

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by David Godbout, East Lyme

File No. 2019-160

FINDINGS AND CONCLUSIONS

The Complainant alleged that during the November 5, 2019 general election his right to submit a secret ballot was compromised by operation of the voting tabulator.

Allegation

1. The Complainant here alleged that on Election Day, November 5, 2019, he attempted to intentionally cast a blank ballot at the East Lyme High School polling place in order to register his protest against all of the candidates appearing on the ballot.
2. The Complainant further alleged that the tabulator was intentionally and impermissibly programmed to reject his blank ballot, which it did that day.
3. Finally, he Complainant alleged that he should have been allowed to cast a blank ballot and have the tabulator accept said ballot without the privacy of his choices being made known to the people at the polling place.

Law

4. The Complainant is correct that a voter's right to a secret ballot is enshrined in the Connecticut Constitution. Article Sixth, Section Five of the Constitution of the State of Connecticut, as amended by Article Twenty Four reads:

In all elections of officers of the state, or members of the general assembly, the votes of the electors shall be by ballot, either written or printed, except that voting machines or other mechanical devices for voting may be used in all elections in the state, under such regulations as may be prescribed by law. **The right of secret voting shall be preserved.** At every election where candidates are listed by party designation and where voting machines or other mechanical devices are used, each elector shall be able at his option to vote for

candidates for office under a single party designation by operating a straight ticket device, or to vote for candidates individually after first operating a straight ticket device, or to vote for candidates individually without first operating a straight ticket device. (Emphasis added.)

5. This right is also enumerated in the General Statutes. For instance, General Statutes § 9-236b provides, pertinent part:

(a) 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) or the United States Department of Justice at (toll-free telephone number). In addition, before leaving the polling place you may notify the moderator of the violation.”

Analysis

6. The Complainant here alleges that the fact that his ballot was rejected was a *per se* violation of his write to a secret ballot. Implied here is that he alleges that the fact that his ballot was rejected by the tabulator put others on notice of the exact nature of what he marked (or in this case, did not mark) on his ballot. That is, the rejection alone told the others in the polling place that his ballot was blank.
7. This could not have been the case here. The ballot could have been rejected by the tabulator for reasons other than having been blank. For instance, the Complainant could have “overvoted” in a particular race—that is, selected more candidates than permitted in a particular race. See Regulations of Connecticut State Agencies § 9-242a-18.¹
8. Moreover, there is a good reason for the machine to reject ballots that read as having no selections. Many voters who do wish to select a candidate unintentionally mark their selections outside of the bubbles, which are read similarly by the tabulator as a blank ballot and rejected.
9. This gives the polling place officials the opportunity to educate the voter on the proper manner of marking a ballot and gives the voter the opportunity to correct the error.
10. Complainant’s recommendation would have the tabulator accept any ballot read as “blank,” leaving no opportunity to correct genuine marking errors by voters who did wish to select a candidate on the ballot.


¹ “An overvote occurs when an elector votes for more candidates for an office than he is entitled to. When an overvote message appears on the voting tabulator, the voting tabulator tender shall instruct the elector to recheck the ballot and obtain a new ballot if necessary. If the elector insists that the ballot be processed with the overvote, the voting tabulator tender shall instruct him votes for the overvoted office will not be counted but that the votes for the other offices will be counted. The elector shall be instructed to deposit the ballot in the auxiliary bin.”

11. Moreover, the Commission notes that according to Secretary of the State Elections Director Ted Bromley, if the Complainant wished to submit a ballot with no candidates selected in a manner that would be accepted by the machine, he should have selected the "Write-in" bubble for each race he wished to protest and simply wrote in no candidate.
12. That is, in order to select no candidate as your choice in Connecticut, a voter must do so affirmatively, rather than passively, as the Complainant attempted to do here, for the reasons set forth above.
13. According to Director Bromley the tabulator would have accepted the ballot in this manner. Moreover, this manner of marking the ballot would also have more clearly achieved the Complainant's end, which according to him was to register his protest regarding the entire field of candidates.
14. Considering the aforesaid, this matter is dismissed.

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

Dismissed.

Adopted this 5th day of February, 2020 at Hartford, Connecticut.



~~Anthony J. Castagno, Chairperson~~

By Order of the Commission

Stephen Penny