

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Iris Vargas, Hartford

File No. 2012-089

FINDINGS AND CONCLUSIONS

The Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that Respondents Raquel Calderon and Deborah Myers impermissibly took possession of, filled out, and submitted an absentee ballot in her name.

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

1. In Connecticut, certain eligible electors may vote by using an absentee ballot if they are unable to appear at the polls on the day of the election, primary or referendum for reasons set forth in the Connecticut Constitution, as well as General Statutes § 9-135, which reads, in pertinent part:
 - (a) Any elector eligible to vote at a primary or an election and any person eligible to vote at a referendum may vote by absentee ballot if he is unable to appear at his polling place during the hours of voting for any of the following reasons: (1) His active service with the armed forces of the United States; (2) his absence from the town of his voting residence during all of the hours of voting; (3) his illness; (4) his physical disability; (5) the tenets of his religion forbid secular activity on the day of the primary, election or referendum; or (6) the required performance of his duties as a primary, election or referendum official at a polling place other than his own during all of the hours of voting at such primary, election or referendum.

(b) No person shall misrepresent the eligibility requirements for voting by absentee ballot prescribed in subsection (a) of this section, to any elector or prospective absentee ballot applicant.
(Emphasis added.)
2. As a general rule, an absentee ballot applicant will receive her/his ballot at the address listed in the application.

3. However, in order to bring some of the polling place protections against fraud and/or undue influence where absentee ballots are being requested in high concentrations from the same residential address, General Statutes §§ 9-159q and 9-159r provide (and sometimes require) for absentee balloting to be conducted on site under the supervision of the registrars of voters.

4. General Statutes § 9-159q reads, in pertinent part:

(a) As used in this section:

(1) "Institution" means a veterans' health care facility, residential care home, health care facility for the handicapped, nursing home, rest home, mental health facility, alcohol or drug treatment facility, an infirmary operated by an educational institution for the care of its students, faculty and employees or an assisted living facility; and

(2) "Designee" means an elector of the same town and political party as the appointing registrar of voters which elector is not an employee of the institution at which supervised voting is conducted.

(b) Notwithstanding any provision of the general statutes to the contrary, if less than twenty of the patients in any institution in the state are electors, absentee ballots voted by such electors shall, upon request of either registrar of voters in the town of such electors' voting residence or the administrator of such institution, be voted under the supervision of such registrars of voters or their designees in accordance with the provisions of this section. The registrars of voters of a town other than the town in which an institution is located may refuse a request by the administrator of such institution when, in their written opinion, the registrars agree that such request is unnecessary, in which case this section shall not apply. Such registrars shall inform the administrator and the town clerk of the electors' town of voting residence of their refusal.

...
(d) The town clerk shall not mail or otherwise deliver an absentee ballot to an applicant who is a patient in any institution if a request for supervision of absentee balloting at that institution has been filed with the clerk during the period set forth in subsection (c) of this section. The clerk shall instead deliver such ballot or ballots to the registrars of voters or their designees who will supervise the voting of such ballots in accordance with this section.

...

(g) The registrars or their designees, as the case may be, shall jointly deliver the ballots to the respective applicants at the institution and shall jointly supervise the voting of such ballots. The ballots shall be returned to the registrars or their designees by the electors in the envelopes provided and in accordance with the provisions of sections 9-137, 9-139 and 9-140a. If any elector asks for assistance in voting his ballot, two registrars or their designees of different political parties or, for a primary, their designees of different candidates, shall render such assistance as they deem necessary and appropriate to enable such elector to vote his ballot. The registrars or their designees may reject a ballot when (1) the elector declines to vote a ballot, or (2) the registrars or their designees are unable to determine how the elector who has requested their assistance desires to vote the ballot. When the registrars or their designees reject a ballot, they shall mark the serially-numbered outer envelope "rejected" and note the reasons for rejection. Nothing in this section shall limit the right of an elector to vote his ballot in secret.

...
(j) Any registrar of voters who has filed a request that the absentee balloting at an institution be supervised and any registrar required to conduct a supervision of voting under this section, who neglects to perform any of the duties required of him by this section so as to cause any elector to lose his vote shall be guilty of a class A misdemeanor. Any registrar from the same town as a registrar who has filed such a request may waive his right to participate in the supervision of absentee balloting.

...
(l) Notwithstanding any provision of the general statutes, if a town clerk receives twenty or more absentee ballot applications from the same street address in a town, including, but not limited to, an apartment building or complex, absentee ballots voted by the electors submitting such applications may, at the discretion of the registrars of voters of such town, be voted under the supervision of such registrars of voters or their designees in accordance with the same procedures set forth in this section for supervised absentee voting at institutions.

5. General Statutes § 9-159r reads:

(a) Notwithstanding any provision of the general statutes to the contrary, if twenty or more of the patients in any institution in the state are electors, absentee ballots voted by such electors shall be voted under the supervision of the registrars of voters or their designees of the town in

which the institution is located, in accordance with the provisions of this section. As used in this section, the term "institution" shall be construed as defined in section 9-159q.

(b) Application for an absentee ballot for any such patient shall be made to the clerk of the town in which such patient is eligible to vote. The application procedure set forth in section 9-140 shall apply, except that the clerk shall deliver the absentee voting set for any such application to the clerk of the town in which the institution is located, who shall deliver all such voting sets he receives to the registrars of such town, on the date when the supervision of absentee balloting is to occur. The ballots and envelopes shall be prepared for delivery to the applicant as provided in sections 9-137 to 9-140a, inclusive. The registrars or their designees shall furnish the town clerk a written receipt for such ballots. The registrars of the town in which an institution is located and the administrator of the institution shall mutually agree on a date and time for such supervision of absentee balloting, which shall be not later than the last business day before the election or primary.

(c) The supervision of absentee balloting under this section shall be carried out in accordance with the provisions of subsections (g), (h), (i) and (k) of section 9-159q.

6. Each absentee ballot applicant, or such applicant's agent, must sign the inner envelope containing the ballot under the penalties of false statement. Only the voter may sign the inner envelope, unless such voter has designated an authorized agent to do so. General Statutes § 9-140a:

Each absentee ballot applicant shall sign the form on the inner envelope provided for in section 9-137, which shall constitute a statement under the penalties of false statement in absentee balloting. Any absentee ballot applicant who is unable to write may cause his name to be signed on the form by an authorized agent who shall, in the space provided for the signature, write the name of the applicant followed by the word "by" and his own signature. The failure of the applicant or authorized agent to date the form shall not invalidate the ballot. The ballot shall be inserted in the inner envelope, and the inner envelope shall be inserted in the outer envelope, prior to the return of the ballot to the municipal clerk. If an applicant is required to return identification with the ballot pursuant to the Help America Vote Act, P.L. 107-252, as amended from time to time, such identification shall be inserted in the outer envelope

so such identification can be viewed without opening the inner envelope.

7. Fraudulently executing a ballot carries potential criminal penalties under General Statutes §§ 9-359, 9-359a, 9-360, and 9-361 (in primaries).
8. Turning to the facts and allegations here, the events of this matter concern the August 14, 2012 state primary.
9. At all times relevant to the instant matter, the Complainant was a resident in a multi-unit residential complex that had been designated for supervised absentee balloting for the August 14, 2012 Primary by Democratic Registrar of Voters Iris Vazquez per General Statutes §§ 9-159q and 9-159r.
10. The Respondents in this matter were designees of the Hartford Democratic Registrar of Voters for the purposes of conducting supervised absentee balloting in the Complainant's building.
11. On or about July 30, 2012, the Office of the Hartford Town Clerk received an application for an absentee ballot from the Complainant for the August 14, 2012 primary asserting that illness prevented the Complainant from voting in person on that date.
12. The Complainant's application indicated that it was signed and dated by the Complainant on July 28, 2012.
13. The Complainant's application also indicated that the assister on her application was Minnie Gonzalez, who at all times relevant to the instant matter was the state representative for the 3rd District in the Connecticut General Assembly, in which the Complainant's residence was located.
14. On or about August 2, 2012, the Office Hartford Town Clerk received the Complainant's sealed ballot from the Hartford Democratic Registrar of Voters Iris Vazquez.
15. On August 3, 2012 the Complainant was able to recover enough from the illness that she claimed on the sworn absentee ballot application would keep her from going to the polls on August 14, 2012 and she appeared personally at the Office of the Hartford Town clerk and requested to withdraw her absentee ballot pursuant to General Statutes § 9-159o.
16. The Complainant alleges here that on or about August 2, 2012, the Respondents entered her apartment with her (and her husband's) absentee ballot and demanded that she sign the ballot. The Complainant alleges that she told the Respondents that she wanted to keep the ballot and

have a family member fill it out on her behalf as she is unable to read or write. She alleges that the Respondents threatened to call the police if she did not return the ballot and upon their threats, she “threw the ballots at them and asked them to leave my home.”

