

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Paula Gallo, Fairfield

File No. 2020-085

FINDINGS AND CONCLUSIONS

Paula Gallo (“Complainant”), filed the instant complaint with the Commission pursuant to Connecticut General Statutes § 9-7b. The Complainant alleged, among other things, that elections officials in the Town of Fairfield mishandled ballots during the November 3, 2020 regular election,¹ The following are the Commissions findings of fact and conclusions of law:

ALLEGATIONS

1. Within the complaint, Complainant alleged that ballots were mishandled by elections officials within the Town of Fairfield.
2. Specifically, Complainant alleged, concerning the Ward High School polling location, in pertinent part:

Ballots were tri-folded! NEVER EVER HAS A PAPER BALLOT BEEN FOLDED. I asked why to (SIC) ballots were folded. The person giving me the ballot brushed me away.

Before I was to scan my ballot to be counted, I witnessed two women emptying the voting machine ballots into a large duffle bag.

The Ballot box door was open and I saw the mess of ballots and inside the machine. Ballots were crumpled, torn, etc. Folded ballots were jamming the machine.

People who didn’t want to wait, put their ballots into a side slot that did not count ballots.

LAW

3. The Regulations of Connecticut State Agencies § 9-242a-12 provides, in pertinent part:

If the voting tabulator malfunctions, the moderator shall notify the registrars immediately and direct that ballots shall be issued and deposited in the auxiliary

¹ Complainant further requested a “full investigation into voter fraud in every town in CT.” However, Complainant made no specific allegations of any violations of Connecticut’s elections laws by anyone outside of the Town of Fairfield. Accordingly, the investigation of this Complaint was limited to the specific allegations of elections law violations by elections officials in the Town of Fairfield.

bin. When the voting tabulator is repaired, or replaced, or after the close of the polls, the moderator, in the presence of two election officials of opposing political parties, shall open the auxiliary bin and process the ballots through the voting tabulator for tabulation.

4. The Regulations of Connecticut State Agencies § 9-242a-16 further provides, in pertinent part:

If the voting tabulator jams or malfunctions, the voting tabulator tender shall summon the moderator or another election official before any corrective action is taken. An election official shall clear any jammed ballots in accordance with instructions provided for the voting tabulator and shall avoid looking at the markings on the ballots. The voting tabulator shall not be opened unless one election official from an opposing political party is present. The moderator shall make a memorandum as to whether the voting tabulator indicates that it has counted the ballot. If the jam cannot be cleared or the voting tabulator malfunction cannot be resolved, the moderator shall call the registrars and shall substitute a perfect voting tabulator for the malfunctioning voting tabulator. Ballots shall continue to be issued, and voted ballots shall be placed in the auxiliary bin. The Secretary of the State shall prescribe the procedure to substitute a voting tabulator for the malfunctioning voting tabulator. When the voting tabulator is repaired or replaced or after the close of the polls, the election officials shall (1) process the ballots from the auxiliary bin through the voting tabulator, (2) return overvoted ballots to the auxiliary bin to be processed and overridden at the end of the day, and (3) return ballots rejected as blank ballots to the auxiliary bin to be hand counted at the end of the day. The moderator shall make a memorandum of such incidents. If the ballot box becomes full, officials of opposing political parties shall empty or replace the ballot box in the manner prescribed by the Secretary of the State. No person shall be permitted to leave the polling place with a ballot, either marked or unmarked. When an elector's ballot has been accepted by the voting tabulator, the elector shall be directed to immediately leave the polls.

5. The Secretary of the State further published advice on this subject in the *Moderator's Handbook for Elections and Primaries* pursuant to Regs. Conn. State Agencies § 9-242a-16, and such handbook states, "If the ballot box becomes full, two election officials shall replace the ballot box in the manner prescribed by the Secretary of the State or empty the ballot box as long as the ballots removed are placed in a secure, sealed container." Secretary of the State, *Moderator's Handbook for Elections and Primaries*, E-9 (2013) (available at: <https://portal.ct.gov/-/media/SOTS/ElectionServices/Handbooks/2013ModeratorHandbookpdf.pdf>).

REGISTRARS' RESPONSE

6. When the issue was brought to the attention of the Registrars of Voters for the Town of Fairfield, they provided the Commission with a response immediately. Such statement provided, in pertinent part.

Due to the unanticipated rescheduling of the Presidential Preference Primary to August (2021 fiscal year) and the difficulty in predicting how many voters would use absentee ballots during the COVID pandemic, we coordinated with our town clerk's office to obtain a single supply of ballots (120% of registered voters) that would be used for both absentee and in-person voting to reduce costs. As a result, folded ballots were used at the polling place, which, as Ms. Gallo observed, jammed more frequently than unfolded ballots. Unfortunately, some jams were cleared improperly -- whether by officials or by voters is unclear -- damaging the equipment and requiring us to use a backup tabulator. At Warde High School, the location in question in this complaint, this happened twice, requiring us to deploy a spare tabulator from our storage facility to restore the customary voting process.

As the complaint alleges, voters were asked to place their ballots into the auxiliary bin, or if they declined were allowed to wait for the tabulator to be restored. Due to the high volume, the auxiliary bin had to be regularly emptied into a ballot transfer bag during this time, while the primary and write-in bins remained locked. Our staffing practice is to appoint a moderator and tabulator tender of opposite parties at each location to ensure that any required ballot box operations are conducted with cross-party oversight, which was the situation described in the complaint.

DISCUSSION

7. In addition to the statement from the Registrars in the Town of Fairfield, Commission staff also reviewed the moderator's diary for the date and polling location in question. Such diary was consistent with the account of the Registrars of Voters for the Town of Fairfield.
8. While a jam, misfeed, or other malfunction of a tabulator at a polling location is something that can cause alarm for a voter, the State and corresponding municipalities prepare for such eventualities by both having back up tabulators on hand at polling locations and by having procedures in place to handle such eventuality.
9. In this case, by both the account of the Complainant and the Registrars of Voters, ballots which were not usually folded were used in the tabulators at the polling locations. There is nothing in the law that prevents the use of folded ballots at polling locations. Nevertheless, the folded ballots did, apparently, cause an increase in the number of malfunctions of the tabulators in Fairfield.
10. Moreover, from all accounts, the Registrars of Voters for the Town of Fairfield and the Moderator at the Ward High School polling location did follow the proscriptions laid out in the Regulations and *Moderator's Handbook* concerning such eventualities.

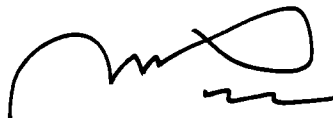
11. Specifically, there was a backup tabulator on hand at the polling location that was brought in after the malfunctioning tabulator went down. In the meantime, voters were instructed to place their ballots in the auxiliary bin, to be tabulated later. When the tabulator was full, the ballots were placed in the sealed ballot bags as required.
12. While the Registrars and Moderator did comply with all applicable legal requirements in this situation, the Registrars acknowledged that the use of the folded ballots created an inconvenience to the Complainant, other voters, and poll workers. As such, the Registrars have represented to the Commission that “as Registrars, we had a consensus in our post-election conversations that the complications from using folded ballots was not worth the cost savings we achieved, and don't expect to adopt this practice again in the future.”
13. Accordingly, the allegations in this complaint 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 21ST day of July, 2021 at Hartford, Connecticut.



STEPHEN T. PENNY
By Order of the Commission