

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

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

File No. 2020-075

FINDINGS AND CONCLUSIONS

David Godbout, (“Complainant”) filed the instant complaint with the Commission pursuant to Connecticut General Statutes § 9-7b. Complainant alleged that that the Registrars of Voters in the Town of East Lyme violated his rights by not including an option for “none of the above” in a referendum vote. The following are the Commission’s findings of fact and conclusions of law:

ALLEGATIONS

1. Complainant alleges on October 1, 2020, 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. Complainant further alleges that the tabulator was intentionally and impermissibly programmed to reject his blank ballot, which it did that day.
3. Finally, Complainant alleges 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 Statues. 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:

...

(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.”

6. The Regulations of Connecticut State Agencies further addresses the situation alleged by Complainant. Specifically, Regs. Conn. State Agencies § 9-242a-19 provides:

A blank or unreadable ballot is one on which the tabulator cannot read a single vote for any office. If this occurs, the tabulator tender shall review with the elector the instructions and direct the elector to obtain a new ballot. If the elector requests that the ballot be processed when no votes are readable by the tabulator, the voting tabulator tender shall instruct the elector that the ballot will be counted by hand after the polls close, but if the election officials are unable to determine the intent of the elector, some or all of his votes could be lost. If the elector insists that the ballot be processed, the elector shall then be instructed to deposit the ballot in the auxiliary bin.

DISCUSSION

7. An investigation of this matter largely confirmed the facts as alleged by Complainant. When Complainant went to cast his ballot in the October 1, 2020 referendum in the Town of East Lyme, his ballot was rejected. The Registrars state that he was asked if he wanted a new ballot. Complainant indicated he did not. Complainant was then asked to place his ballot in the auxiliary bin.

8. The Complainant here alleges that the fact that his ballot was rejected was a *per se* violation of his right to a secret ballot. Implied here is 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.
9. As the Commission has noted in prior decisions, this is not the case. Complainant's 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
10. 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.
11. 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, all without compromising the secrecy of the voter's ballot.
12. In his complaint, Complainant notes that, when considering a prior complaint on the same topic, the Commission noted that, in the case of an election, as opposed to a referendum, a voter may mark the bubble for "Write-in" and then not select a candidate if he wished to cast a protest vote. *In the Matter of a Complaint by David Godbout, East Lyme*, File No. 2019-160.
13. Complainant appears to allege that the absence of this "Write-in" option on a referendum requires the Commission to reach a different conclusion than it did in his prior complaint. It does not. While there is another solution available to those wishing to cast "protest votes" in elections with a "Write-in" option, the absence of such option does not require that the tabulators be programmed to accept blank ballots. As detailed above, failing to mark a selection is but one of several reasons a tabulator might reject a 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."

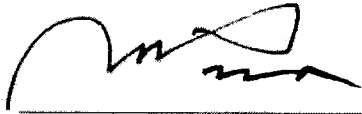
14. As the process undertaken by the Registrars of Voters in the Town of East Lyme was not only acceptable, but required by regulation, the Commission concludes that this matter should be dismissed.

ORDER

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

That the allegations in this matter be dismissed.

Adopted this 4th day of August, 2021 at Hartford, Connecticut.



STEPHAN E. HANLEY
By Order of the Commission