

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In re: SEEC Initiated Investigation of
the Bridgeport Registrars of Voters and
the Bridgeport Town Clerk

File No. 2012-049

AGREEMENT CONTAINING CONSENT ORDER

This agreement, by and between the Bridgeport Registrars of Voters and the Bridgeport Town Clerk, Santa Ayala (D), Linda Grace (R) and Alma Maya respectively (collectively, 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 Section 4-177 (c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. From June 13, 2011 to the present date, the Respondents were subject to the requirements of General Statutes § 9-255a.
2. Public Act 11-46 came into effect on June 13, 2011 for reasons including the absence of a sufficient number of ballots for registered voters of the City of Bridgeport in the 2010 general election. The relevant section of the Public Act was codified as General Statutes § 9-255a, and provides:
 - (a) The registrars of voters and municipal clerk from each municipality shall jointly certify, in writing, to the Secretary of the State the number of ballots for each polling place in the municipality that have been ordered for each election or primary to be held within such municipality. Such certification shall be on a form provided by the Secretary that shall have questions, including, but not limited to, those pertaining to the historical turnout for each polling place in the municipality for the past four elections or primaries of similar nature to the election or primary to be held. The registrars of voters and municipal clerk shall include as part of any such certification any other relevant factors that may be unique to each polling place in their municipality. Such certification shall be provided to the Secretary not later than thirty-one days prior to an election or twenty-one days prior to a primary.
 - (b) If the registrars of voters and municipal clerk of a municipality do not jointly submit the certification as set forth in subsection (a) of this section, such registrars of voters and municipal clerk shall order a number of ballots equal to the total number of registered voters in their municipality for such election or primary.

(c) The registrars of voters and municipal clerk may jointly apply to the Secretary of the State for a waiver of the requirements of subsections (a) and (b) of this section. Such waiver request shall be submitted to the Secretary of the State, in writing, not later than the forty-fifth day before the election or the thirtieth day before the primary to be held and shall demonstrate good cause for such waiver. Not later than five days after receipt of such waiver request, the Secretary shall notify, in writing, the municipal clerk requesting a waiver, of the Secretary's response.

(d) The Secretary of the State shall have the authority to reject the certification submitted by a municipality pursuant to subsection (a) of this section. If the Secretary of the State rejects such certification, the Secretary shall provide, in writing, the reasons for such rejection. Such rejection by the Secretary shall require any such municipality to follow the provisions of subsection (b) of this section. If, not later than seven days after the receipt of a certification from a municipality, the Secretary does not notify the municipality that its certification was rejected, such certification shall be deemed accepted.

3. To examine the failures during the 2010 election, Bridgeport Mayor Finch assembled a panel, which recommended ordering a ballot for each registered voter. In accordance with this recommendation, the Respondents adopted a policy, procedure and practice of ordering one ballot for each registered voter. As confirmed with a review of records provided by Bridgeport municipal counsel, since the Special Election of February 22, 2011 (and before § 9-255a came into effect), the Respondents have been consistently ordering one ballot for each registered voter.
4. Due to this practice, after § 9-255a came into effect, the Respondents state that they considered themselves to be in compliance with the statute as they were already ordering a ballot for each registered voter. Under this stated belief, the Respondents have not been filing the prescribed disclosure forms with the Secretary of the State ("SOTS").
5. In addition to prescribing and serving as the repository for the relevant form, SOTS is the advisory authority for election administration law. General Statutes § 9-3 provides:

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.

6. The Respondents, along with similar officers in all other municipalities, were issued multiple instructions from SOTS regarding the new law as well as a copy of the prescribed form (dated August 10, 2011 and March 19, 2012). Such material included the following express instruction: "If the registrars of voters and municipal clerk of a municipality fail to submit the

certification as required, the registrars of voters and the municipal clerk shall order a number of ballots equal to the total number of registered voters in their municipality for such election or primary as the case may be.”

7. On or about April 18, 2012, the Bridgeport Republican Registrar of Voters received a phone call from a paralegal at SOTS. The paralegal reported that the call was due to the absence of a filing with SOTS, under § 9-255a (a), for the Bridgeport Republican Party Primary to be conducted on April 24, 2012. Following internal consultation on the same day, Bridgeport officers, including the Respondents, confirmed with a SOTS attorney that the filing was legally mandated even if ballots were ordered for each registered voter.
8. Section 9-7b-48 of the Regulations of Connecticut State Agencies provides that, in the determination of the amount of the civil penalty to be imposed, the Commission shall consider, among other mitigating or aggravating circumstances: (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.
9. The Commission declines to seek a civil penalty in this matter based on the following mitigating circumstances: (1) the novelty of the statute at issue; (2) the reasonableness of the Respondents’ good faith belief that they were in compliance with the novel law prior to clarification from SOTS; (3) the absence of the potential harm the statute sought to avoid due to the Respondents’ ordering a ballot for each registered voter for the applicable period.
10. The Respondents agree and understand that the definition of “election” for purposes of § 9-255a is the definition of election in General Statutes § 9-1 (d), which defines the term as, “any electors’ meeting at which the electors choose public officials by use of voting tabulators or by paper ballots as provided in section 9-272,” which is necessarily inclusive of “municipal election” defined in § 9-1 (h), “regular election” defined in § 9-1 (o), “special election” defined in § 9-1 (r) and “state election” defined in § 9-1 (s).
11. The Respondents agree and understand that the duty of SOTS to accept the form prescribed by § 9-255a (a) in the absence of a timely rejection of such a form by SOTS, as required by § 9-255a (d), applies if, and only if, the filing is made on the form prescribed by SOTS. Filings purporting to be filings under § 9-255a (a), but not submitted on the prescribed form impose no assumption of validity or affirmative duty upon SOTS to either review or reject the purported filing.
12. The Respondents agree and understand that § 9-255a (c) provides the Respondents with a formal mechanism to seek a waiver from SOTS.
13. The Respondents agree and understand that any failure to file the prescribed form in the time, manner and method required by § 9-255a shall subject them to liability under § 9-7b (a) (2) (B) for a failure to discharge a duty imposed upon them by a provision of Chapter 147.

14. The Respondents agree and understand that, should they seek and receive any advice from SOTS that they wish to raise as a defense against any future action for an alleged violation of § 9-255a, the Commission will not consider any such advice as a defense unless such advice is issued in writing.
15. 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.
16. Upon the Respondents' agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against them pertaining to this matter.

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ORDER

IT IS HEREBY ORDERED that henceforth the Respondents shall strictly comply with the requirements of Connecticut General Statutes § 9-255a and that they will timely submit the prescribed form with SOTS for all future primaries and elections, unless and until officially notified in writing by SOTS that such filing is not necessary in view of the policy, procedure, pattern and practice of the Respondents of ordering a ballot for each registered voter.

For the Respondents:

BY: Mark T. Anastasi
8/10/12
Dated

Mark T. Anastasi
Bridgeport City Attorney

For the State of Connecticut

BY: Michael J. Brandi 8/15/12

Michael J. Brandi, Esq.
Executive Director
and Authorized Representative
Of the State Elections
Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

Adopted this 22 day of August, 2012 at Hartford, Connecticut by vote of the Commission.

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