

**STATE OF CONNECTICUT**  
**STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Trey Hazard, Newtown

File No. 2021-128

**FINDINGS AND CONCLUSIONS**

The Complainant asserted that his absentee ballot was untimely processed for the April 27, 2021 annual budget referendum held in the Town of Newtown.<sup>1</sup>

**Law**

1. General Statutes § 9-369c provides, in pertinent part:

(a) Whenever a referendum, as defined in subdivision (2) or (3) of subsection (n) of section 9-1, is to be held on any question or proposal, the question or proposal shall be submitted to the municipal clerk in the form in which it will appear on the ballot at least three weeks prior to the date on which the referendum is to be held, and the municipal clerk shall make absentee ballots available for use at the referendum in accordance with the provisions of this section, provided, if any other provision of the general statutes, a special act, a charter provision or an ordinance specifically authorizes a referendum to be held with less than three weeks' notice, absentee ballots shall be made available for each such referendum within four business days after the question or questions which are to be voted on at the referendum are finalized. **Notwithstanding any provision of the general statutes to the contrary, a municipal clerk may only provide an absentee ballot for such referendum held with less than three weeks' notice to a person who applies in person at the office of the municipal clerk for an absentee ballot (1) for himself or (2) for a prospective**

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<sup>1</sup> 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.

**applicant who designates such person for such purpose.** The designee may be a licensed physician, registered or practical nurse or any other person who is caring for the applicant because of the applicant's illness, a member of the applicant's family or a police officer, registrar of voters or deputy registrar of voters in the municipality in which the applicant resides. The designee may also return the ballot in person to the municipal clerk not later than the close of the polls.

(b) At any such referendum, any person who would be eligible to vote on the question or proposal if he appeared in person and is unable to appear in person for one or more of the reasons set forth in section 9-135, may cast his vote by absentee ballot, in accordance with the requirements of this section.

(c) Upon receipt of the written form of the question or proposal to be voted on at any such referendum, the municipal clerk shall immediately prepare and print absentee ballots for the referendum. The phrasing of the question or proposal on the absentee ballots shall be identical to the phrasing on the ballot to be used for voting in person at the referendum. Prior to printing the ballots, the registrars of voters of the municipality may provide comments concerning the content and form of such ballots to the clerk.

(d) Upon notification by the municipal clerk that such a referendum will be held, the Secretary of the State shall furnish to such clerk the forms and materials described in section 9-139a in the amount requested by the clerk.

(e) Any person who is eligible to vote by absentee ballot as provided in this section may apply in person or by mail to the municipal clerk for an absentee ballot. Application shall be made on a form furnished by the Secretary of the State, as provided in subsection (d) of this section. Upon receipt of an application or upon the nineteenth day before the date of the referendum, whichever is later, the municipal clerk shall give to the applicant or mail, as the case may be, the absentee ballot and the envelopes furnished by the Secretary of the State. No absentee ballot shall be issued after the opening of the polls at the referendum, except as provided in section 9-150c.

(f) The procedures for issuing, returning, casting and counting absentee ballots, declaring the count and packaging the ballots at elections, shall apply, as nearly as may be, to absentee ballots at referenda..

2. Due to the extraordinary nature of the COVID-19 pandemic Governor Lamont issued Executive Order 10E which, *inter alia*, waived the three-week limitation on the mailing of absentee ballot sets found in General Statutes § 9-369c. As concerned such waiver, EO 10E reads in pertinent part:

...

**WHEREAS**, elections and referendums will be held in the coming months to select candidates for various state and municipal offices; and

**WHEREAS**, while Connecticut has made significant progress in administering vaccines, significant portions of the population have not yet completed their course of vaccinations, and significant public health risks may still remain to poll workers and voters taking part in municipal elections and referendums; and

**WHEREAS**, absentee voting offers a proven method of secure voting that reduces the risk of transmission of COVID-19 by allowing individuals to vote by mail and thereby reducing the density of in-person voting at polling places; and

**WHEREAS**, secure and tamper-proof drop boxes manufactured specifically for the purpose of voting offer a safe and secure way for voters to deliver absentee ballots to election officials without in-person interactions that could increase the risk of transmission of COVID-19; and

**WHEREAS**, municipalities and regional boards of education do not in all situations have access to venues large enough to conduct town meetings or other meetings for the purpose of voting with sufficient space to provide adequate and safe distancing for all those likely to attend; and

## **Investigation**

12. The investigation found that the Complainant downloaded his application from the Town Clerk's website and signed and dated it Friday, April 9, 2021 (the applications were made available prior to the official notice of the referendum).
13. The investigation was unable to find any evidence of the exact date on which the application was mailed to the Town Clerk with either the Complainant or in the records of the Town Clerk's office, which was not required to keep the envelopes in which absentee ballot applications are returned.
14. The application was stamped as received by the Town Clerk on April 19, 2021 at 1:53pm.
15. According to the records of the Town Clerk, she placed an absentee ballot set in the mail on that same day, April 19, 2021.
16. The investigation was unable to find any evidence, including but not limited to postmarks, confirming the date on which the absentee ballot set was picked up by the United States Postal Service ("USPS") from Newtown for delivery to the Complainant in Baltimore.
17. The investigation was unable to find any evidence confirming the date on which the absentee ballot set was delivered to the Complainant in Baltimore.
18. The investigation confirmed the Complainant's allegation that he returned the executed absentee ballot set too late, as the postmark on his outer envelope was April 28, 2021 and the Town Clerk's stamp indicated a receipt date of May 3, 2021, 6 days after the April 27, 2021 budget referendum.<sup>2</sup>

## **Analysis**

19. The Commission notes as an initial matter, that barring the waiver contained in the Governor's Executive Order 10E, the Town Clerk would not have been permitted to send absentee ballots at all, as the referendum was noticed with less than three weeks.
20. The Commission also notes that Title 9 is silent concerning any timeframes placed on the USPS for delivery of election mail, such as the absentee balloting materials at issue here.

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<sup>2</sup> Two stamps appeared on the inner envelope of the Complainant's absentee ballot set. The first appeared to be from the auto-stamper, which indicated a date of "April 33, 2021." The second stamp was partially stamped and partially filled in with the date of May 3, 2021. These stamps would appear to portray the same date.

21. As the Commission does not have jurisdiction over mail delays within the USPS, the only potential liability here within the Commission's jurisdiction would be if the evidence established that the Town Clerk's office did not meet their responsibilities related to the processing of absentee ballot materials.
22. Turning the substance of the matter, as the evidence did not establish an exact date on which the application was placed in the mail and/or picked up by the USPS, it is impossible to determine exactly how long it took for the application to be delivered to the USPS.
23. However, assuming the application was placed in the mail and picked up on April 9, the total delivery time to the Town Clerk would have been 10 days. Even assuming the Complainant's envelope was placed after the Friday pickup and at a location in which there was no Saturday pickup, a pickup on Monday, April 12 would still mean that the envelope would have taken 7 days to travel between Baltimore, Maryland and the Town Clerk's office in Newtown.
24. As the evidence did not establish an exact date on which the absentee ballot set was delivered to the Complainant it is also impossible to determine exactly how long it took for the absentee ballot set to travel between the Town Clerk's office and the Complainant.
25. However, assuming that the executed ballot set was picked up by the USPS on April 19 and delivered on April 27, as alleged, the total delivery time would be 8 days.
26. Finally, the travel time for the executed absentee ballot set to travel between Baltimore and Newtown could reasonably be established as 5 days, as there was both a postmark (April 28) and a time stamp upon receipt (May 5).
27. However, even considering the above, while the travel time between Baltimore and Newtown may have been potentially excessively long for two East-coast locations, the evidence did not establish sufficiently as to exactly how long each trip took.
28. Moreover, even assuming the worst facts in this matter, the Commission concludes that no evidence discovered during the investigation of this matter established that it was more likely than not that the Town Clerk failed to perform any duty required of the office concerning the Complainant's ballot that led to the Complainant's disenfranchisement.
29. Considering the aforesaid, this matter should be dismissed.

30. However, the Commission will also direct staff to notice the USPS Election Mail Coordinator for the Connecticut Valley District of the United States Postal Service of this matter should the USPS wish to inquire further.

ORDER

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

*Dismissed.*

Adopted this 15<sup>th</sup> day of September, 2021 at Hartford, Connecticut.

A handwritten signature in black ink, appearing to read "Stephen T. Penny", written over a horizontal line.

Stephen T. Penny, Chairperson  
By Order of the Commission