

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Sandra Kush

File No. 2008-068

FINDINGS AND CONCLUSIONS

The Complainant filed the instant complaint with the Commission pursuant to General Statutes § 9-7b, and asserts that on February 5, 2008, during the Democratic Presidential Preference primary, the election officials at the Webster Hill Polling Place in West Hartford, Connecticut did not know how to use the Inspire Vote-by-Phone System referred to by the Office of the Secretary of the State as the Accessible Vote-by-Phone System (hereinafter "AVS"). In addition, she alleges that she was deprived by an election official of her right to vote in privacy.

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

1. On February 5, 2008, the Complainant entered the Webster Hill Polling Place in West Hartford, Connecticut, to vote in the Democratic Presidential Preference primary.
2. The Complainant initially attempted to vote via the AVS. The AVS allows voters to cast their ballots using a regular telephone and a fax machine. To initiate the voting session, the voter goes to the poll and signs in as usual. A poll worker uses a designated telephone with a pre-registered phone number to dial into the system. The poll worker is asked to enter his or her assigned password and the voter's precinct code. If the information provided is valid, the system then directs the poll worker to give the telephone handset to the voter and leave the voting booth to allow the voter to vote privately and independently. The voter listens to an audio ballot then makes their ballot selections. Once the ballot is cast, the voter hangs up the telephone and their ballot will be faxed back to them immediately.
3. The Office of the Secretary of the State provides election officials with training and written materials on how to set up and operate the AVS.
4. The Complainant has 20/200 vision and wanted to utilize the AVS for the first time. The election officials could not, however, get that system to work right away. According to the Complainant, there was no chair at the fax machine, no extra phone, and the election officials could not locate the codes or directions to the system.
5. After enduring a long frustrating process, the Complainant was finally able to make her ballot selections on the AVS; however, before her ballot began to print out, an election official inadvertently cancelled her selections by picking up the fax phone when it rang.
6. The Complainant was so aggravated by the election officials' incompetence in their administration of the AVS and the AVS itself that she elected to vote via the optical scan paper ballot even though she was offered another opportunity to utilize the AVS.

7. When the Complainant communicated her intention to vote via paper ballot she was helped to the privacy booth by the Democratic Moderator of the polling place, Susan Rothbaum and the Republican Assistant Registrar of Voters, Elissa Masters-Weiss. The Complainant does not recall whether she requested the assistance of those two individuals but felt they imposed themselves upon her. There is evidence that suggests that she did make that request.
8. The Complainant alleges that when she made her ballot selection one of the election officials yelled "Oh, you voted for [name of candidate]." She felt that the election official definitely saw her ballot choices and then broadcast it to the entire polling place in violation of her right to vote in privacy and independently.
9. The law provides that the Complainant had the right to vote independently and in privacy at the polling place. See General Statutes § 9-236b (a)(9)(providing that every registered voter in Connecticut has the right to vote independently and in privacy).
10. In addition to General Statutes § 9-236b (a)(9), there are several statutory provisions that make it unlawful to invade or interfere with the secrecy of voting.
11. For example, General Statutes § 9-262 provides in pertinent part that:

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.
12. Similarly, General Statutes § 9-261 (e) states in relevant part as follows:

If any elector, after entering the voting booth, asks for further instruction concerning the manner of voting, the election officials shall give such instructions or directions to the elector; but **no election official instructing or assisting an elector, except as provided in section 9-264, shall look at the ballot in such a way as to see the elector's markings** or in any manner seek to influence any such elector in the casting of the elector's vote. [Emphasis added.]
13. Additionally, General Statutes § 9-264 (a) provides the following in relevant part:

An elector who requires assistance to vote, by reason of blindness, disability or inability to write or to read the ballot, may be given assistance by a person of the elector's choice, other than (1) the elector's employer, (2) an agent of such employer or (3) an officer or agent of the elector's union. The person assisting the elector may accompany the elector into the voting machine booth. Such person shall register such elector's vote upon the machine as such elector directs. **Any person accompanying an elector into the voting machine booth who . . . gives information to any person as to what person or persons such elector voted for . . . shall be fined not more than one thousand dollars or imprisoned not more than five years or both.** [Emphasis added.]
14. Finally, General Statutes § 9-366 provides in pertinent part that:

Any person who . . . attempts to get in such position to do any act so that he will be enabled to see or know how any elector other than himself votes on such [voting] machine, or does any act which invades or interferes with the secrecy of the voting or causes the same to be invaded or interfered with, shall be imprisoned not more than five years.

15. General Statutes §§ 9-261 and 9-264 also make clear, however, that the Complainant had the right to request the assistance of an election official when completing and submitting her ballot. As such, in considering whether the aforementioned provisions were violated, the Commission must also determine whether the Complainant requested the voting assistance of the election officials and the scope of her request.
16. The evidence establishes that the election officials accompanied the Complainant to the privacy booth and spoke to her as she completed her ballot. The Complainant cannot, however, recall whether she requested their help. There is evidence that suggests that she did make that request, however, the scope of the request remains unclear.
17. As a consequence, with respect her right to vote independently, there is insufficient proof that an election official deprived the Complainant of that right. While the Complainant's initial attempt to vote via the AVS was thwarted by an election official, the Complainant was given a second opportunity to utilize that system but declined.
18. Instead, the Complainant cast her vote utilizing an optical scan ballot, and although the election officials accompanied her to the privacy booth and remained there as she completed her ballot, there is evidence that suggests that the Complainant tacitly requested their assistance at the privacy booth.
19. The Commission therefore concludes that, while the election officials exhibited utter incompetence in their administration of the AVS and caused the Complainant great frustration and delay, the evidence is insufficient to establish that they prevented her from voting independently and in privacy. The Commission cannot therefore conclude that General Statutes § 9-236b (a)(9) was violated.
20. As uncomfortable as the Complainant was at the suggestion that her vote was publicized, there is no evidence that any individual at the polling heard an election official announce the Complainant's ballot selections.
21. Furthermore, the Commission cannot establish that the Complainant's right to vote in privacy and/or General Statutes §§ 9-261, 9-262, 9-264, or 9-366 were violated because the Complainant may have requested the election officials' presence at the privacy booth. In addition, there is insufficient proof that an election official publicized her ballot selections.
22. Finally, the Commission notes that systems like the AVS were required by the federal Help America Vote Act of 2002 ("HAVA") so that electors like the Complainant could vote independently and in privacy at the polling place. The election officials here failed

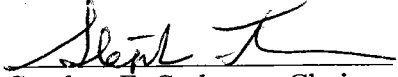
to learn how to properly administer that system, and although they did not violate any law, their failure essentially rendered the Complainant dependent upon them for assistance. That outcome is exactly what systems required by the Help America Vote Act were designed to remedy. As such, the Commission hopes and expects such elections officials will take an additional training class on the AVS prior to the next election.

ORDER

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

That the matter be dismissed.

Adopted this 16th day of December 2009 at Hartford, Connecticut


Stephen F. Cashman, Chairman
By Order of the Commission