STATE OF CONNECTICUT

STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Jason Bartlett, Bethel

File No. 2011-115

FINDINGS AND CONCLUSIONS

The Complainant brings this complaint pursuant to Connecticut General Statutes § 9-7b, alleging that Alma L. Maya, the Bridgeport Municipal Clerk failed to provide an absentee ballot to an elector and registered Democrat, Ms. Carmen Diaz, for Bridgeport's 2011 Democratic primary in the manner required by General Statutes § 9-140 (g). The Complainant further alleges that, in an unrelated instance, Representative Ezequiel Santiago disregarded General Statutes §§ 9-140b (d) and (e) by offering to take and turn in an executed absentee ballot for another Bridgeport elector, Ms. Elizabeth Hendricks.

After the investigation of the Complainant's complaint, the Commission makes the following findings and conclusions:

1. At all times relevant hereto, Alma L. Maya, served as the Municipal Clerk for Bridgeport, Connecticut.

2. At all times relevant hereto, Ms. Carmen Diaz was a registered Democrat for the 137th City Council District.

3. Ms. Diaz voted in the Bridgeport's 2011 Democratic primary by absentee ballot on September 13, 2011.

4. Ms. Diaz appeared in the Bridgeport Municipal Clerk's Office on the morning of September 12, 2011, at which time she requested, was provided, completed, and filed an application to vote via absentee ballot.

5. Upon reviewing the district in which Ms. Diaz was registered to vote, a Municipal Clerk's office employee, Ms. Evelyn Butte, determined that Ms. Diaz was registered to vote in the 137th City Council District.

6. Noting that all absentee ballots for the 137th District already had been issued to other potential voters who had requested absentee ballots, Ms. Butte informed Ms. Diaz that additional ballots were on order and were scheduled to arrive at the Municipal Clerk's office later that same day or the morning of the next date (September 13, 2011) at the latest.

7. According to the Municipal Clerk's office, Ms. Diaz was instructed to call back that same afternoon (September 12, 2011) to see if the additional ballots had arrived, or to come back the next day (September 13, 2011) to vote by absentee ballot.

8. According to the Municipal Clerk's Office, Ms. Diaz stated to Ms. Butte that, while she would be leaving for Puerto Rico on September 15, 2011, the delay would be acceptable as long as she was able to cast her ballot prior to leaving Bridgeport and that she would call or come in the next day (September 13, 2011).

9. Ballots for the 137th District did, in fact, arrive at the Municipal Clerk's office on September 12, 2011, shortly after Ms. Diaz filed her absentee ballot application and left the Municipal Clerk's office.

10. According to the Respondent, on the afternoon of September 12, 2011, the Respondent called Ms. Diaz to notify her of the arrival of the additional ballots for the 137th District, but Ms. Diaz was not home and no message could be left on her voicemail due to her mailbox being full.

11. According to the Municipal Clerk's Office, on the morning of September 13, 2011, Assistant Municipal Clerk Cristina Resto also called Ms. Diaz to provide the same information. Again, no message could be left on Ms. Diaz's voicemail due to her mailbox being full.

12. The Municipal Clerk's office has no record of Ms. Diaz calling back subsequent to her departing the office on September 12, 2011.

13. Ms. Diaz returned to the Municipal Clerk's office on the morning of September 13, 2011 whereupon she promptly voted via absentee ballot.

14. The Commission notes that the 2011 Bridgeport Democratic Primary was extraordinary in that it was not conducted on the original statutorily scheduled date of September 13, 2011; but rather by Connecticut Superior Court Order (in the matter of *Foster v. Ayala*, S.C. No. CV11 602 14 87 S, Judicial District of Fairfield at Bridgeport) issued on Friday, September 2, 2011. Upon such order, the primary was rescheduled to, and conducted on, September 27, 2011.

15. As a consequence of the primary date being changed to September 27, 2011, the Municipal Clerk's office was compelled to order a complete reprint of all previously available absentee ballots.

16. On Tuesday September 6, 2011 (the first business day following the Court's Order amending the election date) the Municipal Clerk was notified that Defendant Ayala, after consultation with the City Attorney's office, had determined not to appeal the September 2, 2011 Court Order. Thereafter, on September 6, 2011, the Municipal Clerk's office immediately ordered a reprint of ballots from its state approved vendor.

17. The reordered absentee ballots arrived on or about September 8, 2011. However, it was discovered that the date in the English language was properly set forth as September 27, 2011, but the date in the Spanish language erroneously still stated the date of the election as being the original date of September 13, 2011.

18. The Municipal Clerk's office promptly consulted with the Secretary of the State's office concerning how to proceed – i.e., whether it would be legal and proper for the erroneous date to be manually corrected on the reprinted absentee ballots.

19. The Secretary of the State's office advised the Municipal Clerk's office to correct the date by manually placing a sticker with the proper date of September 27, 2011 over the erroneous date of September 13, 2011.

20. However, the Municipal Clerk's office was thereafter informed by the Bridgeport Registrar of Voters office that the Secretary of the State's proposed solution would not be an acceptable remedy to the problem because the stickers would disable the machine counter's ability to process the ballots.

21. The Municipal Clerk's office thereupon again reordered ballots, which were delivered to the Municipal Clerk's office on an expedited basis, and distributed to applicants on or about September 8, 2011.

22. On or about September 9, 2011, a supplemental order for absentee ballots (which were delivered on September 12, 2011) was made for the 137th District.

23. The initial delivery of corrected absentee ballots for the 137th District were all distributed to potential voters who had filed applications for the same, prior to Ms. Diaz arriving at the Municipal Clerk's office on September 12, 2011.

24. The Municipal Clerk's office had ordered 300 absentee ballot sets per Council district, which was the standard number ordered for prior elections, and which had been determined by the Municipal Clerk's office as appropriate, reasonable, and sufficient based upon historical mayoral primary experience.

25. According to the Municipal Clerk's Office, on September 9, 2011, the Municipal Clerk's office had found it necessary to reorder additional ballots apparently due to certain unforeseen/unanticipated events and occurrences, such as: (1) the heightened interest generated in the 2011 Democratic primary by the litigation surrounding the decision by the Democratic Registrar of Voters to bar candidate Mary Jane Foster from the ballot; (2) the elevated demand for absentee ballots due to the unanticipated change in the election date to September 27, 2011, as a result of the September 2, 2011 Connecticut Superior Court order described above; and (3) the unusually high level of absentee ballot requests for the 137th District.

26. General Statutes § 9-140 (g), provides:

> On the first day of issuance of absentee voting sets the municipal clerk shall mail an absentee voting set to each applicant whose application was received by the clerk prior to that day. *When the clerk receives an application during the time period in which absentee voting sets are to be issued he shall mail an absentee voting set to the applicant, within twenty-four hours, unless the applicant submits his application in person at the office of the clerk and asks to be given his absentee voting set immediately, in which case the clerk shall comply with the request.* Any absentee voting set to be mailed to an applicant shall be mailed to the bona fide personal mailing address shown on the application. Issuance of absentee voting sets shall also be subject to the provisions of subsection (c) of this section, section 9-150c and section 9-159q concerning persons designated to deliver or return ballots in cases involving unforeseen illness or disability and supervised voting at certain health care institutions. [Emphasis added.]

27. Based on the above, specifically including the extraordinary circumstances of the rescheduled election, the Commission finds that during and after Ms. Diaz's September 12, 2011 appearance at the Municipal Clerk's office, the Municipal Clerk's office attempted to comply with the request and provide Ms. Diaz an absentee ballot set to the extent possible.

28. Based on the above, specifically including that Ms. Diaz was able to cast her ballot the next day, the Commission declines to take further action regarding the alleged violation of § 9-140 (g) and advises the Respondent to seek and comply with any advice or instruction

issued by the Secretary of the State regarding the appropriate number of absentee ballot sets to order in any future election or primary.

29. Complainant does not allege, nor do the investigation's findings extend to any potential violation of General Statute 9-255a, which sets forth the procedures and filing requirements governing the amount of ballots to be order for an election or primary. The Commission specifically reserves such issue for future examination.

30. Separate and apart from the above allegations, the Complainant has also alleged that, on September 15, 2011, State Representative Ezequiel Santiago offered to file the completed absentee ballot for a Bridgeport elector, Ms. Elizabeth Hendricks.

31. Representative Santiago denies the accusation and states that Ms. Hendricks may have misunderstood him when he stated to Ms. Hendricks that the absentee ballot could be filed by a family member, nurse or someone who assists them and is not involved in the campaign.

32. General Statutes § 9-140b provides:

> (d) No person shall have in his possession any official absentee ballot or ballot envelope for use at any primary, election or referendum except the applicant to whom it was issued, the Secretary of the State or his or her authorized agents, any official printer of absentee ballot forms and his designated carriers, the United States Postal Service, any other carrier, courier or messenger service recognized and approved by the Secretary of the State, any person authorized by a municipal clerk to receive and process official absentee ballot forms on behalf of the municipal clerk, any authorized primary, election or referendum official or any other person authorized by any provision of the general statutes to possess a ballot or ballot envelope.
>
> (e) No … candidate … shall knowingly be present when an absentee ballot applicant executes an absentee ballot, except (A) when the candidate or agent is (i) a member of the immediate family of the applicant or (ii) authorized by law to be present….

33. Based on the above, even if the facts as alleged by the Complainant are true, the Complainant has not alleged a violation of §§ 9-140b (d) or (e) by Representative Santiago. Representative Santiago is alleged to have merely offered to take the absentee ballot into his possession rather than actually taking it into his possession and is only alleged to have been present after not during the execution of such absentee ballot.

34. The Commission concludes that the Complainant failed to allege a violation of either §§ 9-140b (d) or (e) against Representative Santiago.

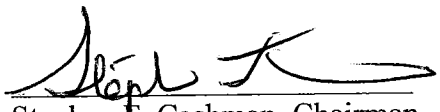
ORDER

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

That no further action be taken against Respondent Alma L. Maya and directs her attention to the advise provided in paragraph twenty-eight.

That the Complaint be dismissed against Respondent Representative Santiago.

Adopted this 25th day of April of 2012 at Hartford, Connecticut



Stephen F. Cashman, Chairman
By Order of the Commission