollment list his name appears on the date of his appointment to, or of his nomination as a candidate for election to, any office specified in subsection (a) of this section, provided any person who has applied for erasure or transfer of his name from an enrollment list shall be considered a member of the party from whose list he has so applied for erasure or transfer for a period of three months from the date of the filing of such application and provided further any person whose candidacy for election to an office is solely as the candidate of a party other than the party with which he is enrolled shall be deemed to be a member of the party of which he is such candidate.”
MINORITY REPRESENTATION

Three month waiting period in CGS 9-167a(g) only applies to characterization of affiliation for minority representation purposes.

Does NOT override the provisions of CGS 9-59, under which an elector immediately loses the rights and privileges of membership in his old party even though rights to participate in the new party do not vest for three months.

MINORITY REPRESENTATION

For purposes of minority representation, a candidate is deemed a member of the party in which he is enrolled at the time that he is nominated, except if he is a candidate only of a party other than the one in which he is enrolled (even if he is unaffiliated). In that case, he is deemed to be a member of the party that nominated him or, if he is unaffiliated and is nominated by two parties, then he is deemed to be a member of the party under whose name he received the most votes. (Santaniello v. O’Connor)
MINORITY REPRESENTATION

So, except for candidates who are unaffiliated, the respective number of votes received if cross-endorsed is irrelevant for purposes of determining compliance with minority representation.

Note regarding transfer of affiliation:
- R nominates R who transfers to D = R for purposes of minority representation
- D nominates R who transfers to D = D for purposes of minority representation
- A petitioning candidate is considered to be a member of the party in which he is enrolled
MINORITY REPRESENTATION

If a member changes party during his term, he is not removed from the board. But when the next vacancy on the board occurs and is filled, his party affiliation on the day it is filled is taken into consideration in filling the vacancy.

MINORITY REPRESENTATION

SEEC Files No. 2015-096 and 2016-048:

- Bridgeport Board of Education Vacancies
  - After 2012 election, composition was 6 D, 2 R, 1 WFP
  - WFP member resigned in 2014, WFP enrolled elector appointed to fill vacancy
  - April 15, 2015, WFP member changes registration to D
MINORITY REPRESENTATION

SEEC Files No. 2015-096 and 2016-048

- Following change in registration, composition of BOE was 7 D's, 2 R's
- For purposes of calculating minority representation, member switching to D was still counted as WFP
- After April 15, 2015 registration change, a D member of the BOE resigned

MINORITY REPRESENTATION

SEEC Files No. 2015-096 and 2016-048:

- On August 24, 2015, a registered D was appointed to fill the D vacancy
- Secretary of State’s office opined that appointment was null and void, as it perpetuated the 7-2 D majority
MINORITY REPRESENTATION

Special provisions for selectmen

- Sec. 9-167a applies to selectmen, except:
  - If the board has 5 members the limitation is 3
  - For the purpose of minority representation, the board includes the first selectman, unless otherwise provided by special act or charter.

MINORITY REPRESENTATION

Board of Education 9-204(a)

- Unless otherwise provided by special act or charter,
  - when the number to be elected for the same term at any election is even, no elector shall vote for more than half that number
  - when the number to be elected for the same term at any election is odd, no elector shall vote for more than a bare majority of that number
MINORITY REPRESENTATION

Board of Education 9-204(b)

- If charter provides all of the following:
  - The board will be elected at one election for the same term, and
  - 9-167a is incorporated by reference to determine minority representation, and
  - makes no reference to the number of candidates for which an elector may vote for such board
  - The number of candidates for which an elector can vote and the number a party can endorse is set at the limit set in the chart in sec. 9-167a(a)(1)

MINORITY REPRESENTATION

Board of Education CGS 9-204a

Nomination and Election of Full Number of Members:

"Notwithstanding the provisions of sections 9-204 and 9-414 and of any special act or town charter, any town may, by charter, or by referendum vote taken at any regular election in such town pursuant to either a vote of its legislative body or a petition signed by at least five per cent of the electors of such town as established by the last-preceding registry list of such town, authorize the nomination by any political party of candidates for election as members of the board of education of such town equal to the number of members of said board to be elected at such election, and authorize the electors of such town to vote for the full number of such members to be elected, provided not more than one-half of the members of said board declared elected to the same term at such election shall be of the same political party if the number to be elected is even and not more than a bare majority thereof shall be members of the same political party if the number to be elected is odd. If the number of candidates, sufficient to fill the offices voted on, receiving the highest number of votes at any such election are of the same political party, those persons sufficient to fill one-half or a bare majority of such offices, as the case may be, who received the highest number of votes among such candidates shall be declared elected and those persons receiving the next highest number of votes who do not belong to such political party, sufficient in number to fill the remaining offices, shall be declared elected."
MINORITY REPRESENTATION

Board of Education – CGS 9-204b

- Optional alternative system for towns with four-year terms for board of education.

"Notwithstanding the provisions of any general statute to the contrary, in any town which provides for four-year terms for members to be elected to the board of education and whose legislative body adopts the provisions of this section by charter or ordinance, and the number of members to be elected is odd or even, any elector may vote for all of that number and the persons receiving the greatest number of votes shall be elected, except that when the number of members of any one political party who would be elected without regard to section 9-167a exceeds the maximum number as determined by said section, then only the candidates of such political party with the highest number of votes up to the limit of such maximum, shall be elected. The next highest ranking candidates, not from such political party, shall be elected, up to the number of places to be filled in such election. Each political party shall have the right to nominate as many persons as there are vacancies on the board and those names shall be placed upon the ballot."

- Only applies when there are four year terms (SEEC File No. 2015-166)

PARTICIPATION BY “VOTERS” IN MUNICIPAL REFERENDA
PARTICIPATION BY ‘VOTERS’

CGS 9-1(n):

“Referendum” means (1) a question or proposal which is submitted to a vote of the electors or voters of a municipality at any regular or special state or municipal election, as defined in this section, (2) a question or proposal which is submitted to a vote of the electors or voters, as the case may be, of a municipality at a meeting of such electors or voters, which meeting is not an election, as defined in subsection (d) of this section, and is not a town meeting, or (3) a question or proposal which is submitted to a vote of the electors or voters, as the case may be, of a municipality at a meeting of such electors or voters pursuant to section 7-7 or pursuant to charter or special act;

PARTICIPATION BY ‘VOTERS’

Sec. 7-6. Eligibility to vote.

At any town meeting other than a regular or special town election or at any meeting of any fire, sewer or school district or any other municipal subdivision of any town incorporated by any special act, any person who is an elector of such town may vote and any citizen of the United States of the age of eighteen years or more who, jointly or severally, is liable to the town, district or subdivision for taxes assessed against him on an assessment of not less than one thousand dollars on the last-completed grand list of such town, district or subdivision, or who would be so liable if not entitled to an exemption under subdivision (17), (19), (22), (23), (25) or (26) of section 12-81, may vote, unless restricted by the provisions of any special act relating to such town, district or subdivision
**PARTICIPATION BY 'VOTERS'

- 1796 version required a “freehold estate rated in the common list at nine dollars” to vote
- 1821 revision required the estate not to be mortgaged
- 1925 revision eliminated mortgage provision but increased amount to $300
- 1943 revision increased amount to $1,000
- 1955 revision expanded to include personal property, previously had only been real property

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**PARTICIPATION BY ‘VOTERS’


“We have taken judicial notice of the fact that "(i)n a Connecticut town which has a town-hall, the words 'town meeting' connotes a meeting in the town-hall. … this court cited Brooklyn Trust Co. v. Hebron, 51 Con. 22, 29 (1883), for a description of a town meeting as an occasion on which "(t)he assembled voters' are upon proper 'warning,' empowered to act. Thus a referendum in which individual voters cast individual ballots in individual voting booths does not constitute a town meeting."
PARTICIPATION BY ‘VOTERS’

- Final statement: “Thus a referendum in which individual voters cast individual ballots in individual voting booths does not constitute a town meeting” has been taken somewhat out of context in later court decisions.

- Keep in mind the distinction between a town meeting as a legislative body adjourning to a referendum under CGS 7-7 and other types of referenda as defined in CGS 9-1(n).

PARTICIPATION BY ‘VOTERS’

Sec. 9-369d. Submission of local question to voters who are not electors. Vote by electors and voters held in conjunction with an election.

(a) Whenever by law a question may be submitted to voters who are not electors of a municipality, the municipality may submit the question to a vote by electors and voters held in conjunction with an election. Except as otherwise provided, the general statutes shall apply to such vote.
Sec. 9-369d. Submission of local question to voters who are not electors. Vote by electors and voters held in conjunction with an election. …

(b) (1) The procedures set forth in this subsection shall only apply if a municipality so chooses and only upon approval of such procedure by its legislative body or in any town in which the legislative body is a town meeting, by the board of selectmen.

(2) Voters who are not electors shall vote by separate voting tabulator or paper ballot, containing solely the question, at one separate location which may be a separate room in the location at which electors vote. Such separate location shall be treated as a separate voting district and polling place for such voters, except that the registrars of voters shall appoint a moderator who shall be the head moderator for the purpose of this question only, and such other officials as the registrars deem necessary. The moderator of such separate location shall add the results of the vote by electors on the question to the results of the vote by voters who are not electors, and shall file such results in the office of the municipal clerk. The moderator of such separate location shall be the moderator for the purposes of a recanvass of a close vote on such question under section 9-370a. The head moderator of the town shall indicate on the return of vote of such question filed with the Secretary of the State that such return does not include the return of vote of voters who are not electors.

