

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Lisa Chambers Williams
Windsor, Connecticut

File No. 2008-013

AGREEMENT CONTAINING CONSENT ORDER CONCERNING A
VIOLATION OF SECTION 302 OF THE HELP AMERICA VOTE ACT OF 2002

This Agreement, by and between Suzanne Moriarty of Windsor, 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 Connecticut General Statutes § 4-177(c). In accordance herewith, the parties agree that:

1. On February 13, 2008, the Complainant, a Windsor resident, filed a sworn affidavit of complaint alleging her difficulty in obtaining a provisional ballot during the February 5, 2008 presidential preference primary that took place in Windsor, Connecticut. Provisional ballots are required in elections for federal office by the Help America Vote Act of 2002, 42 U.S.C. § 15482 (hereinafter "HAVA"). Pursuant to General Statutes § 9-7b (a)(18), the State Elections Enforcement Commission has the authority to receive and determine that complaint as it alleges a HAVA violation. Notably, the Complainant had the right to request a hearing concerning this matter but she did not. See Regs., Conn. State Agencies § 9-7b-88. Furthermore, she waived her right to have the Commission determine the matter no later than ninety days after her complaint was filed. See Regs., Conn. State Agencies § 9-7b-90.
2. On February 5, 2008, the Complainant went to her polling place on or about 5:00 p.m. to vote in the presidential preference primary. The Moderator of that polling place was Suzanne Moriarty (the "Respondent").
3. The Complainant attempted to check in as a registered Democrat but was informed by the checker that she was not on the list of registered Democrats. She informed the official checker that she had voted at that polling place in the past and asserted that her name should be on the official checklist. At that point, the checker directed the Complainant to the Respondent who was sitting at a table with the Republican moderator.
4. The Respondent took the Complainant's identifying information and relayed it to an individual at the Office of the Registrars of Voter in Windsor, Connecticut to see whether the Complainant was registered as a Democrat. After speaking with the Registrars' Office, the Respondent informed the Complainant that when she registered she did not affiliate with either party and, as such, could not vote at the presidential preference primary.

5. The Complainant informed the Respondent that she was not unaffiliated as she "always voted Democrat." The Respondent then told her that she could change her voter registration the next day to reflect her party affiliation. At that point, the Complainant left the polling place without receiving any notification from the Respondent that she could apply for and cast a provisional ballot in the presidential preference primary.

6. Section 302 of the Help America Vote Act of 2002, 42 U.S.C. 15482, provides as follows in relevant part:

If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot as follows:

1. An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election. . . .

7. As noted, the Respondent was the moderator of the Complainant's polling place as well as the election official to whom the Complainant declared her desire and eligibility to vote in the presidential preference primary. In addition, the Respondent was the election official that called the Registrars of Voters to determine whether the Complainant was eligible to vote in that primary, and the official that informed the Complainant that she could not vote in the primary. As such, the Respondent is deemed to be the election official responsible for notifying the Complainant that she could cast a provisional ballot in that election as required by the HAVA.

8. The Respondent failed, however, to notify the Complainant that she could cast a provisional ballot. As a consequence, the Respondent violated section 302 of the Help America Vote Act of 2002, 42 U.S.C. 15482.

9. While the Respondent admits that violation, she maintains that her transgression resulted from her good faith misunderstanding of HAVA's provisional ballot notification obligation. The Respondent stated that before the Complainant, she never really had to use provisional ballots as they are only available in federal elections and thought she only had to provide them upon request. She further stated that she was doing her best to accommodate the Complainant given her understanding of the law and the fact that a long line of people were waiting behind the Complainant. She maintains that she felt overwhelmed by the circumstances and pressured to respond to the Complainant as quickly as possible. She also maintains that once she understood the requirement to notify individuals of their right to cast a provisional ballot, she complied with the requirement for the brief remainder of the night. The evidence does not contradict her claims.

10. While the Secretary of the State did provide moderators, including the Respondent, with instructions concerning the distribution and use of provisional ballots, those instructions did not plainly identify when an election official's duty arises to notify individuals about those provisional ballots. The Respondent acknowledges that she did not read the Secretary's provisional ballot instructions, however, even if she had, she may not have fully understood the HAVA notification requirement unless she actually read HAVA. The Respondent admits that she did not read the applicable HAVA provision.
11. Fortunately, the Complainant made efforts to understand her voting rights. As a result, she returned persistently to her polling place and had a representative from the Office of the Secretary of the State explain the provisional ballot HAVA requirements to the Respondent via telephone. It was only thereafter that the Respondent provided the Complainant with a provisional ballot and receipt. The Complainant cast that ballot but, according to the Democratic Registrar of Voters of Windsor, Anita Mips, that ballot was not counted since the Complainant had not, in fact, affiliated with the Democratic Party when she registered to vote.
12. Nonetheless, the Respondent's violation of section 302 of the Help America Vote Act of 2002, 42 U.S.C. 15482, is a serious offense; especially here where she only learned of and complied with that provision an hour or so before the polls closed. The provisional ballot requirements set forth in HAVA help prevent the disfranchisement of eligible voters. As such, election officials must understand and comply with those requirements during all federal elections.
13. 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.
14. It is understood and agreed that this fully executed Agreement will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, will be deemed withdrawn by the Respondent and will not be used as an admission in any subsequent hearing, if the same becomes necessary.
15. 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.
19. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against her pertaining to this matter.

ORDER

IT IS HEREBY ORDERED that henceforth, the Respondent shall strictly comply with the requirements of section 302 of the Help America Vote Act of 2002, 42 U.S.C. 15482.

IT IS FURTHER ORDERED that the Respondent shall read and initial section 302 of the Help America Vote Act of 2002, 42 U.S.C. 15482, which has been provided herewith, and return that document to the Commission along with this Agreement.

For the Respondent:

BY: Suzanne Moriarty 5/28/08
Suzanne Moriarty
15 Mips Drive
Windsor, CT
Date

For the State of Connecticut

BY: Joan Andrews 5/29/08
Joan M. Andrews, Esq.
Director of Legal Affairs,
And Enforcement and
Authorized Representative
Of the State Elections
Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

Adopted this 4th day of June, 2008 at Hartford, Connecticut by vote of the Commission.

Stephen F. Cashman
Stephen F. Cashman, Chair
By Order of the Commission