

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Helen Lech, Berlin

File No. 2007-421

FINDINGS AND CONCLUSIONS

Complainant brings this complaint pursuant to Connecticut General Statutes § 9-7b and alleges that her right to vote privately was infringed during the November 6, 2007 municipal election in the Town of Berlin. Specifically, she claims that her privacy was violated because the Accessible Vote-by-Phone System ("AVS") was located near the entrance to the polling place, and the Democratic Registrar of Voters, Charles Warner, sat next to her while she utilized the Accessible Voting System (hereinafter "AVS").

After an investigation of the complaint, the following Findings and Conclusions are made:

1. The Complainant, a resident of Berlin, voted at the municipal election held there on November 6, 2007. The Complainant describes herself as "legally blind" and, prior to November 6, 2007 ("Election Day"), had generally voted by absentee ballot.
2. On November 6, 2007, however, the Complainant elected to vote in person using the AVS. According to the Complainant, she learned about the AVS machine when she attended a presentation by the Secretary of the State (hereinafter "SOTS") regarding the new optical scan voting system.
3. The AVS was selected by the SOTS to comply with the Help America Vote Act of 2002 (HAVA) which requires at least one voting system equipped for individuals with disabilities at each polling place. The SOTS chose the Inspire Vote-by-Phone System ("IVS") to satisfy this requirement, and refers to it as the Accessible Vote-by-Phone system. The Attorney General of Connecticut has issued an opinion which requires that the AVS be used in all elections in Connecticut.
4. The AVS is composed of a telephone with very large buttons and a facsimile machine. AVS allows voters to cast their ballots using that telephone. The voter goes to the poll and checks in as usual. A poll worker is supposed to use the designated telephone to call the system, enter the Poll Worker ID and Ballot Access ID to bring up the appropriate ballot, then give the phone to the voter and leave the voting area. The voter listens to the directions and makes his/her choices using the keypad.
5. When the voter is finished making his/her selections, the system will ask the voter to verify his/her choices. The voter is given the opportunity to change any of those choices and even to spoil the ballot and start again. After the voter

completes the voting process, the fax machine will print a cover sheet, the voter's paper ballot, and an ending sheet.

6. The ballot produced by AVS will have a different appearance from the absentee ballots and/or the optical scan ballots used in the election. The voter will place his/her ballot a designated ballot box and his/her vote will be complete. Once the polls are closed, his/her ballot should be hand-counted by an election official. Once the total votes cast are counted, the totals for each candidate are to be reported on the Moderator's Return as a separate voting machine in the polling place. An AVS log should also be maintained to account for the number (not names) of voters that use that machine.
7. Any voter in Connecticut may choose to vote using the AVS.
8. The Complainant's polling place was the Griswold Elementary School. She first attempted to vote on the morning of Election Day. She checked in, and requested to use the AVS for the first time.
9. According to the Complainant, the Moderator of that polling place, Henry Welna, directed her to the equipment. The AVS was on a table that was close to the entrance to the polling place and was not surrounded by screens or a privacy booth. She asserts that she was given a password by the election officials and began to make her ballot selections.
10. The Complainant activated the phone and received detailed and understandable instructions on the referendum and council votes. However, she was not able to complete her selections because she could not get the system to move past the write-in feature. The Complainant requested help but no election official was able to help her rectify the issue. As a consequence, the Complainant returned home without voting, feeling frustrated and disappointed.
11. After she returned home, the Complainant contacted the Registrars of Voters Office concerning the problems she had with the AVS and was instructed how to by-pass the write-in feature.
12. The Complainant returned to the polls later that afternoon and proceeded to the AVS. She claims that because she remembered the password she was able to begin voting without any help. Mr. Warner maintains that he got a call requesting that he meet the Complainant at her polling place to help her use the AVS. Contrary to the representations made by the Complainant, he represents that he sat down next to the Complainant at the AVS because he had to enter the appropriate passwords.
13. As the Complainant was voting, she realized that Mr. Warner was sitting beside her. She asserts that he never announced himself but attempted to push a button on the phone as she was voting. She stated she was able to prevent him from touching the phone. Mr. Warner asserts that while the Complainant was presumably listening to the directions, he reached over to the AVS phone to point out the number "5" so the Complainant could orient herself properly on the phone. There is no evidence that he actually touched the phone.

14. The Complainant also alleges that Mr. Warner continued to sit next to her while she voted. Mr. Warner maintains that he was not sitting at the table during that time.
15. The Complainant alleges that the proximity of the AVS to the entrance of the polling place and Mr. Warner's actions at the AVS table deprived her of her right vote privately. The evidence in this case is insufficient to sustain such a claim.
16. Connecticut General Statutes § 9-236b (a) provides the following in pertinent:

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:

...

(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 . . . or the United States Department of Justice "

17. In addition, General Statutes § 9-262 (Rev. 2007) provides in pertinent part as follows:

No election official shall remain or permit any person to remain in any position or near any position that would permit him to see or ascertain how an elector votes or how he has voted.
18. The Complainant admits that she did not know if Mr. Warner or anyone else saw or heard how she voted while she was making her selection on the AVS. In addition, Mr. Warner and Mr. Welna deny being aware of how she voted. As such, the evidence is insufficient to establish that Mr. Warner or Mr. Welna deprived her of her right to vote privately or remained or permitted another to remain in a position that allowed them to ascertain how she voted while she was using the AVS.
19. The Commission cannot therefore conclude that Mr. Warner or Mr. Welna violated General Statutes §§ 9-236b or 9-262.
20. In this instance, where the Complainant was the only individual at her polling place to utilize the AVS, the very system that was supposed to ensure her ability to vote privately and independently had the opposite effect.

21. While no election official could control or affect the circumstances resulting in the Complainant being the only individual to utilize the system, the situation is likely to repeat itself. In the last two elections where the AVS has been used, there were less voters using the system statewide than polling places statewide. The Commission intends to work cooperatively with the Secretary of the State to seek a solution concerning the manner of tallying votes cast on the AVS, such that votes cast on that system cannot be identified with an individual voter.

ORDER

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

The complaint is hereby dismissed.

Adopted this 9th day of April, 2008 at Hartford, Connecticut.

A handwritten signature in black ink, appearing to read "Stephen F. Cashman", with a long horizontal flourish extending to the right.

Stephen F. Cashman, Chairman
By Order of the Commission