(c) Voters who are not electors and who are entitled by law to vote by absentee ballot shall be entitled to vote by separate absentee ballot containing solely such question. Such absentee ballot shall be issued beginning on the thirty-first day before the election, or, if such day is a Saturday, Sunday or legal holiday, beginning on the next preceding day.

(d) The warning of the election shall include the location where voters who are not electors may vote.
PARTICIPATION BY ‘VOTERS’

SEEC File No. 2010-129

City of Norwich held a referendum on November 2, 2010, but did not allow “voters” to participate

- Norwich does not use town meeting form of government, so CGS 7-7 did not apply
- Norwich had not adopted provisions of CGS 9-369d(b) to permit voters to participate in referenda
- No violation

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PARTICIPATION BY ‘VOTERS’

Massad v. New London, 1993 Superior Court decision, upheld municipal charter provision requiring all electors to be residents of the municipality in order to vote on referendum questions.

- Constitutional equal protection claims denied because it was not a town meeting under CGS 7-6.
PARTICIPATION BY ‘VOTERS’

- Massad v. New London,

Court also held that “New London’s determination that persons who want to vote on city matters must also reside within its boundaries is a reasonable exercise of its discretion and within the power granted to it to run its own affairs, which is tailored to legitimate governmental concerns and is not overridden by the interests of persons owning taxable property in the town who prefer to live elsewhere”

PARTICIPATION BY ‘VOTERS’

- CGS 7-325 permits “voters” as defined in CGS 7-6 to petition for the creation of a special tax district and to vote in the referendum regarding the creation of the same.

- However, CGS 7-325 requires such “voters” to reside within the limits of such proposed district. (Walton v. Burdick, 1981 CT Supreme Court opinion)
PARTICIPATION BY ‘VOTERS’

Jointly owned property?

- **Gunzer v. New Fairfield** (1955 lower level court decision) requires each of the owners to have a taxable interest of at least $1,000
  - **Does not** apply to property owners in a corporate form such as LLC, corporation, limited partnership, etc.
  - Those entities are **not** “citizens of the United States”

PARTICIPATION BY ‘VOTERS’

- Title to the property is held by trustees – can the trustees vote?

  Opinion of Attorney General dated November 22, 1995 declined to address the question: “As §7-6 falls under the Town and Other Community Meetings chapter of the statutes, your question is one reserved for the municipal attorney.”

  - 1996 and subsequent years saw proposed legislation which would have added “trustees” to CGS 7-6 similar to the language in CGS 7-339p(c) which permits holders of property in various forms to participate in referenda to establish special services districts:

    “**No holder of record** of a taxable interest in real property, whether such record holder is a corporation, partnership, unincorporated association, trustee, fiduciary, guardian, conservator, or other form of entity, or any combination thereof, and whether such record holder is an individual who holds interests jointly, or in common with another individual or individuals, or with any one or more of the foregoing, shall be precluded from participating in any such referendum because of the form of entity which holds such record interest.”
PARTICIPATION BY ‘VOTERS’

Weinstein v. Hansen, CV 16-6015116-S (J.D. of Middlesex)

- Plaintiffs were trustees of trusts owning real estate in Clinton
- Defendants were registrars of voters
- Plaintiffs, as trustees, were barred from voting in town elections and referenda despite the Town Charter expressly authorizing votes for any person eligible under CGS 7-6

Weinstein v. Hansen – Trustee Eligibility

- Trustees alleged that was in violation of CGS 7-6 and state and federal constitutions
- Defendants argued that trusts and other non-human entities could not be considered to be "citizens" who may vote under CGS 7-6
- Amicus brief from Attorney General and Secretary of State supported Defendants’ position
PARTICIPATION BY ‘VOTERS’

- **Weinstein v. Hansen – Trustee Eligibility**
  - Argument that trusts are not “born” and do not have a chronological age
  - Even if they did, no plausible reason why would only apply to trusts that are over 18 years of age
  - Other statutes referring to “citizens” only apply to humans
  - Finally, other Title 7 statutes do allow trusts and trustees to vote

- **Weinstein v. Hansen – Trustee Eligibility**
  - Plaintiffs assert distinction between trusts and trustees
  - Unquestionable that trustees are citizens over 18
  - Relying on 1935 Superior Court decision asserted that trustees could be held personally liable for taxes on property owned by trusts
  - Following Defendants’ distinction of 1935 case, Plaintiffs relied on treatise - Second Restatement of Trusts
PARTICIPATION BY ‘VOTERS’

- **Weinstein v. Hansen** – Trustee Eligibility

- Superior Court decision of April 10, 2017
- Disagree with AG and SOTS that real party in interest is the trust, rather than the trustee
- Trustees, by definition, hold legal title and are properly considered the owners
- Followed common law (i.e., non-statutory law) to find trustees personally liable for municipal property taxes
- Evidence provided that trustees were citizens over the age of 18
- Therefore, trustees qualified to vote under CGS 7-6

QUESTIONS?

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