

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In re: Referral of the Secretary of the State

File No. 2014-167

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between The Office of the Hartford Registrars of Voters, 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

1. The Secretary's Referral was filed on behalf of Claude Holcomb, who alleged that he attempted to cast a ballot during the November 4, 2014 general election using the Alternative Voting System ("AVS") at the District 11 polling place in the City of Hartford. The Referral Alleged that the that the election officials at the polling place were not able to operate the AVS machine and after 50 minutes he left the polling place without voting and had to return in the afternoon.
2. According to Mr. Holcomb, who is in a wheelchair and is unable to write on his own. He alleged that he entered the polling place at approximately 10:20 a.m. to cast his ballot using the AVS system. A poll worker (who turned out to be moderator Benita Toussaint) brought him over to the telephone used for indicating his selections. Ms. Toussaint informed him that they were unable to operate the AVS machine and needed to call in someone from the Office of the Hartford Registrars of Voters to troubleshoot the machine. He alleges that after approximately 50 minutes of waiting he gave up and left the polling place.
3. Mr. Holcomb alleged that around approximately 1pm, he was called and told that the AVS machine was operational and that he could come back to cast his ballot, which he successfully did later that afternoon.
4. The Respondent Office of the Hartford Registrars of Voters does not deny any of the facts alleged. The moderator's diary for that day as well as statements by Moderator Benita

¹ This Agreement Containing Consent Order addresses those portions of the Referral and/or Complaint which the Commission could reasonably construe as alleging facts amounting to a specific violation of those laws within the Commission's jurisdiction. Any statements within the Referral and/or Complaint not addressed herein either did not specifically allege a violation or alleged facts which if proven true would not have amounted to a violation within the Commission's jurisdiction.

Toussaint confirm that the moderator's packet did not include the access code to operate the AVS system and that the AVS system was not in operation at the open of polls at 6:30am. Indeed, the evidence in the matter establishes that there were also technical issues with the machine above and beyond the administrative issue of the missing code and that the issue was not resolved until election official Ismael "Pancho" Torres arrived at 1pm with the access code.

5. The investigation here confirmed the above admissions that the AVS machine at District 11 was set up in the polling place but was not operational. According to the Respondent Office of the Hartford Registrars of Voters, former Democratic ROV Olga Vazquez had primary responsibility over setting up this polling place. According to the Respondent, their AVS technician, Mr. Torres, did successful field testing of the machine when it was set up the night before,² but Respondent admits that there is no written evidence to this effect and does not deny that the machine was not functional at the open of polls on Election Day.

6. 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;

² Here, the Office of the Secretary of the State confirmed that it received information from IVS that the AVS machine at the District 11 was indeed successfully registered with the AVS vendor, Inspiration Vote System as Mr. Torres asserts.

- (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.)

7. 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.)

- 8. 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.”
- 9. The Commission has previously held that failure to ensure that an AVS machine is operable when the polls open, even when it was tested days earlier, is a violation of General Statutes § 9-247. See *In the Matter of a Referral by the Secretary of the State*, File No. 2011-120 (“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. Thai attempted to use the system at 5:30 p.m.”).
- 10. Furthermore, even if the AVS machine was technically operational, the Commission has held that if the election officials at the polling location cannot properly operate the AVS machine, it is not considered “operable” pursuant to General Statutes § 9-247. *In the Matter*

of a Complaint by Melissa A. Rickard, Windsor, File No. 2012-196 (“The moderator was not capable of operating the A VS 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.”) See also, *In the Matter of a Referral by the Secretary of the State*, File No. 2016-043

11. 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.
12. Here, this matter is straightforward. Considering the aforesaid, the Commission concludes that the Respondent here failed to fully meet the responsibilities under General Statutes § 9-247.
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. This issue was part of a larger pattern of issues involving the Office of the Hartford Registrar of Voters, as discussed in more detail in *In re: Referral by the Secretary of the State*. File No. 2014-156, which is being resolved concurrently with this matter. The Commission incorporates those matters here, including the aggravating and mitigating circumstances discussed therein.
15. In consideration of the aforesaid aggravating and mitigating circumstances in this matter, the Commission concludes, and the Office of the Hartford Registrars of Voters agrees, that an appropriate civil penalty here is \$200.

16. 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.
17. 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.
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 Respondents in any subsequent hearing, if the same becomes necessary.
19. Upon the Respondents' compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.


ORDER

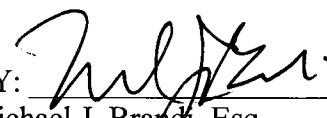
IT IS HEREBY ORDERED that the Office of the Hartford Registrars of Voters will henceforth strictly comply with the requirements of General Statutes §§ 9-236a & 9-247.

IT IS HEREBY ORDERED that the Office of the Hartford Registrars of Voters will remit a civil penalty of Two Hundred Dollars (\$200).

The Respondent:

For the State of Connecticut:

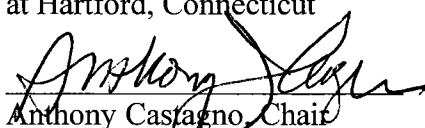

Office of the Hartford Registrars of Voters
By
Howard Rifkin, Hartford Corporation
Counsel

BY: 
Michael J. Brandi, Esq.
Executive Director and General Counsel
& Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: AUGUST 11, 2017

Dated: 8/16/17

Adopted this 16 day of Aug of 2017 at Hartford, Connecticut


Anthony Castagno, Chair
By Order of the Commission