



STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION
20 Trinity Street Hartford, Connecticut 06106 – 1628

*Testimony of Joan M. Andrews
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*Government Administration and Elections Committee
February 29, 2008*

Chairpersons Slossberg and Caruso, Ranking members Freedman and Hetherington, and distinguished members of the committee, thank you for the opportunity to present testimony today.

You have numerous election bills on your agenda today, and I have submitted written testimony on many of them. What I would like to focus on as I address you orally, is the big picture of the structure of election administration laws, and the impact and some of the difficulties that our agency is experiencing with enforcement as we move to the new optical scan voting machines, and how this touches on several proposals before you.

The prior lever voting machine system was codified in great detail in state statutes, with very specific procedures. Under this system, the Commission had significant enforcement authority, because when there was a deviation from procedure, it typically amounted to a statutory violation. The Commission has the ability to investigate any alleged violation of a general statute pertaining to an election, primary or referenda.

The systems governing the new voting machines, however, are largely codified in regulation, which raises a substantial question regarding enforcement. Regulations have the force and effect of law, but it is not clear that the Commission has the authority to enforce the Secretary of State's regulations. The Commission believes that such regulations should be enforceable, and that there ought to be consequences to failing to follow proper election procedures. After meeting with the Secretary of State's office, we agreed to submit a proposed amendment to **SB 444** An Act Concerning Certain Revisions and Technical Changes to the Election Laws that would clarify that the Commission has the ability to investigate an alleged violation of the Secretary of State's regulations, and enforce against violators consistent with the Commission's prior authority with respect to lever machines. A glaring example is the fact that the custody and control of ballots are not addressed anywhere in statute, but are addressed in regulation only.

The Commission supports **SB 444**, with the proposed amendments reflecting the Commission's authority to enforce the Secretary of State's regulations, and an amendment to Section 7 to clarify that the Secretary cannot enter a polling place except her own when she is a candidate on the ballot. In particular, section 1 derives from a situation that was reported to us and the Secretary of State's office, where a candidate who appeared on the ballot in a municipal election was an officer of the company hired to move the voting machines. We felt that the language of the statute did not extend far enough to cover the business relationship, but that as a matter of policy, the appearance of impropriety is one that should be proscribed.

I would recommend further defining what a “member” of a business entity is, and whether it includes shareholders, all employees, officers, etc. The candidate in the situation in last year’s municipal election was the Chief Financial Officer of the moving company. With respect to Section 24 of **SB 444**, concerning the ballot privacy sleeve, we support the concept of requiring that a privacy sleeve be offered or available, but believe that the Moderator should also be responsible for ensuring that the privacy sleeves are provided, in addition to the Registrars of Voters, because the Moderator is the official in charge at each polling place.

The Commission supports **SB 447**, An Act Concerning Elections, and encourages you to consider a global revision to the election administration statutes to address the new voting system. The original regulations on optical scan machines were passed many years ago, when the principal voting machine used was the lever machine, and not when the system was contemplated as a complete replacement for the lever machines. There are vestiges of the lever voting machines left throughout the election statutes, and we are finding in cases that it is presenting difficulties in enforcement. At a minimum, existing statutes should not be *inconsistent* with the regulations governing the optical scan voting machines.

“Robo” Calls

With respect to **HB 5660**, entitled, An Act Prohibiting “Robo” Calls, our experience has been that voters intensely dislike such calls, and frequently call our office to complain. The way this bill and a similar General Law bill (**SB 407**) are written, the Attorney General would be enforcing the law, which the Commission does not object to. However, if you want the Commission to enforce it, the law should be placed in Title 9, the election statutes. Along similar lines, **SB 207** which the committee has already referred, proposes additional staffing for the Commission to monitor “robo” call violations, which, of course, the Commission supports. However, the only law presently within our jurisdiction concerning “robo” calls is an attribution requirement concerning automated telephone calls in the state campaign finance laws, Conn. Gen. Stat. § 9-621(b)(3), which requires that a candidate’s name and voice be contained in the narrative of such a call placed by a candidate, candidate committee or exploratory committee, and it is not a ban on such calls.

Permanent Absentee Ballot

You have several proposals before you concerning permanent absentee ballot status, Section 21 of **SB 444**, Section 23 of **HB 5665**, and a separate bill, **SB 445**. The Commission supports the concept and is comfortable that such status is supported by a physician certificate, and hopes that if such individuals receive their ballots automatically, the undue influence that we have seen in many cases may not be exerted on such electors, which we always find starts with the application process. Again, if the concept as articulated in **SB 445** or **SB 5665** is the one you favor, the proposed amendment to **SB 444** clarifying that the Commission can investigate and enforce violations of regulations is critical.

