

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Melissa A. Rickard, Windsor

File No. 2012-196

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Anita Mips and Karen Andrews, of the Town of Windsor, 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 Complainant, a visually impaired voter, alleges that she attempted to cast a ballot during the November 6, 2012 general election using the Alternative Voting System ("AVS") at the Oliver Ellsworth School polling place in Windsor. She alleges that the AVS system was not set up when she arrived at the polling place and that she was forced to cast a paper ballot using the help of her mother, who was with her at the time.
2. According to Ms. Rickard, she is legally blind. She alleges that entered the polling place with her mother at approximately 8:00 a.m. to cast her ballot. She asked to use the AVS machine. A poll worker (who turned out to be moderator Thomas Conroy) brought her over to the telephone used for indicating her selections. Mr. Conroy informed her that although the system was "operational," he did not have the proper information to log into the system. Mr. Conroy called the Respondents' office to try and get the correct access information, but after 15-20 minutes, Ms. Rickard gave up and requested a paper ballot which her mother helped her complete. Ms. Rickard alleges that this is the second election in which she was unable to use the AVS machine and she is upset that her "right to vote independently, in secret, had been violated once more."
3. Moderator Thomas Conroy does not deny any of the facts alleged. He fully recalled the circumstances of Ms. Rickard's issue. He asserted that Ms. Rickard and her mother told him that they were on their way to a funeral and had very little time to cast their ballots. He asserted that he is an experienced moderator who generally takes pride in his organization of the various duties of a moderator. However, he stated that while it was a very busy Election Day, he had no excuse for not having the correct information on hand when Ms. Rickard arrived to use the AVS system.

4. The Respondents here do not generally deny that the events alleged by the Complainant did occur. However, the Respondents assert that each moderator was trained on the use of the AVS machines and that they included the access codes to each polling place's AVS machines in the packets given to each moderator. However, the Respondents were unable to provide written evidence that they or the Oliver Ellsworth moderator, Mr. Conroy, tested the machine on the day of the election or when the machines were fully set up.
5. The Respondents admit that they were not available to Mr. Conroy at the time that he called and apologized that it took so long to get back. They assert that turnout was especially high that day and that they were attending to other matters, including but not limited to Presidential ballots and calls on other pressing matters. However, they assert that once they got back to Mr. Conroy, they were able to direct him to the correct information and assure that subsequent voters were able to use the AVS system.
6. The investigation did not reveal any AVS issues during the November 6, 2012 general election subsequent to the events of this matter.
7. The standard operating procedure on Election Day is for Inspiration Vote System ("IVS"), Connecticut's AVS provider, 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." The standard operating procedure at IVS on the day of a primary of election is to send a "fax blast" at 6:00 a.m., which sends a test fax to the AVS machine 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."
8. Here, the Office of the Secretary of the State confirmed that it received information from IVS that the AVS machine at the Oliver Ellsworth School in Windsor passed the "fax blast" test and that the test fax went through successfully.
9. General Statutes § 9-236b, the "Voters Bill of Rights" reads, in pertinent part:
 - (a) 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:

- (1) Inspect a sample ballot before voting;

- (2) Receive instructions concerning how to operate voting equipment, on sample voting equipment before voting;
- (3) Cast a ballot if the voter is in line when the polls are closing;
- (4) Ask for and receive assistance in voting, including assistance in languages other than English where required by federal or state law;
- (5) Vote free from coercion or intimidation by election officials or any other person;
- (6) Cast a ballot using voting equipment that accurately counts all votes;
- (7) Vote by provisional ballot if the individual registered to vote and the individual's name is not on the voter list;
- (8) Be informed of the process for restoring the individual's right to vote if the individual was incarcerated for a felony conviction; and
- (9) Vote independently and in privacy at a polling place, regardless of physical disability. . . . (Emphasis added.)

10. General Statutes § 9-247 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.)

11. 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.” Two prior matters before the Commission have involved the new AVS prescriptions under the amended statute. See *Referral from the Secretary of the State*, File No. 2012-008 and *Referral from the Secretary of the State*, File No. 2011-120.

