

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Christopher Brown, Hartford

File No. 2018-100

FINDINGS AND CONCLUSIONS

The Complainant alleged that he was asked for photo identification twice at the Burns School polling place in Hartford during the November 6, 2018 general election.

Law

1. The process of voting is enumerated in General Statutes § 9-261 provides, pertinent part:

(a) In each primary, election or referendum, when an elector has entered the polling place, the elector shall announce the elector's street address, if any, and the elector's name to the official checker or checkers in a tone sufficiently loud and clear as to enable all the election officials present to hear the same. Each elector who registered to vote by mail for the first time on or after January 1, 2003, and has a "mark" next to the elector's name on the official registry list, as required by section 9-23r, shall present to the official checker or checkers, before the elector votes, either a current and valid photo identification that shows the elector's name and address or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the elector. *Each other elector shall (1) present to the official checker or checkers the elector's Social Security card or any other preprinted form of identification which shows the elector's name and either the elector's address, signature or photograph, or (2) on a form prescribed by the Secretary of the State, write the elector's residential address and date of birth, print the elector's name and sign a statement under penalty of false statement that the elector is the elector whose name appears on the official checklist. Such form shall clearly state the penalty of false statement. A separate form shall be used for each elector. If the elector presents a preprinted form of identification under subdivision (1) of this*

subsection, the official checker or checkers shall check the name of such elector on the official checklist, manually on paper or electronically. If the elector completes the form under subdivision (2) of this subsection, the registrar of voters or the assistant registrar of voters, as the case may be, shall examine the information on such form and either instruct the official checker or checkers to check the name of such elector on the official checklist, manually on paper or electronically, or notify the elector that the form is incomplete or inaccurate.

...

(e) If not challenged by anyone lawfully present in the polling place, the elector shall be permitted to pass to the separated area to receive the ballot. The elector shall give any receipt the elector has received to a ballot clerk who shall give the elector a ballot to vote only in the primary of the party specified by the receipt. The elector shall be permitted into the voting booth area, and shall then register his or her vote in secret. Having voted, the elector shall immediately exit the voting booth area and deposit the ballot in the voting tabulator and leave the room. No elector shall remain within the voting booth longer than the time necessary to complete the ballot, and, if the elector refuses to leave such booth after completing the ballot, the elector shall at once be removed by the election officials upon order of the moderator. Not more than one elector at a time shall be permitted to be within the enclosed space which the elector occupies while the elector completes his or her ballot, provided an elector may be accompanied within such enclosed space by one or more children who are fifteen years of age or younger and supervised by the elector, if the elector is the parent or legal guardian of such children. If any elector, after entering the voting booth area, asks for further instruction concerning the manner of voting, the election officials shall give such instructions or directions to the elector; but no election official instructing or assisting an elector, except as provided in section 9-264, shall look at the ballot in such a way as to see the elector's markings or in any manner seek to influence any such elector in the casting of the elector's vote.

2. General Statutes § 9-261c provides, pertinent part:

The Secretary of the State shall review, in consultation and coordination with The University of Connecticut, electronic devices that could assist official checkers in checking the names of electors pursuant to section 9-234 or any regulation adopted pursuant to this chapter. Not later than September 1, 2015, the Secretary shall include on a list any such device that the Secretary approves and shall make such list available to municipalities in a manner determined by the Secretary. The Secretary may add or remove a device from such list, as the Secretary determines such addition or removal is necessary..

Allegations

3. Specifically, the Complainant alleged that when he arrived at his polling place on or about 7:50am on November 6, 2018, he approached the checkers table and the polling place official requested a photo ID and when he handed her his license, the official scanned the license with a device.
4. The Complainant asserted that after the above interaction, he was then asked to provide his ID a second time, after which he was handed a ballot and permitted to proceed to the voting booths to mark his ballot.
5. The Complainant alleges that he believed that this experience might deter other voters in his precinct from casting their ballots.

Investigation

6. The investigation here revealed that on the date in question, the City of Hartford Registrar of Voters Giselle Feliciano and Sheila Hall were running a beta test of utilizing “electronic poll books” alongside the traditional paper official checklists required in each polling place.
7. The Respondent Registrars asserted in their response to the instant Complaint that it was their understanding that their use of these electronic poll books alongside the traditional paper official checklists was permissible and that they were fully compliant with any requirements issued by the Secretary of the State for the testing of such devices.
8. The Respondent Registrars explained that the devices they were beta testing were placed at the beginning of the process. A poll worker would check the voter in on the electronic poll

book first. They asserted that the electronic poll books they were beta testing had a feature where the machine could read the bar code on a Connecticut driver's license to match the driver's license name to a name on the list quickly without having to do a search. They asserted that this feature was designed to speed up the process but is not necessary for checking a voter on an electronic poll book.

9. The Respondent Registrars asserted that all polling place workers operating the electronic poll books underwent training on the devices and the rules regarding voter identification.
10. The Secretary of the State confirmed that while the Secretary has not approved any model of electronic polling book for exclusive use in a polling place, such electronic polling books given preliminary approval through General Statutes § 9-261c are permitted to be used alongside the official printed checklist.
11. However, the Secretary, through Elections Director Peggy Reeves, confirmed that their advice to registrars is that the electronic poll books should be placed after the paper registry lists and that the voter is not required to participate in the use of the electronic poll book.
12. That is, once the voter has sufficiently met such voter's responsibilities under General Statutes § 9-261 for identification and has been checked off the written list, such voter has met all of the requirements of receiving a ballot.

Analysis

13. As an initial matter, the Commission concludes that the law allowed that the electronic poll books to be utilized by the Hartford Registrars inside the polling place on the date in question.
14. Moreover, the Hartford Registrars of Voters met their responsibilities under General Statutes § 9-261 insofar as there was a checker at this polling place crossing off names on the official paper-based registry list.
15. The main question here is whether the voter identification procedures under General Statutes § 9-261 were properly implemented.
16. The Commission has consistently held that is permissible for a checker to request a preprinted form of identification such as a driver's license from a voter, provided such checker also offers the option of using the affidavit in the event that such voter does not offer up a preprinted identification. See, e.g., *In the Matter of a Referral by the Secretary of the State* File No. 2016- 038 *In the Matter of a Complaint by Bernandus Van Gool, Old*

Lyme, File No. 2014-183; and *In the Matter of a Complaint by Jonathan L Tunik, Stamford*, File No. 2014-154.

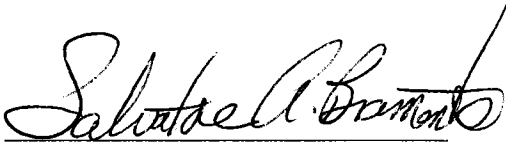
17. Insofar as the checkers requested a preprinted form of identification, such request was in line with the requirements of General Statutes § 9-261.
18. The remaining question is whether the second request for preprinted identification was proper.
19. Insofar as the Registrars wanted to beta test the use of the electronic poll books in “real world” conditions and insofar as such beta testing was permissible, the Commission concludes that it stands to reason that such test would include following all of the requirements of General Statutes § 9-261. As such, asking for identification for the electronic poll book *in and of itself* was not a violation of General Statutes § 9-261.
20. However, under General Statutes § 9-261, once the voter has provided sufficient identification, such voter is eligible to receive a ballot.
21. Accordingly, any requirements placed on the voter above and beyond those enumerated in § 9-261 are not permissible.
22. Turning the facts here, it was not clear from either the allegations or from the investigation that the checkers were requiring the voters to provide their identification twice before being allowed to vote.
23. However, it is clear enough from the facts that such an extra-statutory requirement could be implied—intentionally or not—without the elections officials making it clear to each voter that the second showing of identification was optional.
24. Moreover, the Commission notes that by placing the electronic voting machine first, ahead of the official checker with the paper registry list, it made it even less clear to the average voter that the second showing of identification was anything other than mandatory.
25. Fortunately, no harm occurred here and this concern is easily remedied in future elections.
26. In the future, where such electronic poll books are tested, the registrars should always place the written registry list before the electronic poll book, and where plausible, place the written registry list and electronic poll book lists next to each other so that a single act of identification by the voter can be recorded in both places at the same time without having to ask for a second showing.

27. Where such an arrangement is not possible, the registrars should train their elections officials to inform the voters that it is not required to present identification a second time for the electronic poll book.

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

No further action.

Adopted this 18th day of September, 2019 at Hartford, Connecticut.


Anthony J. Castagno, Chairperson
By Order of the Commission
Salvatore Bramante