The Commission supports Section 4 of **HB 5029**, An Act Concerning an Ethics Code for Public Officials. Section 4 addresses concerns about the reach of the contribution and solicitation ban on department heads not extending to the Governor’s Chief of Staff and others in high level governmental positions within the state. You may want to consider clarifying which state departments are subject to Conn. Gen. Stat. § 9-622(11) (formerly 9-333x(11)). The organization of many departments has changed since the law first passed in 1983, and it only applies to departments covered in Conn. Gen. Stat. § 4-5, by prior

Commission advisory opinion. The rationale seems outdated now, and we support extending the prohibition to all department heads appointed by the Governor. We would also suggest adding in line 289 to subsection (10) of 9-623 “and Chapter 157.” Because the statute falls in Chapter 155, and we now have two campaign finance chapters, Chapter 157, the new public finance law, should also be included in this section.

The Commission can support much of **HB 5665**, An Act Concerning Changes to the Conduct of Elections and Certain Compensation of Registrars of Voters, but is concerned about several provisions, such as removing public notice in Section 5. There are also a couple of provisions that appear to allow Election Day Registration through the back door. Section 5, subsection (b), the first two lines of Section 7, and Section 16, lines 521-523, removing the restriction against adding someone as an elector on a primary or election day, or the day of a special election or referenda. The elimination of time frames in Section 9 as to when preliminary lists are made available is a concern, as it is unclear how quickly such response would have to be made or when such list would be completed. For candidates desiring to send mailings, for example, receiving the list the day before the election would not be particularly helpful. Section 13 raises similar concerns regarding removing the requirement to update the list monthly, and the annual requirement to generate an enrollment list in Section 14, and the enrollment lists one week prior to the primaries. However, the Commission is in favor of the sections requiring the provision of such list to all candidates, not just candidates for the General Assembly in the same sections. There is no uniformity on what the posted hours of Registrars of Voters are – in one town it could be a 40 hour work week, and in another, it could be a one hour a week. The Commission would suggest that if you remove the level of detail on time frames in Section 10, replace it with something standard and tangible that would provide citizens with reliable access to the Registrars of Voters, such as at least ten hours a week between the hours of 9 a.m. and 5 p.m. It is laudable that the Registrars want to place a list outside the door, but with no one supervising or available to make copies, the first person there might walk away with it. The law provides that the public can request copies, but of whom if no one is there? What about people who want electronic copies for generating mailing lists? The Commission supports Section 12 requiring the maintenance of the final registry list for two years. With respect to section 18, there is no definition of “disabled,” and the definition “permanently physically disabled” is being removed, accordingly, it is unclear to whom the statute applies: The policy is laudable, but nothing prevents Registrars from home visits to assist their constituencies *presently*. On the other hand, this will essentially *require* home visits on little more than an elector’s say so. The provision requiring the Registrars to provide “election-related materials” upon request concerns us because it does not identify the “alternative formats” and it does not exempt campaign materials, which could clearly be election related materials. The Commission supports Section 19 of the bill, which requires an attempt to identify an individual who is assisting an elector in voting. The Commission supports Section 20, but feels obligated to point out to the committee that it only applies to Paper Ballot elections, which are elections where machines cannot be used. If the committee wants the concepts to be enacted in elections where voting machines are used, Part 1 of Chapter 147 should be amended.

Thank you for your consideration of the Commission’s views on these bills.



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Public Hearing of the Joint Committee on Government
Administration and Elections

February 29, 2008

Senate Bill 444

An Act Concerning Certain Revisions and Technical Changes to the Election Laws

Technical Corrections and Revisions

Proposed Amendment to Section 7 of SB 444:

Delete section 7 and substitute the following:

Sec. 7. (NEW) Section 9-236 shall be amended by adding subsection (d) as follows
(*Effective from passage*):

The Secretary of the State, or the secretary's designee, shall be allowed access to each polling place within the state during any municipal, state or federal election or primary for the purpose of providing guidance and instruction concerning the requirements with state and federal law, except that when the Secretary of the State is a candidate in said election or primary, she shall not personally access a polling place, except for the purposes of casting her own ballot, and her designees in such election or primary shall be limited to civil service classified employees.

Add as a new section:

Section 9-7b shall be amended as follows:

Sec. 9-7b. (Formerly Sec. 9-368b). State Elections Enforcement Commission's duties and powers. (a) The State Elections Enforcement Commission shall have the following duties and powers:

(1) To make investigations on its own initiative or with respect to statements filed with the commission by the Secretary of the State or any town clerk, or upon written complaint under oath by any individual, with respect to alleged violations of any provision of the general statutes or regulations relating to any election or referendum, any primary held pursuant to section 9-423, 9-425 or 9-464 or any primary held pursuant to a special act, and to hold hearings when the commission deems necessary to investigate violations of any provisions of the general statutes or regulations relating to any such election, primary or referendum, and for the purpose of such hearings the commission may administer oaths, examine witnesses and receive oral and documentary evidence,

and shall have the power to subpoena witnesses under procedural rules the commission shall adopt, to compel their attendance and to require the production for examination of any books and papers which the commission deems relevant to any matter under investigation or in question. In connection with its investigation of any alleged violation of any provision of chapter 145, or of any provision of section 9-359 or section 9-359a, the commission shall also have the power to subpoena any municipal clerk and to require the production for examination of any absentee ballot, inner and outer envelope from which any such ballot has been removed, depository envelope containing any such ballot or inner or outer envelope as provided in sections 9-150a and 9-150b and any other record, form or document as provided in section 9-150b, in connection with the election, primary or referendum to which the investigation relates. In case of a refusal to comply with any subpoena issued pursuant to this subsection or to testify with respect to any matter upon which that person may be lawfully interrogated, the superior court for the judicial district of Hartford, on application of the commission, may issue an order requiring such person to comply with such subpoena and to testify; failure to obey any such order of the court may be punished by the court as a contempt thereof. In any matter under investigation which concerns the operation or inspection of or outcome recorded on any voting machine, the commission may issue an order to the municipal clerk to impound such machine until the investigation is completed;

(2) To levy a civil penalty not to exceed (A) two thousand dollars per offense against any person the commission finds to be in violation of any provision of chapter 145, part V of chapter 146, part I of chapter 147, chapter 148, section 7-9, section 9-12, subsection (a) of section 9-17, section 9-19b, 9-19e, 9-19g, 9-19h, 9-19i, 9-20, 9-21, 9-23a, 9-23g, 9-23h, 9-23j to 9-23o, inclusive, 9-23r, 9-26, 9-31a, 9-32, 9-35, 9-35b, 9-35c, 9-40a, 9-42, 9-43, 9-50a, 9-56, 9-59, 9-168d, 9-170, 9-171, 9-172, 9-232i to 9-232o, inclusive, 9-404a to 9-404c, inclusive, 9-409, 9-410, 9-412, 9-436, 9-436a, 9-453e to 9-453h, inclusive, 9-453k or 9-453o, or any regulation promulgated under said sections or chapters, (B) two thousand dollars per offense against any town clerk, registrar of voters, an appointee or designee of a town clerk or registrar of voters, or any other election or primary official whom the commission finds to have failed to discharge a duty imposed by any provision of chapter 146 or 147 or any regulation promulgated under said chapters, (C) two thousand dollars per offense against any person the commission finds to have (i) improperly voted in any election, primary or referendum, and (ii) not been legally qualified to vote in such election, primary or referendum, or (D) two thousand dollars per offense or twice the amount of any improper payment or contribution, whichever is greater, against any person the commission finds to be in violation of any provision of chapter 155 or sections 9-700 to 9-716, inclusive. The commission may levy a civil penalty against any person under subparagraph (A), (B), (C) or (D) of this subdivision only after giving the person an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive. In the case of failure to pay any such penalty levied pursuant to this subsection within thirty days of written notice sent by

certified or registered mail to such person, the superior court for the judicial district of Hartford, on application of the commission, may issue an order requiring such person to pay the penalty imposed and such court costs, state marshal's fees and attorney's fees incurred by the commission as the court may determine. Any civil penalties paid, collected or recovered under subparagraph (D) of this subdivision for a violation of any provision of chapter 155 applying to the office of the Treasurer shall be deposited on a pro rata basis in any trust funds, as defined in section 3-13c, affected by such violation;

(3) (A) To issue an order requiring any person the commission finds to have received any contribution or payment which is prohibited by any of the provisions of chapter 155, after an opportunity to be heard at a hearing conducted in accordance with the provisions of sections 4-176e to 4-184, inclusive, to return such contribution or payment to the donor or payor, or to remit such contribution or payment to the state for deposit in the General Fund, whichever is deemed necessary to effectuate the purposes of chapter 155;

(B) To issue an order when the commission finds that an intentional violation of any provision of chapter 155 has been committed, after an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, which order may contain one or more of the following sanctions: (i) Removal of a campaign treasurer, deputy campaign treasurer or solicitor; (ii) prohibition on serving as a campaign treasurer, deputy campaign treasurer or solicitor, for a period not to exceed four years; and (iii) in the case of a party committee or a political committee, suspension of all political activities, including, but not limited to, the receipt of contributions and the making of expenditures, provided the commission may not order such a suspension unless the commission has previously ordered the removal of the campaign treasurer and notifies the officers of the committee that the commission is considering such suspension;

(C) To issue an order revoking any person's eligibility to be appointed or serve as an election, primary or referendum official or unofficial checker or in any capacity at the polls on the day of an election, primary or referendum, when the commission finds such person has intentionally violated any provision of the general statutes or regulations relating to the conduct of an election, primary or referendum, after an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive;