

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Nathanael T. Wales, Fairfield

File No. 2016-037

FINDINGS AND CONCLUSIONS

The Complaint in this matter concerns an alleged delay in voting caused by the failure to properly connect an alternate voting system. As detailed hereinafter, it is the Commissions determination that this matter should be dismissed.

1. At all times relevant hereto Complainant Nathaniel Wales was an elector in the Town of Fairfield.
2. At all times relevant hereto, Respondent Mathew Waggner was the Democratic Registrar of Voters in the Town of Fairfield.
3. At all times relevant hereto, Respondent Roger Autuori was the Republican Registrar of Voters in the Town of Fairfield.
4. On April 26, 2016, the Complainant traveled to his polling place located at the Mill Hill School in Fairfield in order to cast a ballot in the Presidential Preference Primary.
5. When the Complainant presented himself to the official checker, he requested that she be able to vote using the Alternative Voting System (hereinafter "AVS") machine.
6. In response, an elections official directed the Complainant to the AVS machine and instructed him how to use it.
7. When the Complainant attempted to complete his vote, however, the fax line required to operate this system would not connect.
8. In response, the elections officials immediately contacted the Town Clerk and the Secretary of the State to address this issue, in accordance with the process indicated in Moderator's Handbook for Elections and Primaries.

9. Within approximately 20 minutes, it was determined that a digit was missing from the access code the AVS machine requires in order to process the vote. By way of background, in order to operate an AVS machine, an elections official must enter an access code. This code is a security backup to ensure only authorized votes are processed. These codes are given to the moderators at each polling place prior to the opening of the polls on Election Day or Primary Day.
10. Once the entry of the access code was corrected, the vote was then immediately processed.
11. Section 9-242a-11 of the Regulations of Connecticut State Agencies sets out certain criteria for the organization of polling places and requires that “[a]t least one voting booth in each voting district shall be accessible to persons with disabilities[.]”
12. General Statutes § 9-247 further requires that all tabulators, including AVS machines, be tested and functional by the open of polls and reads:

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

(Emphasis added.)

13. The Commission has previously held that failure to ensure that an AVS machine is operable when the polls open, even when it was tested days earlier, is a violation of General Statutes § 9-247. *See In the Matter of a Referral by the Secretary of the State*, File No. 2011-120 (“Here, although the evidence suggests that Respondent Vasquez did test the AVS prior to the primary, the Commission finds that the evidence is sufficient to show that it was not properly set up and/or tested at the opening of the polls at 6:00 a.m. or any time between then and when Mr. Thai attempted to use the system at 5:30 p.m.”).
14. Furthermore, even if the AVS machine was technically operational, the Commission has held that if the election officials at the polling location cannot properly operate the AVS machine, it is not considered “operable” pursuant to General Statutes § 9-247. *In the Matter*

of a Complaint by Melissa A. Rickard, Windsor, File No. 2012-196 (“The moderator was not capable of operating the AVS system and as such the machine was not "operable" as it should have been. It was the Respondents' responsibility under General Statutes § 9-247 to assure that the machines were ready for the voters to use during the hours of voting, including that their poll workers could operate it. A mechanically functioning voting system without a human operator that can use it is as good as having no machine at all.”).

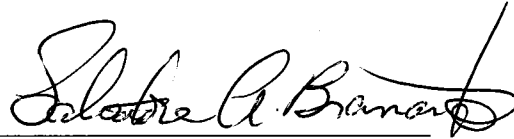
15. Evidence in this case shows that the AVS machine in question was successfully tested both several days before and the day before the Presidential Preference Primary. Both tests indicated that the machine was mechanically operational and properly connected to the relevant systems.
16. Moreover, despite improperly entering the access code into the AVS machine, the elections officials operating the AVS machine were knowledgeable in both the correct operation of the machine as well as the procedures to address apparent malfunctions.
17. While it was apparently human error on the part of the elections officials that resulted in the 20 minute delay in voting by the Complainant, in light of the fact that the elections officials swiftly acted in line with the proscribed policies and the fact that the delay was not a result of failure to train election officials, set up, or test the AVS machine, the Commission elects to take no further action with regard to this Complaint.

ORDER

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

This matter is closed with no further action to be taken.

Adopted this 14th day of December, 2016 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission

