

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Brian S. Ashbee, Norwich

File No. 2014-155

FINDINGS AND CONCLUSIONS

The Complainant alleged that during the 2014 General Election the Town of Norwich, the elections officials in the Huntington Elementary School polling place impermissibly allowed a marked sample ballot to remain on display in the demonstration area.¹

ALLEGATION

1. According the Complainant, at about 5:40pm on Election Day, November 4, 2014, he entered the Huntington Elementary School polling place and witnessed that the sample ballot on the table utilized by the polling place demonstrator, Respondent Marilyn Stevenson was not entirely blank, but instead the bubble next to the name of gubernatorial candidate Dannel Malloy had been circled in blue ink. He alleges that it was impermissible to display a sample ballot marked accordingly.

LAW

2. By law, each polling place must contain a demonstrator device and a sample ballot for voters to inspect.
3. General Statutes § 9-260 reads:

A demonstrator device shall be provided inside the polling place for the instruction of electors. Any such demonstrator device shall instruct electors on the proper method to cast their vote, including the proper method to cast a write-in vote using the voting equipment located in each polling place. Upon request by any elector who desires instruction

¹ The following are the Commission's findings and conclusions based on those portions of the Complainant's statement of complaint which the Commission could reasonably construe as alleging facts amounting to a specific violation of those laws within the Commission's jurisdiction. Any statements within the Complaint not addressed herein either did not specifically allege a violation or alleged facts which if proven true would not have amounted to a violation within the Commission's jurisdiction.

after he has entered the polling place and prior to casting his vote, two election officials of different political parties jointly shall instruct such elector on the demonstrator device

4. General Statutes § 9-255 reads:

The registrars of voters shall provide for all polling places using voting tabulators at least two sample ballots that shall contain the offices, party designations, names of candidates, write-in slots and questions to be voted upon. On each such sample ballot shall be printed instructions as to the use of the voting tabulator, which instructions shall be approved by the Secretary of the State. Such sample ballots shall be so posted inside the polling place as to be visible to those within the polling place during the whole day of election. At least one of such sample ballots shall be so posted as to be visible to an elector being instructed on the use of the voting tabulator under section 9-260.

5. Neither General Statutes §§ 9-255 nor 9-260 specify that such ballot must not be marked in any manner. However, it is impermissible per General Statutes § 9-236 to electioneer inside a polling place or within 75' of any outside entrance, including but not limited to displaying and/or handing out campaign materials or displaying the names of candidates on clothing or other paraphernalia. See, e.g., *In re: Referral of Middletown Registrar of Voters Janice Gionfriddo*, File No. 2014-160 (Display of candidates' names on coat impermissible in EDR location); *In the Matter of a Complaint by Karen Doyle Lyons, City of Norwalk*, File No. 2008-007 (campaign flyers inside a polling place). Further, General Statutes § 9-236 (b) requires moderators and constables to prohibit such electioneering. General Statutes § 9-236 reads, in pertinent part:

(a) On the day of any primary, referendum or election, no person shall solicit on behalf of or in opposition to the candidacy of another or himself or on behalf of or in opposition to any question being submitted at the election or referendum, or loiter or peddle or offer any advertising matter, ballot or circular to another person within a radius of seventy-five feet of any outside entrance in use as an entry to any polling place or in any corridor, passageway or other approach leading from any such outside entrance to such polling place or in any room opening upon any such corridor, passageway or approach. . .

(b) . . . (3) The moderator and the moderator's assistants shall meet at least twenty minutes before the opening of a primary, referendum or an election in the voting district, and shall cause to be placed by a police officer or constable, or such other primary or election official as they select, a suitable number of distance markers. *Such moderator or any police officer or constable shall prohibit loitering and peddling of tickets within that distance.*
... (emphasis added)

INVESTIGATION AND ANALYSIS

6. The Complainant here further alleges that he informed the polling place demonstrator, Marilyn Stevenson and that her initial reaction was to attempt to blacken out the blue inked circle on the ballot. He asserts that after he insisted that her action was not sufficient, she took the ballot to the moderator, Respondent JoAnn Martin, who removed it.
7. According to the demonstrator, Respondent Stevenson, sometime in the afternoon, she did not recall an exact time, a voter came to her table to review the sample ballot. She asserts that the voter became confused and started to mark the gubernatorial portion of the ballot by placing what she described as a "hairline mark" on the green sample ballot. She asserts that she stopped the voter and directed him to the ballot clerk for an official ballot. She confirms that she did not inform the moderator as she thought nothing of the incident and continued performing her duties up until the Complainant asserted that there was a problem. At that point she brought the ballot to the moderator, Respondent JoAnn Martin, who gave her a new sample ballot from the ballot clerk's table.
8. Respondent JoAnn Martin separately corroborated Ms. Stevenson's assertions. Respondent Martin noted the incident in the moderator's diary and moved on to other concerns in the polling place.
9. No copy of any sample ballot was recovered in this investigation. However, Republican Registrar of Voters Dianne Slopak provided corroborating testimony that the ballot was circled with a blue pen as indicated by the Complainant.

Analysis and Conclusion

10. As an initial matter, the Commission has concluded in the past that the display of advocacy materials in a polling place *can* constitute impermissible electioneering pursuant to General Statutes § 9-236 (a). See, *Lyons*, above.

11. Moreover, the Commission has concluded in the past that filled-in unofficial ballots or portions of ballots can be considered electioneering materials if used to advocate. *See, e.g., In the Matter of Complaints by Kathleen Prudden and Elizabeth A. Rhoades, Stafford Springs*, File No. 2007-405
12. However, in *Lyons*, while campaign materials explicitly advocating for the election of Walter O. Briggs for mayor were found inside the polling place, the Commission found that no polling place official was responsible for them being there. As such, so long as they were removed by the moderator upon discovery, the moderator had no liability under General Statutes § 9-236 (b) (3)
13. Turning first to the question of Ms. Stevenson's liability, while the investigation did not uncover the ballot at issue here, the evidence sufficiently supports a finding that there was a sample ballot on display that for at least 2-3 hours contained a blue pen circle around the bubble for gubernatorial candidate Dannel Malloy.
14. It is sufficient enough here to assume that such *could* constitute advocacy, as the Commission finds other reasons that liability does not attach here for Ms. Stevenson. First, there is insufficient evidence to support an allegation that Ms. Stevenson herself made the mark. No person witnessed such an act. Moreover, even assuming that leaving the ballot marked as such could constitute electioneering, there is insufficient evidence that Ms. Stevenson, a Republican, would have any interest in supporting the candidacy of Mr. Malloy, a Democrat. Moreover, the very act of leaving the ballot exposed for anyone in the polling place to see, as well as her fumbling attempt to fix the issue, while not ideal, supports her assertion that she simply did not believe that it was a problem.
15. As such, the Commission concludes that while having the sample ballot marked as such was not ideal, the evidence in this matter does not support a conclusion that Ms. Stevenson electioneered within the polling place and violated General Statutes § 9-236 (a) under these facts.
16. Turning next to the question of the Respondent moderator JoAnn Martin's liability, the evidence supports that as soon as Ms. Martin was made aware of the issue, she promptly removed the marked sample ballot and replaced it with a clean one. As such, the evidence does not support a finding that Ms. Martin violated General Statutes § 9-236 (b).
17. Considering the aforesaid, this matter should be dismissed.

ORDER

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

Dismissed.

Adopted this 16th day of November, 2016 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission