

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Referral by the Secretary of the State

File No. 2012-008

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Sharon Krawiecki and Mary Rydingsward, of the City of Bristol, County of Hartford, State of Connecticut and the authorized representative of the State Elections Enforcement Commission is entered into in accordance with Section 9-7b-54 of the Regulations of Connecticut State Agencies and Section 4-177 (c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. The Secretary of the State formally referred this matter after receiving a statement with her office submitted by Gary Allen, a visually impaired voter who attempted to cast a ballot during the November 7, 2011 general election using the alternative voting system ("AVS") at the Green Hill School polling place in Bristol.
2. The Secretary of State referred the matter to the Commission, as Mr. Allen's statement alleged that the AVS was not set up when he arrived at the polling place at approximately 5:30 p.m. and that he was unable to cast his ballot using the system. The referral alleges facts which may lead to a violation of General Statutes § 9-247 of the 2012 supplement to the general statutes.
3. General Statutes § 9-247 of the 2012 supplement to the general statutes reads:

The registrars of voters shall, before the day of the election, cause test ballots to be inserted in each tabulator to ensure that each tabulator is prepared and read and cause each other voting system approved by the Secretary of the State for use in the election, *including, but not limited to, voting devices equipped for individuals with disabilities that comply with the provisions of the Help America Vote Act, P.L. 107-25, as amended from time to time*, to be put in order in every way and set and adjust the same so that it shall be ready for use in voting when delivered at the polling place. *Such registrars of voters shall cause each voting system to be in order and set and adjusted, to be delivered at the polling place, together with all necessary furniture and appliances that go with the same, at the room where the election is to be held, and to be tested and operable not later than one hour prior to the opening of the polling place.* (Emphasis added.)

4. According to Mr. Allen's statement, he is legally blind. He entered the polling place at approximately 5:30 p.m. to cast his ballot. He asked to use the AVS machine. After some confusion, he was brought over to the telephone used for indicating his selections. The telephone had no dial tone and the polling place officials were unable to get it to function after 10-15 minutes of attempting to do so. Mr. Allen ultimately had to vote by using a magnifying glass to mark a regular ballot.
5. At approximately 5:30 a.m. on the morning of the election, Barbara Kaczmarczyk, who was the moderator at Green Hills discovered that the AVS phone lines were inoperable and promptly told the registrars about the problem. Ms. Kaczmarczyk kept the AVS set up for the remainder of the day in case the phone lines became active again during the day and the system became useful. When Mr. Allen came in, she again attempted to use the system, to no avail.
6. Laura Reid-Newkirk of Inspiration Vote System, Connecticut's AVS provider, submitted a statement that the standard operating procedure at IVS on the day of a primary of election is to send a "fax blast" at 6am, which sends a test fax to the AVS in every polling place. If the initial fax does not go through successfully, IVS will make 2 to 3 more attempts before marking it as "failed." In this instance, Ms. Reid-Newkirk presented evidence that IVS made at least 3 attempts at the Green Hills polling place, all of which failed.
7. The Respondents do not generally deny that the AVS was not functioning on Election Day. The Respondents assert that the phone lines were installed, tested and functional as of August 2011. They assert that the destructive and historical October 29, 2011 snowstorm had knocked out the phone lines at the Green Hill School polling place, as well as the polling places at the Northeast and Edgewood polling locations. They allege that the phone lines at Northeast were brought back online in the middle of Election Day and that the lines at the Edgewood polling place were erratic throughout the day, but that the Green Hill location suffered a shutdown throughout the day. At the Green Hill location, the polling place workers were forced to use their personal cell phones rather than the dedicated line available to them.
8. According to the Respondents, the nine days between the snowstorm and the election brought duties additional to the hectic pre-election norm. The Respondents were actively tracking power outages in every city polling location, attending Emergency Management Meetings of town officials, inventorying and ordering emergency supplies and responding to displaced voters. Additionally, traveling through Bristol was difficult, they assert.
9. As an initial matter, the Commission finds that although the evidence suggests that the Respondents may have tested the AVS prior to the election, the evidence shows, and the

Respondents do not dispute, that the AVS was non-operable at the Green Hills polling place in Bristol throughout Election Day, November 7, 2011.

10. Turning to the Respondents' defense, they assert that due to an impossibility created by the October 29th snowstorm, they could not make the AVS at the Green Hills polling place available despite their best efforts to do so. However, the Commission finds that the Respondents have not presented sufficient evidence in support of their assertion that the phone lines were not functional due to the October 29 snowstorm. For instance, no bills or any other materials were provided from the telephone company to show that live lines had been set up in the polling place in the first place. Moreover, the principal of the Green Hills School submitted a statement that the phone lines in the school itself were functional throughout Election Day.
11. As such, the Commission concludes that the evidence in this case is insufficient to support the Respondents' defense as to liability.
12. Considering the aforesaid, the Commission concludes that Respondents Krawiecki and Rydingsward violated General Statutes § 9-247 by failing to have an operable AVS voting system in place at the District 5 polling place.
13. Connecticut General Statutes § 9-7b (a) (2) provides that the Commission may assess a civil penalty of 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. Pursuant to Regulations of Connecticut State Agencies §9-7b-48, in determining the amount of a civil penalty, the Commission shall consider, among other mitigating and aggravating factors:
 - (1) the gravity of the act or omission;
 - (2) the amount necessary to insure immediate and continued compliance;
 - (3) the previous history of similar acts or omissions; and
 - (4) whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes.
14. Here, the Respondents failed to properly set up the AVS in order to assure that it was operable at a single polling place at the time that the polling place opened. Fortunately, the incident involved not more than a single individual who, after a wait, was able to cast his ballot by an alternate means. The evidence does not suggest that the failure by the Respondents was intentional. Moreover, the Respondents assert that they have implemented new guidelines and controls concerning setup and testing of the alternative voting systems for future elections, including a standard testing process the night before

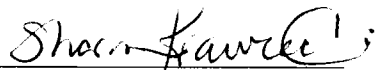
each primary or election. Finally, while the Commission does not conclude here that the Respondents' defense is sufficiently supported to obviate their liability, we do not discount the extraordinary nature and effect of the historic October 29, 2011 snowstorm and its impact on polling places across a large swath of the state, including but not limited to the City of Bristol.

15. In consideration of the aforesaid and in consideration of the fact that this is one of the first of two matters involving the new AVS prescriptions under the amended statute, the Commission will levy no civil penalty in this instance in exchange for this Agreement by the Respondents to henceforth comply with General Statutes § 9-247 as well as a letter of contrition to Mr. Allen signed by both Respondents explaining what occurred on Election Day that caused him to have to vote by alternate means and what measures they are undertaking to better set up and test the AVS systems for future primaries and elections.
16. The Respondents admit all jurisdictional facts and agree that this Agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. The Respondents shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
17. The Respondents waive:
 - a. Any further procedural steps;
 - b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
 - c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to this Agreement.
18. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn and may not be used as an admission by the Respondents in any subsequent hearing, if the same becomes necessary.
19. Upon the Respondents' compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.


ORDER

IT IS FURTHER ORDERED THAT that both Respondents will henceforth strictly comply with the requirements of General Statutes § 9-247 and draft, sign and send a letter of contrition to Mr. Allen explaining what occurred on Election Day that caused him to not be able to vote using the AVS and what measures they are undertaking to better set up and test such alternate voting systems for future primaries and elections.

The Respondent:

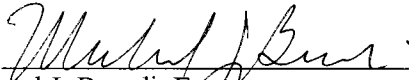

Sharon Krawiecki, Registrar of Voters
City of Bristol
111 North Main Street
Bristol, CT 06010

Dated: 5/14/2012


Mary Rydingsward, Registrar of Voters
City of Bristol
111 North Main Street
Bristol, CT 06010

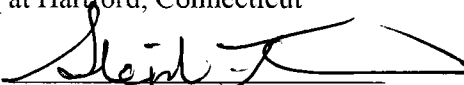
Dated: 15 May 2012

For the State of Connecticut:

BY: 
Michael J. Brandi, Esq.
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: 5/23/12

Adopted this 2nd day of May of 20 at Hartford, Connecticut


Stephen F. Cashman, Chair
By Order of the Commission