

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint by Minnie Gonzalez, Hartford
Complaint by Ramon Arroyo, Hartford

File No. 2012-081
File No. 2012-082

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Olga Iris Vasquez, of the City of Hartford, 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 Complainants bring the above Complaints pursuant to Connecticut General Statutes § 9-7b, each alleging that the Respondent Registrar violated her responsibilities under General Statutes § 9-436 (e) to equitably apportion polling place workers among the candidates in the August 14, 2012 Democratic Primary.
2. The Complainants here are Minnie Gonzalez and Ramon Arroyo, respectively the endorsed candidates of the Democratic Party for State Representative in the 5th General Assembly District and Democratic Registrar of Voters in the August 14, 2012 primary held within the 5th District and the City of Hartford.
3. The Respondent here is Olga Iris Vasquez, the Democratic Registrar of Voters for the City of Hartford during all times relevant to the instant Complaints.
4. The Complainants here allege, and provide evidence in support, that they received notices from the Respondent of their rights to submit lists of names of their designees for polling place officials on Primary Day. These notices contained forms for each polling place that listed the titles of the officials for each such polling place on them and included lines on which the Complainants could identify their designees.
5. However, they allege that while the Registrar provided forms for each polling place contained within their respective races, the notices from the Respondent Registrar provided spaces to choose only particular polling place officials and not others.
6. The Complainants allege that they have a right to provide names of designees for *every* official in the polling place and that the Respondent's provision of opportunity to submit names of *only certain* officials was a violation of General Statutes § 9-436.

7. General Statutes § 9-436 (e) (Rev. to May 24, 2011), provides, in pertinent part:

(e) The registrar shall designate one of the moderators so appointed by the registrar to be head moderator or shall appoint as head moderator an elector who is not also moderator of a polling place and who shall be deemed a primary official. The registrar may also appoint a deputy head moderator to assist the head moderator in the performance of his duties. A deputy head moderator shall also be deemed to be a primary official. *Each registrar's appointments of primary polling place officials, except moderators of polling places, and of designees to conduct supervised voting of absentee ballots pursuant to sections 9-159q and 9-159r shall be divided equally, as nearly as may be, between designees of the party-endorsed candidates and designees of one or more of the contestants*, provided, if a party-endorsed candidate is a member of a party other than the one holding the primary, such primary officials, except voting machine mechanics, shall be enrolled party members of the party holding the primary. Names of designees and alternate designees for such positions shall be submitted in writing by party-endorsed candidates and contestants to the registrar not later than ten days before the primary, except that names of designees and alternate designees for the position of moderator shall be so submitted not later than twenty-one days before the primary and, if such lists are not so presented, all such appointments shall be made by the registrar but in the above-mentioned proportion. The registrar shall notify all such candidates and contestants of their right to submit a list of designees under this section. Notwithstanding any other provision of this section, the registrar shall appoint as moderators only persons who are certified to serve as moderators or alternate moderators pursuant to section 9-229, unless there is an insufficient number of such persons who are enrolled members of the registrar's party in the municipality or political subdivision holding the primary, in which case the registrar may appoint a new moderator in accordance with section 9-229, but only to the extent of such insufficiency. Primary central counting moderators and absentee ballot counters shall also be deemed primary officials. No primary official shall perform services for any candidate at the primary on primary day. (Emphasis added.)

8. As an initial matter, the evidence supports, and the Respondent does not deny, that the notices and forms sent to each candidate provide space for each candidate to submit names of designees for only certain offices. The offices designated for each polling place and for each candidate differ from polling place to polling place so that one candidate will have the opportunity to submit names for a variety of types of polling officials, but not necessarily all at the same polling place. That is, a particular candidate may have the opportunity to

submit a designee for ballot clerk in Polling Place A and an official checker at Polling Place B and a tabulator tender in Polling Place C.

9. The Respondent here asserts that it is the practice of her office to equitably distribute the polling place official designations among the candidates *prior* to sending out the notices. The office sets up a grid of candidates for each polling place against the list of officials in the polling place and distributes the roles as evenly as possible given the number of candidates. The Respondent asserts that this method is a more equitable non-partisan distribution, as it avoids claims of bias against certain designees by making the distribution prior to knowing the identity of such designees. Moreover, she tells the candidates up front what the distribution will be so that they can concentrate on finding designees for only those positions that will be allocated for them, rather than trying to find an entire slate of positions from which only a few will be chose by the registrar.
10. The question before the Commission is twofold. First, whether, as the Complainants allege, General Statutes § 9-436 (e) provides that each candidate has a right to submit names of designees for all polling place workers and whether it is a violation of § 9-436 (e) for a registrar to fail to inform the candidates of such right and/or fail to allow such a broad designation by each candidate. Second, whether the Respondent's method of pre-assigned distribution comports with the mandates of General Statutes § 9-436 (e) to distribute the polling place workers "equally, as nearly as may be, between designees of the party-endorsed candidates and designees of one or more of the contestants."
11. Both questions are of first impression for the Commission. Moreover, the Commission found no written advice from the Secretary of the State on this issue. As such, the Commission sought the formal written opinion of the Secretary of the State, in her role as Commissioner of Elections of the state per General Statutes § 9-3.
12. In its opinion to the Commission dated January 18, 2013, the Secretary of the State's office, looking to the Connecticut Superior Court in Green v. Vazquez, CV106013904S, Peck, J., (Conn. Super. Ct. September 17, 2010) states:

Although the court in Green points out the lack of clarity with regard to [General Statutes § 9-436 (e)], it does find a registrars failure to appoint primary polling place officials from a list of designees submitted by a primary candidate, even when the positions were "full" because of the prior and unilateral appointment of primary polling place officials by the registrar, constituted an "error in the ruling of an election official".

As such, it is our opinion that a registrar must provide adequate notice to all primary candidates of their right to submit a full list of all designees for

all available primary polling place officials. Once received, the registrar should review the list of names received and appoint and divide the primary polling place officials as equally as may be between designees of the party endorsed candidates and any contestants. Consistent with the court in Green, the statutory language does not allow a registrar to pre-determine or unilaterally appoint primary polling place officials or positions without first providing the primary candidates with an opportunity to submit full lists of designees.

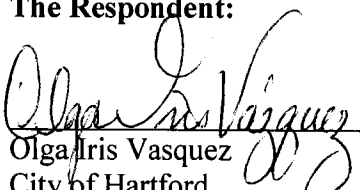
13. As to the first question, the Commission concludes that the Respondent here violated General Statutes § 9-436 by failing to inform the candidates of their right to submit designees for all polling place officials and for failing to allow for space for the Complainants to submit such designees.
14. As to the second question, the Commission concludes that the evidence does not support a finding that the Respondent's method of distributing the roles among the various candidates failed to meet the "as nearly as may be" clause of General Statutes § 9-436 (e). The evidence here shows an effort on the part of the Registrar to develop an orderly, and fair, system by which to meet the reasonable prescription in the statute. The method itself was not flawed, merely the timing of its application.
15. In conclusion, 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.
16. Here, the Respondent failed to inform the Complainants here of their right to submit a list of designees for all polling place officials and failed to allow for space for the Complainants to submit such designees. However, the evidence does not support a finding that the Respondent's failure resulted in an unfairly disproportionate distribution of the polling place officials for the primary at issue.

17. In consideration of the aforesaid and in consideration of the fact that legal issue in this case was one of first impression, the Commission will levy no civil penalty in this instance in exchange for this Agreement by the Respondent to henceforth comply with General Statutes § 9-436 (e) as interpreted here by the Commission and by the Secretary of the State.
18. The Respondent admits all jurisdictional facts and agrees 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 Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
19. The Respondent waives:
 - 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.
20. 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 Respondent in any subsequent hearing, if the same becomes necessary.
21. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

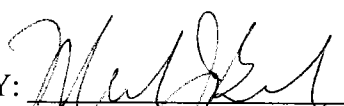
ORDER

IT IS ORDERED THAT that the Respondent will henceforth strictly comply with the requirements of General Statutes § 9-436.

The Respondent:


Olga Iris Vasquez
City of Hartford
550 Main St.
Hartford, CT

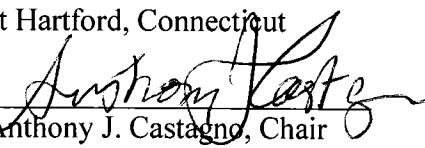
For the State of Connecticut:

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: _____

Dated: 3/12/13

Adopted this 20 day of March of 20 13 at Hartford, Connecticut


Anthony J. Castagno, Chair
By Order of the Commission