12. In both of the above-captioned matters, the so-called “fax blast” had failed and the AVS machines were physically incapable of operating. Both matters ended in a finding that the registrars had violated General Statutes § 9-247.
13. Here, this matter presents the Commission with an issue of first impression. The Commission finds that the evidence shows that it was more likely than not that the machine was *mechanically* operational. It passed the “fax blast” test. However, the moderator lacked the ability properly operate the machine and as such could not process the voter.
14. The question for the Commission is if a voting machine (AVS or otherwise) is set up and technically/mechanically functional, but the moderator lacks the ability to use the machine, has the registrar (or registrars, as is the case here) failed to meet their burden of making sure that the machine is “tested and operable not later than one hour prior to the opening of the polling place?”
15. Considering General Statutes § 9-247 both in the context of the AVS system, but also within the context of the other voting machines available at the polling place, the Commission finds that under the facts of this case, while the Respondents appear to have met their responsibility to “cause each system to be in order and set and adjusted, to be delivered at the polling place, together with all necessary furniture and appliances,” the evidence is sufficient for the Commission to conclude that it is more likely than not that the Respondents failed to meet the second prong of assuring that each machine is “tested and operable not later than one hour prior to the opening of the polling place.”
16. The moderator was not capable of operating the AVS system and as such the machine was not “operable” as it should have been. It was the Respondents’ responsibility under General Statutes § 9-247 to assure that the machines were ready for the voters to use during the hours of voting, including that their poll workers could operate it. A mechanically functioning voting system without a human operator that can use it is as good as having no machine at all.
17. Considering the aforesaid, the Commission concludes that the Respondents here failed to fully meet their responsibilities under General Statutes § 9-247, which was the proximate cause of the Complainant’s inability to “[v]ote independently and in privacy at a polling place, regardless of physical disability” under the Voters Bill of Rights.
18. 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.

19. Here, the Respondents failed to properly set up 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 incident involved not more than a single individual who, after a wait, was able to cast her ballot by an alternate means. The evidence does not suggest that the failure by the Respondents was intentional. Moreover, the machines were set up and had a dial tone, if not tested and/or operable, before 6:00 a.m. on the day of the primary. Finally, the Respondents dealt with the issue on the spot and, after the aforementioned delay, the AVS machines were operable for the remainder of the day (and were utilized by another impaired voter).
20. However, this matter involved an AVS system for which the legislature recently chose to extend the same setup requirements as a standard tabulator, including, importantly, civil penalties for registrars who fail to timely set them up. While there appears to be no bad faith on the part of these registrars, a civil penalty is necessary here.
21. However, in consideration of the aforesaid, in exchange for this Agreement by the Respondents to henceforth comply with General Statutes § 9-247 as well as a letter of contrition to the Complainant signed by both Respondents explaining what occurred on Election Day that caused her to have to vote by alternate means and what measures they are undertaking to better set up and test the AVS systems for future primaries and elections, the Commission will agree to reduce the Respondent's civil penalty by 50%.
22. 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 after a full hearing and shall become final when adopted by the Commission. The Respondents shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
23. 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.
24. 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 Respondents in any subsequent hearing, if the same becomes necessary.
25. Upon the Respondents' compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

ORDER

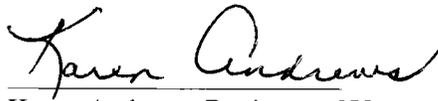
IT IS FURTHER ORDERED THAT that both Respondents will:

- 1) henceforth strictly comply with the requirements of General Statutes § 9-247
- 2) pay a civil penalty of \$200, reduced to \$100 if within 30 days of the Commission's approval of this Agreement, they draft, sign and send a letter of contrition to the Complainant explaining what occurred on Election Day that caused her to not be able to vote using the AVS and what measures they are undertaking to better set up and test such alternate voting systems for future primaries and elections.

The Respondent:

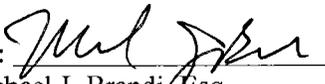

 Anita Mips, Registrar of Voters
 Town of Windsor

Dated: Nov. 19, 2013


 Karen Andrews, Registrar of Voters
 Town of Windsor

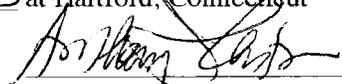
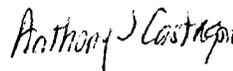
Dated: Nov 19, 2013

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: 12/8/13

Adopted this 20th day of November of 2013 at Hartford, Connecticut


 Stephen P. Cashman, Chair
 By Order of the Commission


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ENFORCEMENT COMMISSION