

JAN 21 2011

ENFORCEMENT COMMISSION

STATE OF CONNECTICUT

STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Robert Burke, Manchester

File No. 2009-136

AGREEMENT CONTAINING A CONSENT ORDER

This agreement, by and between Timothy H. Becker and Francis A. Maffe, Jr., of the Town of Manchester, State of Connecticut (hereinafter the "Respondents") 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. The Complainant, a resident of the town of Manchester, alleged that on November 3, 2009, he was prevented from voting independently and in privacy because the Accessible Vote-by-Phone System ("AVS") was not set up for use. He further maintains that after he indicated to a poll worker that he wanted to use that system, he was informed that the election officials "were not told to set up the phone." He claims he was also told that the AVS was not required for local elections and that, if he was willing, his driver could read and fill out a ballot for him. According to the Complainant, he was not happy about that arrangement but, because he has a visual impairment, did have his driver fill out his ballot. He felt he was left to trust that it had been filled out according to his instructions. He then asserts he submitted his ballot into the optical scanner.
2. The Respondents were the Registrars of Voters for the Town of Manchester during the November 3, 2009 municipal election. At that time, Respondent Maffe had acted as the Democratic Registrar of Voters for several years. Respondent Becker, however, took on the role of Republican Registrar for the first time in 2009.
3. The AVS was selected by the SOTS to comply with the Help America Vote Act of 2002 (HAVA) which requires at least one voting system equipped for individuals with disabilities at each polling place. The SOTS chose the Inspire Vote-by-Phone System ("IVS") to satisfy this requirement, and refers to it as the Accessible Vote-by-Phone system. The AVS allows voters to cast their ballots using a regular telephone and a fax machine.
4. Any voter in Connecticut may choose to vote using the AVS.
5. General Statutes § 9-236b (a) (9) provides in pertinent part as follows:

The Secretary of the State shall provide each municipality with sufficient quantities of a poster size copy, at least eighteen by twenty-four inches, of a Voter's Bill of Rights, which shall be posted conspicuously at each polling place. The text of the Voter's Bill of Rights shall be:

"VOTER'S BILL OF RIGHTS

Every registered voter in this state has the right to:

* * *

(9) Vote independently and in privacy at a polling place, regardless of physical disability. . .
.”

6. General Statutes § 9-236b was originally passed in 2002 and contains a list of rights for each elector in Connecticut. Public Act 02-83. Public Act 04-32 amended the Voter’s Bill of Rights to add, *inter alia*, the right “to vote independently and in privacy at a polling place, regardless of physical disability.”

7. General Statutes § 9-3 provides as follows:

The Secretary of the State, by virtue of the office, shall be the Commissioner of Elections of the state, with such powers and duties relating to the conduct of elections as are prescribed by law and, unless otherwise provided by state statute, **the secretary’s regulations, declaratory rulings, instructions and opinions, if in written form, shall be presumed as correctly interpreting and effectuating the administration of elections** and primaries under this title, except for chapter 155, provided nothing in this section shall be construed to alter the right of appeal provided under the provisions of chapter 54. [Emphasis added.]

8. At the request of the Secretary of the State, the Attorney General of Connecticut issued an Opinion dated June 1, 2007 addressing the Voter’s Bill of Rights. In that Opinion the Attorney General determined that the AVS is to be set up for use at *all* elections (federal and non-federal) in Connecticut to ensure that no voter is deprived of their right to vote independently and in privacy at the polling place.

9. Since August of 2007, and in reliance on the Opinion of the Attorney General, the Secretary of the State’s Office has consistently advised Registrars of Voters that the AVS was required in all elections. For example, the Secretary of State issued “Bi-Weekly Voting Machine Newsletters” in August and September of 2007 which made it clear that the AVS was required in all elections. Respondent Maffe was the Democratic Registrar of Voters in Manchester at that time.

10. In addition, the *Moderator’s Handbook*, October 2009 Edition, issued by the Secretary of the State prior to the November 2009 municipal election provided that any elector could choose to vote using the AVS and that an effort should be made to alert an elector with known disabilities of the option to use the AVS.

11. The Commission has interpreted General Statutes § 9-236b (a) as granting voters the rights enumerated in the Voter’s Bill of Rights. *See, e.g., Complaint of Cynthia Clark*, et al., File No. 2003-067 (right to inspect a sample ballot); *Complaint of Kathleen Prudden and Elizabeth Rhoades*, File No. 2007-405 (same); *Complaint of Norman S. Douglas*, File No. 2007-411 (right to vote in privacy at the polling place); *Complaint of Helen Lech*, File No. 2007-421 (right to vote in privacy at the polling place); *Complaint of Claude Holcomb*, File No. 2009-029 (right to vote independently and in privacy at the polling place); *Complaint of Eileen Torrow*, File No.

2009-005 (right to vote independently and in privacy at the polling place); *Complaint of Sandra Kush*, File No. 2009-068 (right to vote independently and in privacy at the polling place).

12. Here, because the AVS was not set up in his polling place, the Complainant had no choice but to have another individual mark his ballot. The Commission therefore concludes that Registrars failure to require the set up of the AVS at the Complainant's polling place caused him to be deprived of his right to vote independently and in privacy in violation of General Statutes § 9-236 (a) (9).
13. The Respondents maintain that in late September, 2009, they inquired of an Assistant Town Attorney whether they were required to set up the AVS for the November 2009 municipal election. There is evidence that that attorney emailed the following advice to the Respondents in response to their inquiry:

I don't guarantee my research, but I have checked the State and Federal statutes and have not found anything that seems to mandate the use of the IVS or similar apparatus [in non-federal elections]. So, unless the Secretary of the State has decreed that you must provide the IVS or similar machine for use by physically impaired persons, then, in my opinion, you don't have to."

14. According to the Assistant Town Attorney who issued the above-referenced advice, he was not aware that the Attorney General had issued an Opinion in June of 2007 which indicates that the AVS was required in all elections. He asserts that had he been aware of that opinion, he would have advised the Respondents to set up the AVS for the November 2009 municipal election.
15. The Respondents maintain that they acted on their attorney's advice when they elected not to require the use of the AVS for the 2009 municipal election in Manchester as alleged by the Complainant. The Respondents affirm, however, that they will ensure that the AVS is made available in all future elections as required by General Statutes § 9-236 (a) (9).
16. The Commission notes that the Respondents do not have a history of committing similar violations of General Statutes § 9-236b.
17. 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 into after a full hearing and shall become final when adopted by the Commission.
18. 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.

19. Upon the Respondents' agreement to comply with the Order hereinafter stated and to promptly issue a letter of apology to the Complainant, the Commission shall not initiate any further proceedings against them concerning this matter.
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 of the Respondents in any subsequent hearing, if the same becomes necessary.

ORDER

IT IS HEREBY ORDERED THAT the Respondents shall henceforth strictly comply with the requirements of General Statutes § 9-236b (a) (9) and ensure that the appropriate voting system is set up for use at all future elections.

The Respondent

For the State of Connecticut

By:

By:


Timothy Becker


Shannon Clark Kief, Esq.

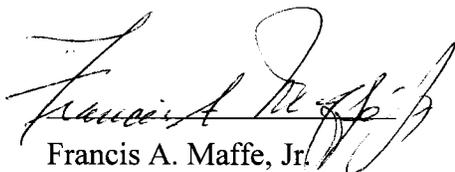
Manchester, Connecticut

Legal Program Director and Authorized
Representative of the State
Elections Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

Dated: 1/20/2011

The Respondent

By:


Francis A. Maffe, Jr.

Manchester, Connecticut

Dated: 1/20/2011

Dated: 1/21/11

Adopted this 20th day of January 2011 at Hartford, Connecticut by vote of the Commission.


Stephen F. Cashman, Chairman

By Order of the Commission