

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Deputy Secretary of State Lesley Mara

File No. 2009-090

FINDINGS AND CONCLUSIONS

The Complainant filed the instant complaint with the Commission pursuant to General Statutes § 9-7b, and asserts that the Town of Hamden did not set up the vote-by-phone system for its September 15, 2009 Democratic primary in violation of General Statutes § 9-236b.

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

1. On September 15, 2009, the Town of Hamden held a Democratic Primary (hereinafter the "Primary"). The Democratic Registrar of Voters in Hamden is Rose Mentone (hereinafter "the Respondent").
2. The Respondent took the position of Registrar on January 1, 2009. As such, September 15, 2009 would have been the first time she set up the voting machines, including the Accessible Vote-by-Phone System (hereinafter "AVS"). There was no corresponding Republican Primary in Hamden. As such, the Respondent was solely responsible for the set up of that system.
3. 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.
4. The Respondent admits that she did not set up the AVS for the Primary but that she did so because Anthony Esposito, Republican Registrar of Voters for the Town of Hamden told her that the AVS was not required in a local primary.
5. General Statutes § 9-236b (a) provides in pertinent part as follows:

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) . . .”

6. General Statutes § 9-236b was originally passed in 2002 and contains a list of rights for each elector in Connecticut. Public Act 02-83. Public Act 04-32 amended the Voter's Bill of Rights to add, *inter alia*, the right “to vote independently and in privacy at a polling place, regardless of physical disability.”
7. The Commission has interpreted General Statutes § 9-236b (a) as granting voters the rights enumerated in the Voter's Bill of Rights. See *Complaint of Cynthia Clark, et al.*, File No. 2003-067 (right to inspect a sample ballot); *Complaint of Kathleen Prudden and Elizabeth Rhoades*, File No. 2007-405 (same) 2007-405; *Complaint of Norman S. Douglas*, File No. 2007-411 (right to vote in privacy at the polling place); *Complaint of Helen Lech*, File No. 2007-421 (right to vote in privacy at the polling place); *Complaint of Claude Holcomb*, File No. 2009-029 (right to vote independently and in privacy at the polling place); *Complaint of Eileen Torrow*, File No. 2009-005 (right to vote independently and in privacy at the polling place); *Complaint of Sandra Kush*, File No. 2009-068 (right to vote independently and in privacy at the polling place).

8. In the present matter, the Commission must first determine whether voters possess those rights when voting in a primary. In order to answer this question, the Commission must apply the well-settled principles of statutory construction.
9. “When construing a statute, [the] fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter. . . .” State v. Tabone, 292 Conn. 417, 431-32 (2009).
10. The plain language of General Statutes § 9-236b establishes that the legislature intended that voters possess the rights enumerated in § 9-236b during a primary as nothing in that provision specifies when those rights attach (i.e., election, primary, etc.). There is no distinction in that provision between a regular election and primary. Rather, that provision speaks broadly and merely references where such rights attach (i.e., the polling place.) Compare with other provisions where the legislature clearly articulates when a provision applies to an election and/or primary. See, e.g., General Statutes § 9-243. In this instance, those terms are omitted completely. Furthermore, an examination of the legislative history of that provision does not suggest otherwise.
11. As such, the Commission concludes that the rights enumerated in General Statutes § 9-236b apply in primaries. See also Complaint of Sandra Kush, File No. 2008-068 (Commission dismisses complaint after analyzing whether an elector who voted during a Democratic *primary* was deprived of her right to vote independently and in privacy pursuant to General Statutes § 9-236b).
12. Our conclusion is further supported by General Statutes § 9-381a which provides that “[e]xcept as otherwise provided by statute, the provisions of the general statutes concerning procedures relating to regular elections shall apply as nearly as may be, in the manner prescribed by the Secretary of the State, to primaries held under the provisions of this chapter.”
13. With that in mind, we turn to whether the Respondent deprived any voter of a right articulated in General Statutes § 9-236b by failing to require her election officials to set up the AVS at the polling place.
14. It is clear that certain voters could be deprived of their rights to vote independently and/or in privacy at the polling place during a primary if the AVS is not set up. For example, a

visually impaired voter who cannot see the ballot well enough to mark it properly would need assistance completing their ballot if they elected to go to the polling place to vote but found that the AVS was not available because election officials failed to require it and/or set it up.

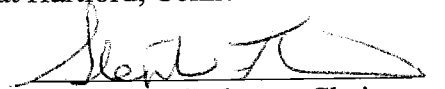
15. In fact, the Commission notes that the main reason the AVS was approved for use and required by the Office of the Secretary of the State was to ensure that those rights were not violated. See P.A. 04-32 (adding to General Statutes § 9-236b the right to vote independently and in privacy at the polling place regardless of disability) and Comments of Rep. O'Rourke, House Session Transcript, March 31, 2004 ("We are, in this bill before us, adding a couple of new provisions to that list of rights since the passage of the Help America Vote Act"); See also Help America Vote Act § 301(a)(3)(A) & (B)(requiring that all voting systems used in federal elections "be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters" and noting that that requirement could be satisfied "through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place.")
16. In this case, while the Respondent did fail to require her elections officials to set up the AVS for the Primary, the Commission has not found any evidence (i.e., a voter that requested to use of the AVS) that supports a finding that a specific voter was deprived of his or her right to vote independently and in privacy during that Primary because of the Respondent's failure.
17. The Commission therefore concludes that the evidence in this matter is insufficient to establish that the Respondent violated General Statutes § 9-236b by failing to require her election officials to set up the AVS during the September 15, 2009 Democratic primary.
18. The Commission does however *strongly advise* the Respondent, and all Registrars of Voters throughout Connecticut, to ensure that the AVS is set up during *every primary* and election held in their respective municipalities as the AVS is vital to a voter's rights to vote independently and in privacy at the polling place. As noted, a deprivation of such rights could be established if the AVS is not set up yet a single voter appears at the polling place and can only vote independently and in privacy via that system. Under those circumstances and for the aforementioned reasons, the deprivation of such rights will merit severe punishment.

ORDER

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

That the matter be dismissed.

Adopted this 20th day of January 2010 at Hartford, Connecticut



Stephen F. Cashman, Chairman
By Order of the Commission