

**STATE OF CONNECTICUT**  
**STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Claude Holcomb, Hartford

File No. 2017-011

**FINDINGS AND CONCLUSIONS**

The Complainant brought this matter alleging that the Respondent Hartford Registrars of Voters violated General Statutes § 9-247 in relation to his experience attempting to vote using an Alternative Voting System (“AVS”) during the February 28, 2017 Special Election in the City of Hartford.

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

**Allegation and Factual Background**

1. The Complainant here alleges that during the February 28, 2017 Special Election in the City of Hartford for an open seat in the 2<sup>nd</sup> District of the State Senate he asked to use the Alternative Voting System to mark his ballot.
2. The Alternative Voting System, used in Hartford and throughout the state since the November 2016 General Election, was manufactured and sold by Inspiration Vote Systems (“IVS”), the vendor for the prior Alternative Voting System utilized by the State of Connecticut.
3. The IVS version of the system was used during the February 28, 2017 Special Election and gives the voter the option of voting using either a touch screen or a telephone and keypad to make their selections. Once the selections have been made and confirmed, a ballot is fed by an election official into an attached printer, which marks the ballot with the voter’s selections. The voter, or such voter’s designee, then takes the ballot (utilizing a privacy sleeve) from the printer and feeds it into tabulator.<sup>1</sup>
4. Here, the Complainant alleges that after confirming his selections using the telephone and keypad option, he sent his ballot to be marked by the printer. However, the elections officials realized too late that a blank sheet of paper had been fed into the machine rather than a ballot.

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<sup>1</sup> This new machine is a marked upgrade over the prior system. The AVS system utilized prior to the November 2016 general election required that two phone lines be installed in each polling place, required that all voters utilize the lengthy phone-and-keypad process, which then resulted in a ballot being fax-printed. Moreover, this ballot could not be fed into the tabulator and had to be counted separately, which sometimes led to voter privacy issues in instances where only one voter cast a ballot using this method.

He alleges that they informed him of this error and asked him to make his selections again so that they could feed a ballot into the printer. He asked to speak with the moderator, who also told him that he needed to vote again. He alleges that he believed that by re-making his selections he was voting twice. He asserts that he left the polling place without his vote being counted. His allegations imply that the polling place officials' actions led to his disenfranchisement on that day.

**Law**

5. General Statutes § 9-247 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.)

6. General Statutes § 9-236b, the Voter's Bill of Rights, reads, in pertinent part:

(a) The Secretary of the State shall provide each municipality with sufficient quantities of a poster size copy, at least eighteen by twenty-four inches, of a Voter's Bill of Rights, which shall be posted conspicuously at each polling place. The text of the Voter's Bill of Rights shall be:

VOTER'S BILL OF RIGHTS

Every registered voter in this state has the right to:

- (1) Inspect a sample ballot before voting;
- (2) Receive instructions concerning how to operate voting equipment, on sample voting equipment before voting;

- (3) Cast a ballot if the voter is in line when the polls are closing;
- (4) Ask for and receive assistance in voting, including assistance in languages other than English where required by federal or state law;
- (5) Vote free from coercion or intimidation by election officials or any other person;
- (6) Cast a ballot using voting equipment that accurately counts all votes;
- (7) Vote by provisional ballot if the individual registered to vote and the individual's name is not on the voter list;
- (8) Be informed of the process for restoring the individual's right to vote if the individual was incarcerated for a felony conviction; and
- (9) Vote independently and in privacy at a polling place, regardless of physical disability.**

If any of your rights have been violated, you have the right to file an official complaint with the State Elections Enforcement Commission at .... (toll-free telephone number) or the United States Department of Justice at .... (toll-free telephone number). In addition, before leaving the polling place you may notify the moderator of the violation. (Emphasis added.)

### **Response and Investigation**

7. The investigation here was relatively straightforward, however the moderator's own recollection from that day differs materially from the Complainant's allegations, insofar as the moderator's response, as well as the official election records, confirm that the Complainant's ballot was cast on that day and that he was not disenfranchised. Otherwise, the Complainant's recollection and the response of the moderator generally line up.
8. In his response, Moderator Kenneth Taylor indicates that the Complainant arrived at approximately 4:45pm and was brought over to the AVS system upon his request. The Complainant made his selections and as alleged, there was a blank sheet of paper in the printer rather than a ballot when the voter sent his selections to print. The piece of paper was

replaced with a full ballot and the Complainant's selections were marked on the ballot using the printer. The ballot was then fed into the tabulator and counted like any other ballot.

9. The records of that day match up with the moderator's assertions that Mr. Holcomb's ballot was counted. The Special Election was lightly attended. The tabulator tape reported that 61 ballots were cast. This matches up exactly with the number of voters crossed off the registry list (both in the moderator's report and in the SEEC review of the registry list pursuant to this investigation).<sup>2</sup>

### **Analysis and Conclusion**

10. The question here isn't whether the Complainant was allowed to cast two ballots, or no ballot, as alleged. The facts found during the instant investigation indicate that the Complainant was neither disenfranchised nor double-enfranchised. The discrete question before the Commission here is not a matter of factual dispute: Was the fact that the election officials mistakenly placed a blank sheet of paper instead of a full ballot a violation of the requirement in General Statutes § 9-247 that a tabulator be tested and operable?
11. As an initial matter, there is no indication that the AVS system had not been tested and/or was technically non-functional.
12. However, the Commission has found in prior matters that even if an AVS system is technically functional, if the elections officials themselves are incapable of operating the machine due to either their own lack of knowledge and/or some other deficiency in the setup of the polling place, then such an event can be a violation of General Statutes § 9-247. See *In the Matter of a Referral by the Secretary of the State*, File No. 2016-043 (Violation of 9-247 as moderator could not locate code to begin process, causing a 3-45 min delay) and *In the Matter of a Complaint by Melissa A. Rickard, Windsor*, File No. 2012-196 ("The moderator was not capable of operating the A VS 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.").
13. But, where such failures result in only a modest delay to a voter who ultimately is able to cast their ballot, the Commission has declined to find a violation. See *In the Matter of a Complaint by Nathanael T. Wales, Fairfield*, File No. 2016-037 (Moderator missed one

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<sup>2</sup> Indeed, 61 votes were recorded by the tabulator for the candidates, meaning that none of the ballots that day were blank, including but not limited to the Complainant's.

number in the code to set up the AVS system, resulting in a 20 minute delay that was ultimately resolved with the voter successfully casting ballot; no further action.)

14. Here, this matter is far more akin to the *Wales* matter than either the *Secretary of the State* or *Rickard* matters. Indeed, these issues are far less material than even those in *Wales*. Here, the elections officials made an error in inserting a blank sheet of paper instead of a ballot into the AVS printer, however this error was immediately caught and corrected. Notwithstanding the time it took for the Complainant to voice his concerns, he was only materially delayed for the amount of time that it took to redo his selections.

15. Considering the aforesaid, this matter should be dismissed.


### ORDER

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

That the matter is dismissed.

Adopted this ~~14~~<sup>23</sup> day of March, 2018 at Hartford, Connecticut.

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Anthony J. Castagno, Chairperson  
By Order of the Commission