17. The Complaint further alleges that on or about August 3, 2012 she went personally to the Office of the Hartford Town Clerk to inquire about her ballot and she asserts that she was told that the ballot had been submitted by the Respondents as having been voted and that the inner envelope had been signed by the Complainant.
18. The Complainant alleges that she never marked a ballot or signed the envelope and that the Respondents must have fraudulently voted for her.
19. In oral and written statements to the Commission, which included their contemporaneous notes from the date in question, the Respondents generally deny the Complainant’s assertion that they in any way marked her ballot for her.
20. More specifically, the Respondents assert that they entered the Complainant’s building and were escorted up to the Complainant’s apartment door by institution employee Edwin Centeno. The Complainant appeared at her door after the Respondents knocked. After the Respondents explained their purpose for being there and presented the envelope containing the Complainant’s blank absentee ballot, the Complainant took the ballot and explained that “Minnie Gonzalez told her not to give it back and that Minnie Gonzalez would fill it out for her.” The Respondents explained to the Complainant that although she could fill out the ballot in her home, she needed to give it back to them, as they were required by law to return it to the Hartford Town Clerk. The Complainant insisted that she would not give back the ballot because “Minnie Gonzalez wanted to fill it out for her” at which point the Complainant shut the door on the Respondents.¹
21. The Respondents further assert that after being shut out by the Complainant, they called Freda Seritella, who was coordinating supervised absentee balloting for the Hartford Democratic Registrar Olga Vazquez, and asked her to come up and intervene. The Respondents assert that Ms. Seritella did intervene, knocked on the Complainant’s door and stressed that if the Complainant did not return the absentee ballot to the designees of the registrar, she would need to call the police. Finally, they assert that Mr. Edwin Centeno personally intervened and convinced the Complainant to return the ballot, at which time the ballot was returned to the Town Clerk in its envelope as delivered to them by the Complainant.

¹ No evidence was found that Representative Gonzalez was present when the Complainant marked her ballot, which would have been a violation of General Statutes § 9-140b (e), as Rep. Gonzalez was a candidate on the ballot and precluded from being present while the ballot was marked.

22. Ms. Seritella submitted a statement to the Commission supporting the Respondents' assertions and adding that it was she who asked Mr. Centeno to intervene.
23. Mr. Centeno also submitted oral and written statements to the Commission. Mr. Centeno identified himself as Resident Services Coordinator at Capitol Towers Apartments where the Complainant lived. He supports the Respondents' assertions that he escorted them up to the Complainant's apartment door. He states that he witnessed Ms. Vargas insist that she was not going to give back her ballot. He asserts that eventually he and the Respondents convinced her to mark the absentee ballot and return it to the Respondents by telling her that she could get in trouble for refusing to return it. He stated that he never witnessed the Respondents raise their voices in the Respondent's presence or otherwise make threats.
24. Turning to the Complainants allegations, the gravamen of the Complaint here is that the Respondents fraudulently marked Ms. Vargas' ballot for her and submitted it on her behalf. The Respondents specifically deny that allegation and generally deny the events as alleged by the Complainant.
25. However, after investigation, other than the Complainant's own assertions, there is no evidence supporting these allegations. Indeed, the evidence in this matter support the conclusion that it was more likely than not that the Complainant marked her own ballot and that the Respondents were merely doing their job in seeking its return. The Respondents here were responsible for supervising the marking of the ballots at the Complainant's residential complex and escorting the ballots back to the Office of the Town Clerk that day. It was incumbent upon them under General Statutes § 9-159q to demand return of the Complainant's ballot, whether or not it was marked.
26. Moreover, it was their sole duty to render assistance in marking the ballot if the Complainant needed it. While the Complainant expressed a desire to have someone else assist her in marking the ballot (the accounts differ concerning the identity of that person), only the Respondents could perform that service under General Statutes § 9-159q.
27. For this reasons set forth above, this matter should be dismissed.

ORDER

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

That the matter is dismissed.

Adopted this 19th day of August, 2014 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission