

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Russell Zimberlin, Hartford

File No. 2015-157

FINDINGS AND CONCLUSIONS

The Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that the Respondent Hartford Registrars of Voters incorrectly applied the voter identification rules at the Election Day Registration location at the November 3, 2015 municipal General Election and impermissibly deprived the Complainant of the opportunity to cast a ballot.

After an investigation of the Complaint, the Commission makes the following findings and conclusions:

1. The Complainant here alleges that he appeared at the Election Day Registration (“EDR”) location at Hartford City Hall on Election Day November 3, 2015 and attempted to register through the Election Day Registration process enumerated in General Statutes § 9-17j but was impermissibly turned away by the Respondent Registrars or their designees for having insufficient identification.
2. The Complainant alleges that he showed the Respondents a copy of his lease for a property in the City of Hartford, as well as his driver’s license, in order to prove residency and identification.
3. The Complainant alleges that he was turned away at the EDR location because his driver’s license did not contain his new address.
4. General Statutes § 9-19j, provides in pertinent part:
 - (a) As used in this subsection and subsections (b) to (i), inclusive, of this section, “election day” means the day on which a regular election, as defined in section 9-1, is held.
 - (b) Notwithstanding the provisions of this chapter, a person who (1) is (A) not an elector, or (B) an elector registered in a municipality who wishes to change his or her registration to another municipality pursuant to the provisions of subdivision (2) of subsection (e) of this section, and (2) meets the eligibility requirements under subsection (a) of section 9-

12, may apply for admission as an elector on election day pursuant to the provisions of subsections (a) to (i), inclusive, of this section.

(c) (1) The registrars of voters shall designate a location for the completion and processing of election day registration applications on election day, provided the registrars of voters have access to the state-wide centralized voter registration system from such location.

(2) The registrars of voters may appoint one or more election officials to serve at such location and may delegate to such election officials any of the responsibilities assigned to the registrars of voters. The registrars of voters shall supervise such election officials and train such election officials to be election day registration election officials.

(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. 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. . . . (Emphasis added.)

5. General Statutes § 9-20, provides in pertinent part:

(a) Each person who applies for admission as an elector in person to an admitting official shall, upon a form prescribed by the Secretary of the State and signed by the applicant, state under penalties of perjury, his name, bona fide residence by street and number, date of birth, whether he is a United States citizen, whether his privileges as an elector are

forfeited by reason of conviction of crime, and whether he has previously been admitted as an elector in any town in this or any other state. 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. Notwithstanding the provisions of any special act or charter to the contrary, the application form shall also, in a manner prescribed by the Secretary of the State, provide for application for enrollment in any political party, including, on any such form printed on or after January 1, 2006, a list of the names of the major parties, as defined in section 9-372, as options for the applicant. The form shall indicate that such enrollment is not mandatory.

(b) The applicant's statement shall be delivered to the registrars immediately and shall be kept by the registrars as a public record in a safe depository, except that no Social Security number obtained by the registrars prior to January 1, 2000, may be disclosed to the public or to any governmental agency. Any such statement of an elector whose name has been removed from the registry list for a period of at least five years may be placed on microfilm, destroyed or otherwise disposed of by such registrars, in the manner provided in section 7-109. 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. Each person found qualified shall thereupon be admitted as an elector, except as provided in sections 9-12, 9-19e, 9-19g and 9-30. The registrars may request an elector whose date of birth is missing from their records to voluntarily furnish his date of birth. Any admitting official may administer oaths in any matter coming before him under section 9-12, 9-17, 9-19b, subsection (a) of section 9-19c, section 9-19e, 9-19g, 9-23, 9-23a, 9-25, 9-31a, 9-31b, 9-311, 9-40a or this section. Said admitting official shall prohibit any activity which interferes with the orderly process of admission of electors. . . . (Emphasis added.)

6. In its October 15, 2015 communication to all registrars of voters, the Office Secretary of the State stated the following regarding the voter identification requirements at EDR locations:

APPLICATION AND IDENTIFICATION REQUIREMENTS

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. 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.

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. 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).

(Emphasis added.)

7. The initial question is whether the documents that the Complainant alleges he provided should have sufficed.
8. Assuming the Complainant's allegations to be true, the Commission concludes that they should have been acceptable. 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.

9. The second question is whether a registrar *must* accept a form of identification enumerated by the Secretary of the State's communication here. The Commission concludes that a registrar must. The Secretary's communication was produced pursuant to that office's authority to interpret the election administration laws in Title 9, as enumerated in General Statutes § 9-3¹ and as such is presumed to be correct. The Commission sees no reason to challenge that presumption.²
10. With the above in mind, the Commission turns to the factual question in this case. As the Complainant was unable to produce corroborating witnesses to the events that he alleged occurred, the investigation focused on the records of the Hartford Registrars of Voters, as well as the individual election officials manning the EDR operations on the day in question, as the only source of potential corroborating evidence.
11. While the Complainant was unable to identify the election officials with whom he interacted on Election Day, based on his description, the Commission was able to identify Kayana McCalla and Shawn Vassel, who served as assistant registrars and designees of the Respondents at the EDR location. The investigation also included inquires to Working Families Party registrar Shari Williams, who was administratively responsible for EDR that day.³
12. Statements were taken from both Ms. McCalla and Mr. Vassel and all of the materials relevant to the Hartford Registrars' application of EDR on that day were gathered in the course of the investigation.

¹ General Statutes § 9-3 reads, in pertinent part:

(a) 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.

² This is consistent with the Commission's holding in *In the Matter of a Complaint by Linda Szyrkowicz, Middletown* File No. 2014-159 (SOTS opinion on sufficiency of identification in the form of letters from a college bursar presumed correct.)

³ While in most instances, registrars may administratively divide the responsibilities of their office in any way they see fit, the obligation to correctly administer their responsibilities are joint and severally held here, as in most instances.

13. Neither Ms. Williams, Ms. McCalla nor Mr. Vassel recall the interaction alleged by the Complainant.
14. Moreover, the responses to document requests included the Respondents' designees understanding of the acceptable forms of identification for EDR, which included, but was not limited to, the documentation that the Complainant alleges he provided. However, none of the documentation included any contemporaneous recording of the interaction that the Complainant alleges.
15. Indeed, it is a flaw of the EDR process, that while it combines the registration and voting experience into one, it does not adopt all of the practices and procedures of a regular polling place that stand as protections for voters during the process of casting ballot.
16. For instance, in *In re: Referral of Middletown Registrar of Voters Janice Gionfriddo*, File No. 2014-160, the Commission found mitigating circumstances against a respondent who wore campaign paraphernalia within an EDR location, in violation of General Statutes § 9-17j (j), because while § 9-17j (j) imported the restrictions on electioneering from § 9-236 (a), it failed to import the requirements of warning signage in § 9-236 (b).
17. Here, as an EDR location operates effectively as a polling place, it stands to reason that it should contain most of those protections found in a polling place. One of those protections, is the requirement that the moderator of a polling place keep a diary of events, the so-called "moderator's diary." According to the Moderator's Handbook (Rev. July 2013), the moderator is required to keep a diary, as follows:

MODERATOR'S DIARY

Moderators should keep a diary and record in it any unusual situations or problems that occur. For example,

- a) If a disruptive elector is removed from the polling place, the Moderator should describe the event in their diary, including the names of all persons involved;
- b) Record the name of any elector needing assistance and who assisted the elector;
- c) Make a note of any ballot found in a voting booth or elsewhere in the polling place which is to be marked and handled as an "Abandoned Ballot;"
- d) Make a record of ballot jams in the tabulator and how each problem was resolved;
- e) If any equipment was missing or malfunctioning and what was done to correct the situation;
- f) Official signs moved or removed; and

g) Any other unusual matters that could be violations.

This diary will be useful to the Moderator if any questions arise after the primary or election. A copy of this diary must be attached to the Moderator's return for later filing with the Municipal Clerk with the rest of the election materials after the close of the polls on Election Day

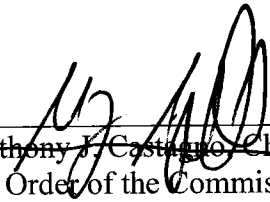
18. Here, had there been a requirement to keep a log of events at the Hartford EDR location akin to the moderator's diary, the fact in this matter may very well have been more easily sorted. However, since we do not have such evidence available in this situation and since the Complainant took no further action, such as contact the Election Day Hotline manned by Commission staff, the Commission is left with little choice.
19. 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.
20. Accordingly, this matter should be dismissed, without prejudice. Should additional evidence come in supporting the Complainant's claim, the matter may be refiled at a future date.

ORDER

The following Order is recommended on the basis of the aforementioned findings:

That the matter is dismissed without prejudice.

Adopted this 19th day of July, 2017 at Hartford, Connecticut.


~~Anthony J. Castano, Chairperson~~ Michael J. Ajello
By Order of the Commission