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**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Referral by Trish Munroe Simsbury Town Clerk

File No. 2024-016

AN AGREEMENT CONTAINING A CONSENT ORDER

This agreement, by and between Erin Leavitt-Smith, Town of Simsbury, State of Connecticut, and the authorized representative of the State Elections Enforcement Commission (hereinafter "Commission"), is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177 (c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. Trish Munroe, Town Clerk for the Town of Simsbury, made this referral alleging that two absentee ballot applications were received from Ryan Smith, for the November 7, 2023, election, and that the applications appeared to include different signatures. Specifically, the referral provides:

"Attached please find 2 absentee ballot applications for elector Ryan Smith. These applications were received by the town clerk's office in Simsbury for the 11/7/23 election. Application #1 is dated August 16, 2023, and was received on August 21, 2023 (date stamp is on back of original). Based on this application, an absentee ballot was issued to the elector on October 6, 2023. Application #2 was received on October 6, 2023. The application indicates that a ballot was issued on October 9, 2023, but it was not processed because CVRS showed that a ballot was already issued to this elector for the November 7, 2023, election. The signatures differ on both applications, even though all of the elector's information is the same (and appears to be completed in the same handwriting)."

2. Based on the referral, the Commission named Ryan Smith and Erin Leavitt-Smith as Respondents in this matter.

Relevant Legal Authority

3. General Statutes § 9-140 provides in relevant part:
 - (a) (1) Except as provided in subsection (b) of this section, application for an absentee ballot shall be made to the clerk of the municipality in which the applicant is eligible to vote or has applied for such eligibility. Any person

who assists another person in the completion of an application shall, in the space provided, sign the application and print or type his name, residence address and telephone number. Such signature shall be made under the penalties of false statement in absentee balloting. The municipal clerk shall not invalidate the application solely because it does not contain the name of a person who assisted the applicant in the completion of the application. The municipal clerk shall not distribute with an absentee ballot application any material which promotes the success or defeat of any candidate or referendum question. The municipal clerk shall maintain a log of all absentee ballot applications provided under this subsection, including the name and address of each person to whom applications are provided and the number of applications provided to each such person. Each absentee ballot application provided by the municipal clerk shall be consecutively numbered and be stamped or marked with the name of the municipality issuing the application. The application shall be signed by the applicant under the penalties of false statement in absentee balloting on (A) the form prescribed by the Secretary of the State pursuant to section 9-139a...

4. General Statutes § 9-153b provides in relevant part:

- (a) If any absentee ballot applicant applies for an additional absentee ballot, he shall note on his application the reason for his applying for an additional absentee ballot and he shall return the absentee voting set formerly issued to him before another set is issued to him, provided, if he is unable to return the set formerly issued to him, his application for an additional ballot shall be accompanied by a statement signed under the penalties of false statement in absentee balloting in which he shall set forth the reason for his inability to return the set formerly issued to him. If he fails to file such a statement, no additional set shall be issued to him...
- (c) When an absentee ballot applicant has applied for more than one absentee ballot, only the latest absentee ballot issued to him by the municipal clerk as determined by the serial number appearing on the outer envelope may be counted and all absentee ballots and envelopes formerly issued to that applicant shall be marked rejected as provided in subsection (b) of this section and not counted.

Facts Found After an Investigation

5. Following the issuance of the referral and notification letter in this matter to Respondent Ryan Smith, Commission staff received a response from Respondent Ryan Smith's mother, Respondent Erin Leavitt-Smith, who stated:

"I am writing on behalf of my son, Ryan Smith, who received a letter from you last week. He is currently away at school but worked with me on this letter to explain what occurred with the absentee ballot application and absentee ballot. We feel we can clear up events that led to the referral from the Simsbury Town Clerk. When Ryan received the absentee ballot application, he had already left for school and was unable to sign the application in time to get an absentee ballot. Therefore, I signed his application as we were unaware this could be done on-line or that it would be a problem signing the application on his behalf. When the application was signed, I was given permission by Ryan to sign it. We did not realize the ramifications of doing this and will not do this again. The absentee ballot was filled out solely by Ryan and mailed to the Simsbury Town Clerk."

6. In response to the Commission's inquiry regarding the filing of two separate absentee ballot applications, Respondent Erin Leavitt-Smith stated:

"The first absentee ballot application received by the Simsbury Town Clerk August 21, 2023, was signed by Ryan. He received a second application after he left for school so I signed that application, with his permission, on his behalf, not knowing he had already submitted one before he left for college. He did not remember or mention that he had gotten and sent in the first application so the second one was submitted as well. He did receive one ballot from the Town of Simsbury which he filled out himself and mailed to the Simsbury town clerk."

7. The Application for Absentee Ballot provides the following statement in Section VI (Applicant's Declaration):

I declare, under penalties of false statement in absentee balloting, that the above statements are true and correct, and that I am the applicant named above (Sign your legal name in full. If you are unable to write, you may authorize someone to write your name and the date in the spaces provided, followed by the word "by")

and the signature of the authorized person. Such person must also complete Section VII below.).¹

8. An examination of the second Application for Absentee Ballot, received on October 6, 2023, by the Office of the Town Clerk for the Town of Simsbury, revealed that spaces designated for the signature, printed name, telephone number, and residence address of the person providing assistance were left blank in Section VII.

Analysis and Conclusions of Law

9. The Commission determines, pursuant to General Statutes § 9-140 (a), any person assisting another person in the completion of an Application for Absentee Ballot must, “in the space provided, sign the application and print or type his name, residence address and telephone number.”²
10. Although Respondent Ryan Smith gave Respondent Leavitt-Smith, his mother, permission to sign his name, the Commission concludes that Respondent Leavitt-Smith violated General Statutes § 9-140 (a) by signing Ryan Smith’s name, on the second Application for Absentee Ballot, received on October 6, 2023, by the Office of the Town Clerk for the Town of Simsbury, without identifying herself as an “assister” by failing to sign her name and print or type her name, residence address and telephone number in Section VII.³
11. The Commission concludes that this matter is dismissed against Respondent Ryan Smith due to a lack of statutory liability given the facts and circumstances.

Penalty Considerations

12. The Commission possesses the authority to set the punishment it metes out to individuals who violate the statutes under its authority; while the maximum penalty available under the enabling statute is \$2,000 per offense or violation, the Commission also has the authority to set a lesser penalty where circumstances call for such leniency.⁴
13. Section 9-7b-48 of the Regulations of Connecticut State Agencies provides that, “in the determination of the amount of the civil penalty to be imposed, the Commission shall consider, among other mitigating or aggravating circumstances:

¹ Section VII of the Application for Absentee Ballot form is the Declaration of the person providing assistance.

² Connecticut General Statutes § 9-140 (a).

³ *Id.*

⁴ Connecticut General Statutes § 9-7b (a) (2).

- (1) the gravity of the act or omission;
- (2) the amount necessary to ensure immediate and continued compliance;
- (3) the previous history of similar acts or omissions; and
- (4) whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes."

14. In consideration of the fact that Respondent Leavitt-Smith has cooperated fully in this matter and does not have any prior history of enforcement actions before the Commission, the Commission concludes that ordering Respondent Leavitt-Smith to henceforth strictly comply with the requirements of General Statutes § 9-140 (a) and pay a civil penalty in the amount of \$600 is sufficient to ensure immediate and continued compliance.
15. Respondent Leavitt-Smith admits all jurisdictional facts and agrees that this agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. Respondent Leavitt-Smith shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
16. It is understood and agreed that this agreement will be submitted to the Commission at its next available meeting and, if it is not accepted by the Commission, it is withdrawn by Respondent Leavitt-Smith and may not be used as an admission by either party in any subsequent hearing, if the same becomes necessary.
17. Respondent Leavitt-Smith waives:
 - (a) any further procedural steps concerning this matter,
 - (b) the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated, and
 - (c) all rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this agreement.
18. Upon Respondent Leavitt-Smith's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against Respondent Leavitt-Smith pertaining to the allegations specifically addressed herein.

ORDER

The following Order is issued based on the aforementioned findings and conclusions:

IT IS HEREBY ORDERED that Erin Leavitt-Smith shall henceforth strictly comply with the requirements of General Statutes § 9-140 (a);

IT IS HEREBY ORDERED that Erin Leavitt-Smith shall pay a civil penalty in the amount of \$600 to the Commission for the Commission to deposit said civil penalty into the Connecticut General Fund; and

IT IS FURTHER HEREBY ORDERED that this matter is dismissed against Ryan Smith.

The Respondent:

BY: Erin Leavitt-Smith
Erin Leavitt-Smith
7 Wintergreen Lane Street
West Simsbury, Connecticut

For the State of Connecticut:

BY: Michael J. Brandi
Michael J. Brandi, Esq.
Executive Director and General Counsel
and Authorized Agent of the
State Elections Enforcement Commission
55 Farmington Avenue
Hartford, Connecticut

Dated: May 28, 2024

Dated: 6/12/24

Adopted this 26th day of June, 2024 at Hartford, Connecticut by vote of the Commission.

Stephen T. Penny
Stephen T. Penny, Chairman
By Order of the Commission