

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Eileen Torow, Milford

File No. 2009-005

FINDINGS AND CONCLUSIONS

The Complainant filed this complaint with the Commission, pursuant to Connecticut General Statutes §9-7b(a)(1), alleging that it took forty five minutes to cast her vote by phone upon arriving at her polling place on November 4, 2008.

After an investigation of this matter, the following findings and conclusions are made:

1. Complainant, who is legally blind, alleged that she was not able to use the vote-by-phone system when she first attempted to do so at the Foran High School polling place in Milford at the November 4, 2008 election.
2. Further, Complainant alleged that the Moderator at the polling place did not have the access codes to use the system, and that it took her 45 minutes before she was able to cast her vote using the vote-by-phone system.
3. The AVS was selected by the Office of the Secretary of the State (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 Moderator was able to coordinate with the Milford Registrar of Voters and affect a solution to Complainant's problems with voting. After receiving information regarding how to dial-up the access codes for the vote-by-phone system, the system functioned properly and Complainant was able to cast her ballot using the system.
5. General Statutes § 9-236b, provides 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:

...

(9) Vote independently and in privacy at a polling place, regardless of physical disability. ...

[Emphasis added.]

6. The investigation revealed that while there were initial delays before Complainant was able to vote-by-phone, the Complainant was able to vote after about approximately forty five minutes. Furthermore, the Commission finds that Complainant was able to cast her vote privately and independently by use of the vote-by-phone system at the Foran High School Polling Place in Milford as required by General Statutes § 9-236b(a)(9).
7. Therefore, the Commission concludes that because Complainant was ultimately able to vote privately and independently at the Foran High School polling place in Milford at the November 4, 2008 election, there was no violation of General Statutes § 9-236b(a)(9).
8. General Statutes § 9-247, provides in pertinent part:

The registrars of voters shall, before the day of the election, cause the mechanic or mechanics to **insert on each machine the ballot labels** corresponding with the sample diagrams provided and to put each such machine 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 shall cause the machine so labeled, 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, not later than six o'clock in the afternoon of the day preceding the election. Each **voting machine shall be furnished with light** sufficient to enable electors while voting **to read the ballot labels** and suitable for use by the election officials in examining the counters. A pencil shall also be provided, within each voting machine, for use in casting a write-in ballot.

[Emphasis added.]

9. The investigation revealed that the Moderator at the Foran High School polling place initially failed to properly operate the vote-by-phone system upon Complainant's arrival because he did not dial a "9" to acquire an outside line when attempting to initialize the system. The Commission further finds that the Moderator realized his error upon contacting the Registrars office and thereafter properly operated the vote-by-phone system.

10. The Commission concludes therefore, despite any errors by the moderator at the Foran High School polling place in operating the vote-by-phone system on Election Day, the Commission lacks the ability to rely on General Statutes § 9-247 to fashion a remedy due to that statute's antiquated references to a voting technology that is no longer used in Connecticut.
11. Furthermore, the Commission finds, to the extent § 9-247 contemplates authority for the Commission over the set-up of voting machines prior to an election, the statute is limited to language pertaining to voting "machines," and has not been amended to incorporate current voting technologies such as the vote-by-phone system at issue in this complaint.
12. The Commission further considered whether election officials were properly trained on the new technology. In that regard, General Statutes § 9-249, provides, in pertinent part:

(a) Before each election, the registrars of voters, certified moderator and certified mechanic shall instruct the election officials. Any provision of the general statutes or of any special act to the contrary notwithstanding, election officials shall be appointed at least twenty days before the election except as provided in section 9-229. The registrars, certified moderator and certified mechanic shall instruct each election official who is to serve in a voting district in which a voting machine is to be used ***in the use of the machine and his duties in connection therewith, and for the purpose of giving such instruction, such instructors shall call such meeting or meetings of the election officials as are necessary. Such instructors shall, without delay, file a report in the office of the municipal clerk and with the Secretary of the State, (1) stating that they have instructed the election officials named in the report and the time and place where such instruction was given, and (2) containing a signed statement from each such election official acknowledging that the official has received such instruction.***

(b) The election officials of such voting districts shall attend the elections training program developed under subdivision (1) of subsection (c) of section 9-192a and any other meeting or meetings as are called for the purpose of receiving such instructions concerning their duties as are necessary for the proper conduct of the election.

...

(d) No election official shall serve in any election unless the official has received such instruction and is fully qualified to perform the official's duties in connection with the election, but this shall not prevent the appointment of an election official to fill a vacancy in an emergency. [Emphasis added.]

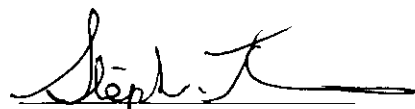
13. The investigation revealed that training sessions for election officials, including moderators, occurred in Milford prior to the November 4, 2008 election, which included training on the AVS vote-by-phone system.
14. The Commission concludes therefore that the Milford Registrars of Voters trained election officials as required prior to the November 4, 2008 election and did not violate General Statutes § 9-249.
15. The Commission considers an individual's right to cast a vote privately and independently as a fundamental guarantee in any election. Therefore, the Commission finds Complainant's allegations serious. Nevertheless, the Commission notes that while the Complainant was required to wait forty five minutes for the vote-by-phone system to be made operational, she was ultimately able to utilize the vote-by-phone system as she desired.
16. While a system such as the AVA system is required by the federal Help America Vote Act, state law has not kept pace. The AVS system used in Connecticut to comply with HAVA is not codified in Connecticut election law or regulation, leaving the Commission without a remedy for the undue delay and difficulties experienced by the Complainant.

ORDER

The following order is issued on the basis of the aforementioned findings and conclusions:

That the complaint is dismissed.

Adopted this 1st day of Sept., 2009 at Hartford, Connecticut.



Stephen F. Cashman
Chairman
By Order of the Commission