

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Agnes Kurzyna, New Britain

File No. 2015-121

FINDINGS AND CONCLUSIONS

The Complainant alleged that the Spanish-language labels on the ballots for the September 16, 2015 Democratic Party Primary and the November 3, 2015 General Election in the City of New Britain were incorrect and misleading concerning offices in which the voter had the option of voting for more than one candidate.¹

Law

1. Pursuant to § 203 of the federal Voting Rights Act, 42 U.S.C. 1973aa-1a, political subdivisions of a state are required to provide language assistance to voters if more than five (5) percent of voting age citizens are members of a single language minority group and do not “speak or understand English adequately enough to participate in the electoral process” and if the rate of those citizens who have not completed the fifth grade is higher than the national rate of voting age citizens who have not completed the fifth grade.
2. Pursuant to Section 203, the United States Census Bureau Director has the responsibility to determine which states and political subdivisions are subject to the minority language assistance provisions.
3. As of the 2010 Census, the Towns of Bridgeport, East Hartford, Hartford, Meriden, New Britain, New Haven, New London, Waterbury, and Windham are subject to the minority language assistance provisions in Connecticut and must provide such language assistance, in all cases, in Spanish.
4. Included in these language requirements is the requirement that all ballots in said political subdivisions be provided in such minority language (in addition to English).

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.

5. General Statutes § 9-250 provides:

Ballots shall be printed in plain clear type and on material of such size as will fit the tabulator, and shall be furnished by the registrar of voters. The size and style of the type used to print the name of a political party on a ballot shall be identical with the size and style of the type used to print the names of all other political parties appearing on such ballot. The name of each major party candidate for a municipal office, as defined in section 9-372, except for the municipal offices of state senator and state representative, shall appear on the ballot as authorized by each candidate. The name of each major party candidate for a state or district office, as defined in section 9-372, or for the municipal office of state senator or state representative shall appear on the ballot as it appears on the certificate or statement of consent filed under section 9-388, subsection (b) of section 9-391, or section 9-400 or 9-409. The name of each minor party candidate shall appear on the ballot as authorized by each candidate. The name of each nominating petition candidate shall appear on the ballot as it is verified by the town clerk on the application filed under section 9-453b. The size and style of the type used to print the name of a candidate on a ballot shall be identical with the size and style of the type used to print the names of all other candidates appearing on such ballot. Such ballot shall contain the names of the offices and the names of the candidates arranged thereon. The names of the political parties and party designations shall be arranged on the ballots and followed by the word "party", either in columns or horizontal rows as set forth in section 9-249a, immediately adjacent to the column or row occupied by the candidate or candidates of such political party or organization. **The ballot shall be printed in such manner as to indicate how many candidates the elector may vote for each office, provided in the case of a town adopting the provisions of section 9-204a, such ballot shall indicate the maximum number of candidates who may be elected to such office from any party.** If two or more candidates are to be elected to the same office for different terms, the term for which each is nominated shall be printed on the official ballot as a part of the title of the office. If, at any election, one candidate is to be elected for a full term and another to fill a vacancy, the official ballot containing the names of the candidates in the foregoing order shall, as a part of the title of

the office, designate the term which such candidates are severally nominated to fill. No column, under the name of any political party or independent organization, shall be printed on any official ballot, which contains more candidates for any office than the number for which an elector may vote for that office. (Emphasis added.)

6. General Statutes § 9-256 provides:

The registrars of voters of each municipality shall, not less than ten days prior to an election, file with the Secretary of the State a sample ballot identical with those to be provided for each polling place under section 9-255. The Secretary of the State shall examine the sample ballot required to be filed under this section, and if such sample ballot contains an error, the Secretary of the State shall order the registrars of voters to reprint a corrected sample ballot or to take other such action as the Secretary may deem appropriate. (Emphasis added.)

Background

Allegations

7. The allegations here concern both the September 16, 2015 Democratic Party Primary for the office of Board of Education in New Britain, as well as the November 3, 2015 General Election.
8. The Complainant here alleges here that the Spanish language instructions for voting do not meet the requirement in General Statutes § 9-250 that “the ballot shall be printed in such manner as to indicate how many candidates the elector may vote for each office.”

Primary Ballot

9. On the Primary Ballot, there were five candidates, three of whom were endorsed by the Democratic Party, as indicated by appearing on the top line with asterisks next to their names. The two challenge candidates, including the Complainant here, appeared on the next line, without an asterisk.
10. The English instruction on the Primary Ballot for the Board of Education race was “Vote for Any Three” and the Spanish instruction was “Vote por cualquiera de los Tres.”

General Election Ballot

11. On the General Election Ballot, the English and Spanish instructions were the same as for the Primary, except the numbers for Alderman-at-Large, Ward Alderman, Board of Education, Board of Assessment Appeals, and Constables were Five/Cinco, Two/Dos, Three/Tres, Two/Dos, and Four/Cuatro, respectively.
12. In each case, the voter had the option of choosing up to the amount indicated. For instance, in a race in which the instructions were “Vote for Any Three” and “Vote por cualquiera de los Tres” the voter had the option of voting for 0-3 candidates.
13. Three races on the General Election ballot—Mayor, Tax Collector, and Treasurer—were all limited to one selection. The English instruction for these offices was “Vote for One” and the Spanish instruction was “Vote por Uno.”

Allegation

14. The Complainant here alleges that the Spanish language instruction “Vote por cualquiera de los Tres” may have created confusion insofar as this phrase, literally translated is not “Vote for Any Three,” but rather “Vote for any of the Three.”
15. The Complainant alleges that instead of conveying the message that a voter could choose as many as three, it creates the impression that a voter can only choose one of three.
16. The Complainant further alleges that the mistranslation, in combination with the asterisks could have created the misimpression that the voter could only choose one of the three endorsed candidates, leading to a potential suppression of the votes for the challenge candidates.
17. The Complainant asserts that the Spanish instruction should be simply “Vote por tres.”

Investigation

18. Here, the investigation found that the origin of the English and Spanish language labels utilized in the 2015 Primary and General Election ballots in New Britain dates back to 2009, when Adkins, Inc., the printer utilized by the City of New Britain to print the ballots, requested and received an update of all of the labels from the Secretary of the State’s Office.

19. For all but one office on the General Election ballot—Alderman-at-Large²—the City of New Britain utilized the labels recommended by the Secretary of the State via a written communication from Staff Attorney Ted Bromley to Adkins, Inc. in 2009, on which both Deputy Secretary Lesley Mara and Secretary Bysiewicz’s Chief of Staff were copied.
20. The labels recommended by the Secretary of the State were generated internally through Valeriano Ramos, who was the Constituent Services Coordinator for the Secretary. Mr. Ramos is fluent Spanish speaker with a B.A. from Yale University and a M.A. in Political Science and Government from New York University.
21. The City of New Britain Registrars and Town Clerk, through Counsel, as well as Adkins, Inc., all asserted that it was their (mistaken) understanding that they could not make any changes to any of the labels, in English or in Spanish, without approval of the Secretary of the State.

Analysis and Conclusion

22. As an initial matter, the Commission notes that while the Secretary may recommend the use of particular labeling on any ballot, a town may depart from that recommendation provided that the label still meets the requirements of General Statutes § 9-250 to accurately describe the content and the voters’ choices.

Language Analysis

23. Turning to the main issue here, the use of “Vote por cualquiera de los Dos/Tres/Cuatro/Cinco,” the Commission’s investigation, led by a native Spanish speaking investigator from Puerto Rico, included an academic review of the terms used, as well as consultations with native Spanish speakers from Spanish-speaking countries and territories in North and South America, as well as native Castilian Spanish speakers from Spain.
24. The Commission’s review did reveal that this particular interpretation could be problematic in the way described by the Complainant.
25. That is, “Vote por cualquiera de los Dos/Tres/Cuatro/Cinco,” is potentially a too-direct interpretation of the English instruction, “Vote for Any Two/Three/Four/Five.” For many

² New Britain used “Miembro del Concilio” instead of the recommended “Concejales Extraordinarios.” “Concilio is itself not quite the right term, as while it literally translates to “Council” it generally is used to mean a type of religious council. “Concejal” is the more appropriate/direct translation of “Councilor” when one is referring to a member of a government body.

Spanish speakers, the instruction could read literally “Vote for any of the Two/Three/Four/Five” and has the potential of leading the voter to believe that s/he could only vote for only one of the candidates listed, rather than multiple candidates.

26. When such instruction appeared on the General Election ballot in this case, this danger was mitigated to some degree as it also contained races in which only one vote was allowed. In such cases, the Spanish instruction was “Vote por un,” (“Vote for one”). In context then, a reasonable voter would understand that there was a difference between the two options.
27. However, the September 16, 2015 Democratic Party Primary Ballot lacked this context and contained only the race for Board of Education in which the English-language instruction “Vote for Any Three,” and the Spanish-language instruction “Vote por cualquiera de los Tres” appeared.³ The Complainant’s concern here is reasonable.

Analysis of Effect

28. However, while the concern is reasonable, it is difficult to determine whether the wording had an actual detrimental effect in this instance. Commission investigators obtained all 1112 of the ballots from the 2015 Primary at issue here and conducted a recount to determine the number of voters who cast ballots for 1, 2, or 3 candidates.
29. Of the 1112 voters, 119, or 11% voted for just one candidate, 225, or 20%, voted for just two candidates, while the vast majority, 768, or 69%, voted for three candidates.⁴
30. Unfortunately, the ballots were not separated by district, so the investigation was not able determine which of the single-candidate voters were from districts with large Spanish-speaking populations.

Commission’s Holding on Liability

31. Accordingly, the Commission holds that the effect of a potentially confusing Spanish-language ballot instruction was indeterminable here.
32. However, even assuming some demonstrable effect, the City of New Britain’s reliance on the Secretary’s written advice is important here. General Statutes § 9-3 (Rev. to Jan. 1, 2016) reads, in pertinent part:

³ As discussed, there were five candidates from which to choose, three endorsed and two challenge, including the Complainant.

⁴ Four ballots submitted were blank.

(a) The Secretary of the State, by virtue of the office, shall be the Commissioner of Elections of the state, with such powers and duties relating to the conduct of elections as are prescribed by law and, unless otherwise provided by state statute, the secretary's regulations, declaratory rulings, instructions and opinions, if in written form, shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under this title, except for chapter 155 provided nothing in this section shall be construed to alter the right of appeal provided under the provisions of chapter 54. (Emphasis added.)

33. While the City of New Britain's understanding of their flexibility in labeling its ballots was mistaken, insofar as they relied on the Secretary's written advice they have no liability here, even if the Commission determined that the ballot did not meet the requirements of General Statutes § 9-250.

34. Accordingly this matter should be dismissed against the City of New Britain.

Additional Analysis by the Commission of both the Spanish and English Instructions

35. However, the Commission notes that during its investigation, it found a concern with both the Spanish and the English instructions that was not raised in the Complaint.

36. The English instructions, from which the Spanish instructions appear to be modeled, do not appear to fully capture the full nature of the voter's choice in these races in which more than one candidate may be selected.

37. The instruction "Vote for Any Two/Three/Four/Five" is the functional equivalent of not having the word "any" in the sentence. That is, "Vote for Any Two/Three/Four/Five" is functionally perceived by most readers as "Vote for Two/Three/Four/Five."

38. Indeed, in English-to-Spanish translations, the word "any" is often dropped as redundant.⁵

⁵ E.g., "Are there any tickets left?" → "¿Quedan entradas o boletos?"
"Do you speak any foreign languages?" → "¿Habras algún idioma extranjero?"
"We got him home without any problem." → "Lo llevamos a casa sin ningún problema."

39. Moreover, the Commission's investigation showed that even if "any" is not altogether read out of the sentence, at best it injects an element of uncertainty that is open to different reasonable interpretations.
40. However, the Commission's greater concern with either "Vote for Two/Three/Four/Five" or "Vote for Any Two/Three/Four/Five" is that neither clearly inform the voter that such voter has the option of voting for fewer candidates than that number. This concern applies to the Spanish instructions as well.⁸
41. That is, in the Commission's opinion, such instructions carry with them a risk that the reasonable voter would believe that such voter had no other choice but to vote for the full number listed.
42. The Commission's investigation did not review all 169 towns' municipal ballots, but a random survey of ballots statewide showed that the "any" language in the English instructions was consistent across those municipalities surveyed.
43. In those municipalities in which Spanish was required, the Commission's survey found some variation of either "Vote/Votar por cualquiera de los Dos/Tres/Cuatro/Cinco" or "Vote por Dos/Tres/Cuatro/Cinco," all of which suffer from the above concern.

Commission's Recommendation

44. In light of the above concerns, the Commission recommends that the Secretary of the State, under the office's authority in General Statutes § 9-3, study this matter and recommend potential alternatives to the existing English and Spanish instructions for the 2019 municipal elections that more explicitly and clearly describe the options in races in which more than one candidate may be selected—in all languages required by state and federal law.⁹
45. While the town clerks in a municipal year are not required to follow the Secretary's recommendations in this area, doing so would be advisable, as reliance on written recommendations by the Secretary would be considered by the Commission with the same weight and deference as in this instance.

⁸ Indeed, the Complainant's recommendation to change "Vote por cualquiera de los Dos/Tres/Cuatro/Cinco" to "Vote por Dos/Tres/Cuatro/Cinco" does not satisfy this concern, but rather makes it worse.

⁹ For example "Vote for no more than two/three/four/five" and "Vote por no mas de Dos/Tres/Cuatro/Cinco" would be a viable option.


ORDER

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

That the matter is dismissed.

That the Commission's recommendation is referred to the Secretary of State for consideration under General Statutes § 9-3.

Adopted this ²¹7th day of August, 2019 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission