

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

Referral by the Secretary of the State

File No. 2011-120

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 Secretary of the State formally referred this matter after receiving an e-mailed statement with her office from Stephan Thal, a visually impaired voter who attempted to cast a ballot during the September 11, 2011 Democratic primary using the alternative voting system ("AVS") at the District 5 polling place at Grace Lutheran Church in Hartford.
2. The Secretary of State referred the matter to the Commission, as Mr. Thal's statement alleged that the AVS was not set up when he arrived at the polling place at approximately 5:30 P.M. Mr. Thal alleged that it took approximately 50 minutes for the polling place officials to repair the machine, at which time he was able to cast his ballot. The referral alleges that the facts suggest that the AVS was not set up properly at 6:00 A.M., which is 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. Mr. Thal is legally blind and uses a guide dog. He alleges that he entered the polling place with his spouse as a guide at approximately 5:30 p.m. to cast his ballot. He asked to use the AVS. After some confusion, he was brought over to the telephone used for indicating his selections. He was able to successfully reach the service (called "Inspiration Vote System" or "IVS") and was able to successfully make his ballot selections and send them to the fax machine to print his ballot.
5. However, he alleges that the fax machine did not function and would not print his selections. After making three different attempts, the moderator and at least two other polling place workers placed a call for repair. After a period of time, repair persons arrived at the polling place and he was told that they determined that a cable had been incorrectly connected on the fax machine and that it was not receiving the incoming calls because of this. The cables were correctly placed and Mr. Thal was able to successfully make his ballot selections and print them to the fax machine. According to Mr. Thal, this process took approximately 50 minutes from the time he entered the polling place until the time that he left.
6. The City of Hartford's IVS technician, Nelson Davila, confirms that he arrived at the polling place after he was contacted by the moderator for the polling place, Mark Bibbins about the AVS problem. He inspected the machine only to discover that the telephone cables were incorrectly set. After switching the cables, the fax was functional and Mr. Thal was able to send his selections to the fax.
7. Laura Reid-Newkirk of Inspiration Vote System, Connecticut's AVS provider, stated 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 District 5, all of which failed. At approximately 9:05 a.m., Ms. Reid-Newkirk stated that she sent an e-mail to the Respondent Registrar informing her of all of the polling places that had failed during the fax blast, including but not limited to District 5. There is no evidence that the Respondent received the e-mail or that she ever replied to same.
8. The Respondent, who at all times relevant to the instant Complaint was the Democratic Registrar of Voters in the City of Hartford, does not generally deny the events alleged by Mr. Thal. She states that all of the machines in the polling place, including the AVS, were tested two weeks prior to the primary and that the AVS was functioning properly at that time. She also states that all of the moderators, including the moderator for District 5, had

been trained on or about September 6 and/or 7 on how to set up and manage a polling place, including the setup and use of the AVS. However, there is no evidence that either she or the District 5 moderator, Mark Bibbins, tested the machine at District 5 on the day of the primary or on the night before, when the machines were set up.

9. Public Act 11-173 of the 2011 Public Acts amended General Statutes § 9-247 to include alternative voting systems and to require that each voting system “be in order and set and adjusted, to be delivered at the polling place . . . 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.” This is the first matter involving the new AVS prescriptions under the amended statute.
10. The Commission finds that the evidence shows, and the Respondent does not dispute, that the fax was non-operable at 5:30 p.m. on primary day and that the reason for its inoperability was that telephone cables had been placed incorrectly in the back of the fax machine. Moreover, the evidence shows that no polling place worker or voter used and/or tested the machine from at least 6:00 a.m. until Mr. Thal’s attempt. Finally, the evidence shows that a “fax blast” from IVS was sent to the polling place three different times and each was a failure.
11. Here, although the evidence suggests that Respondent Vasquez did test the AVS prior to the primary, the Commission finds that the evidence is sufficient to show that it was not properly set up and/or tested at the opening of the polls at 6:00 a.m. or any time between then and when Mr. Thal attempted to use the system at 5:30 p.m.
12. Considering the aforesaid, the Commission concludes that Respondent Olga Iris Vasquez 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.

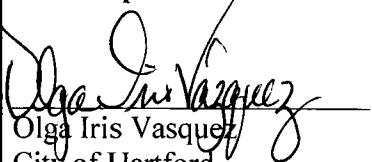
14. Here, the Respondent failed to properly set up and test the AVS in order to assure that it was operable at a single polling place at the time that the polling place opened. Fortunately, the error involved not more than a single individual who, after a wait, was able to cast his ballot. Moreover, there is no evidence that the failure by the registrar was intentional or noticed at any time prior to Mr. Thal's attempt; the machines had been successfully tested days earlier and were set up, if not tested and/or operable, prior to 6:00 a.m. on the day of the primary. Finally, the Respondent has asserted that she implemented stricter guidelines and scrutiny of the alternative voting systems at the general election in 2011 and will continue to do so.
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 Respondent to henceforth comply with General Statutes § 9-247 as well as a letter of contrition to Mr. Thal explaining what occurred on the day in question that caused him to have to wait 50 minutes before successfully voting with the AVS and what measures she is undertaking to better set up and test the AVS for future primaries and elections.
16. 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.
17. 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.
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 Respondent in any subsequent hearing, if the same becomes necessary.

19. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

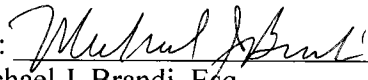
ORDER

IT IS FURTHER ORDERED THAT that the Respondent will henceforth strictly comply with the requirements of General Statutes § 9-247 and shall draft, sign and send a letter of contrition to Mr. Thal explaining what occurred on Election Day that caused him to have to wait approximately 50 minutes to vote using the AVS and what measures she is undertaking to better set up and test such alternate voting systems for future primaries and elections.

The Respondent:


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

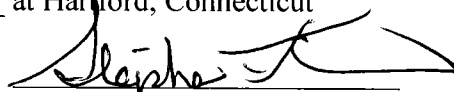
For the State of Connecticut:

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: 5/16/12

Dated: 5/23/12

Adopted this 23rd day of May of 2012 at Hartford, Connecticut


Stephen F. Cashman, Chair
By Order of the Commission