

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Claude L. Holcomb, Hartford

File No. 2009-029

FINDINGS AND CONCLUSIONS

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

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

1. Complainant alleged that he went to vote on November 4, 2008 at the District 9 Burns Elementary School polling place in Hartford. After checking in to vote by Accessible Vote-by-Phone System (AVS), he discovered that the facsimile machine for the vote-by-phone system was not correctly hooked up to receive calls, and he was not able to use the system without extensive delay.
2. After unsuccessful attempts by the District 9 Moderator and polling place officials to activate the vote-by-phone system, Complainant was still not able to vote. Complainant proceeded to the Office of the Secretary of State's office, to seek assistance from the Elections Division to get the District 9 AVS system operational.
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 Office of the Secretary of the State was able to coordinate with the Democratic Registrar of Voters and affect a solution to his problems with voting. After receiving information that the District 9 vote-by-phone system was functioning properly, Complainant returned to his polling place and was able to cast his ballot using the system.
5. Therefore, after approximately four hours, Complainant was finally able to vote using the vote-by-phone system, after the intervention by both the officials at the Office of the Secretary of the State and the Democratic Registrar of Voters.

6. 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. ...

7. The Commission finds that, although, there is little question that the Complainant had considerable difficulty voting using the vote-by-phone system when he first arrived at the polls due to equipment failure and lack of adequate set-up prior to the opening of the polls, the Complainant was eventually able to cast his vote privately and independently by use of the vote-by-phone system.
8. Therefore, the Commission concludes that because Complainant was ultimately able to vote privately and independently at the District 9 Burns Elementary School polling place there was no violation of General Statutes § 9-236b(a)(9).
9. 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.

10. The Commission finds that, to the extent § 9-247 provides authority for the Commission over set-up of voting machines prior to an election, the statute clearly contemplates the lever voter machines, which are no longer in use, and has not been amended to incorporate current voting technologies such as the voting tabulators and the vote-by-phone system at issue in this complaint.
11. The Commission concludes therefore, despite any errors in setting up the vote-by-phone system machine at the District 9 polling place or the failure to have it functioning at the opening of the polls, which appears to have occurred in this instance, 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.
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 Commission finds that training sessions for election officials, as well as an extra-statutory training session occurred for moderators prior to the November 4, 2008, which included training on the AVS vote-by- phone system.
14. In addition, the Commission concludes based upon its investigation that there was ample available information to the Hartford Registrars of Voters pertaining to the training of election officials, and specifically regarding the set-up and operation of the vote-by-phone system, which has been in use in Connecticut since November 2006, prior to the November 2008 election, and Complainant's problems with using the vote-by-phone system could have been avoided with due diligence.
15. The Commission concludes therefore that the Hartford Registrars of Voters did not violate General Statutes § 9-249, and trained election officials as required prior to the November 4, 2008 election.
16. Turning to the next allegation, Complainant also alleged that he witnessed Hartford Councilman Calixto Torres casting a vote for an elderly woman.
17. General Statutes § 9-264 provides:

(a) 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*** deceives any elector in registering his vote under this section or ***seeks to influence any elector while in the act of voting,*** or who registers any vote for any elector or on any question other than as requested by such elector, or who gives information to any person as to what person or persons such elector voted for, or how he voted on any question, ***shall be fined not more than one thousand dollars or imprisoned not more than five years or both.***

[Emphasis added.]

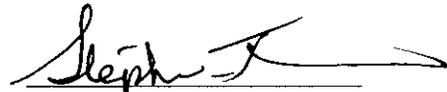
18. The Commission concludes that there is insufficient evidence to establish that Mr. Torres violated General Statutes § 9-264 by instructing an individual how to cast their ballot.
19. The Commission considers an individual's right to cast a vote privately and independently as a fundamental guarantee in any election. Therefore, the Commission finds Complainant's allegations and lengthy ordeal highly problematic.
20. Furthermore, the Commission finds, based on the facts supporting Complainant's allegations, and information that the City of Hartford had been aware of Complainant's previous difficulties in casting votes in District 9, prior to the November 4, 2008, that the Complainant's experience of waiting over four hours to cast a vote privately and independently deeply disturbing. Also troubling, was the City of Hartford's inability to anticipate, avoid or alleviate Complainant's problem prior to the opening of the polls on November 4, 2008.
21. Nevertheless, although such a 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 5th day of Aug., 2009 at Hartford, Connecticut.



Stephen F. Cashman
Chairman
By Order of the Commission