

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Referral by the Secretary of the State

File No. 2016-043

AGREEMENT CONTAINING A CONSENT ORDER

The parties, Respondent Beth Kyle of West Hartford and Respondent Alice Weibel of West Hartford (collectively the “Respondents”) and the undersigned authorized representative of the State Elections Enforcement Commission (the “Commission”), enter into this agreement as authorized by Connecticut General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance with those provisions, the parties agree that:

PARTIES

1. At all times relevant hereto, Respondent Kyle was the Republican Registrar of Voters in the Town of West Hartford.
2. At all times relevant hereto, Respondent Weibel was the Democratic Registrar of Voters in the Town of West Hartford.
3. At all times relevant hereto Mary Silverberg was an elector in the Town of West Hartford.

ALLEGATIONS, FINDINGS, AND ANALYSIS

4. On April 26, 2016, Ms. Silverberg traveled to her polling place located at the Wolcott Elementary School in West Hartford in order to cast a ballot in the Presidential Preference Primary.
5. When Ms. Silverberg presented herself to the official checker, she requested that she be able to vote using the Alternative Voting System (hereinafter “AVS”) machine.¹
6. However, at the time Ms. Silverberg requested to use the AVS machine, it had not been properly configured and the election official responsible for the AVS machine could not locate the access code required for its operation.

¹ Alternative Voting System machines are designed to enable voters with visual disabilities, like Ms. Silverberg, to vote without compromising the secrecy of their ballot.

7. Because the AVS machine was not properly set up and the elections official could not locate the access code, there was a 30-45 minute delay before Ms. Silverberg could vote utilizing the AVS machine.
8. Section 9-242a-11 of the Regulations of Connecticut State Agencies sets out certain criteria for the organization of polling places and requires that “[a]t least one voting booth in each voting district shall be accessible to persons with disabilities[.]”
9. General Statutes § 9-247 further requires that all tabulators, including AVS machines, be tested and functional by the open of polls and 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.)

10. Evidence indicates that the Respondents had the AVS machine in question tested on April 20, 2016.
11. However, once the machines were moved to the polling place, they were not properly set up or tested.
12. 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.”).
13. 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.”).

14. The Respondents contend that they provided the proper training, equipment, and documentation to the Wolcott Elementary School elections officials to enable them to properly operate the AVS machine, and this is supported by the evidence discovered in this case. This is not in dispute.
15. However, General Statutes § 9-247 places the responsibility of ensuring that the AVS machines are “tested and operational” prior to the opening of the polls on the registrars. While it may have been the polling place elections officials that erred, it was the Respondents that were responsible for ensuring that the AVS machines were properly operational and that the elections officials understood how to operate them.
16. After the election, the Respondents took several proactive steps to ensure this would not happen again, to make amends to Ms. Silverberg, and to reach out to the community of people with disabilities in West Hartford. Specifically:
 - 1) Both Respondents met with Ms. Silverberg and explained what happened and admitted that the delay was the fault of the Respondents and their staff;
 - 2) The Respondents took additional steps to ensure that the AVS machines were operational for the August 2016 probate judge primary;
 - 3) Ms. Silverberg was invited to speak at a poll worker training sessions;
 - 4) West Hartford provided a link on its website to the Secretary of the State Fact Sheet, which references the use of AVS machines;
 - 5) The West Hartford ADA Coordinator was made aware of the issue, and was asked to work with the Registrars of Voters to ensure compliance and accessibility in the future; and
 - 6) The Registrars of Voters were invited to speak before the West Hartford Advisory Commission for Persons with Disabilities, which they did.

17. The Commission commends these efforts as they clearly demonstrate a commitment to ensuring every elector has equal, unencumbered access to the ballot box.
18. Nevertheless, failure to properly test and ensure the operation of AVS machines is a matter the Commission takes seriously as it directly impedes an individual's ability to exercise their right to vote. Moreover, even a delay in the process of voting can discourage that voter or other voters from voting in future elections. *See generally* Charles Stewart III, *Managing Polling Place Resources*, CALTECH/MIT VOTING TECHNOLOGY PROJECT (Nov. 2015) available at http://elections.delaware.gov/pdfs/manage_pp.pdf.
19. Once the Commission finds that a violation within its jurisdiction has occurred, it must then determine what civil penalty to assess. Pursuant to section 9-7b-48 of the Regulations of Connecticut State Agencies, in its 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.
20. Here, the Respondents failed to ensure that the AVS machines were operational 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. The evidence does not suggest that the failure by the Respondents was intentional. In fact, the Respondents' reaction to the event demonstrated a true commitment to ensuring all voters had access to the voting booth. There is no known history of similar acts of omissions by these Respondents.
21. Thus, while the Respondents have acted in an exemplary manner *since* the incident at the heart of this matter, the AVS machine was not properly "tested and operational" at the opening of the polls causing the voter to be unnecessarily delayed in the casting of her ballot. Accordingly, the Commission elects to exercise its civil penalty authority as detailed in the accompanying Order.

TERMS OF GENERAL APPLICATION

22. The Respondents admit to all jurisdictional facts and agrees 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.
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 to contest the validity of the Order entered into pursuant to this Agreement.
24. Upon the Respondents' agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against the Respondents regarding this matter.
25. It is understood and agreed by the parties to this Agreement that the Commission will consider this Agreement at its next available meeting and, if the Commission rejects it, the Agreement will be withdrawn and may not be used as an admission by the Parties in any subsequent hearing, proceeding or forum.


ORDER

It is hereby ordered that the Respondents shall henceforth strictly adhere to the requirements of General Statutes § 9-247 and section 9-242a-11 of the Regulations of Connecticut State Agencies.

It is further ordered that the Respondent Kyle shall pay a two hundred dollar civil penalty (\$200).

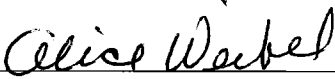
It is further ordered that the Respondent Weibel shall pay a two hundred dollar civil penalty (\$200).

The Respondents:



Beth Kyle
50 South Main Street
West Hartford, CT 06107


Dated: 11/18/16



Alice Weibel
50 South Main Street
West Hartford, CT 06107

Dated: 11/23/16

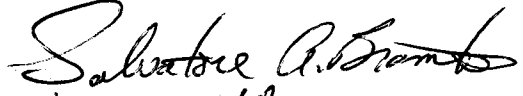
For the State of Connecticut:

By: 

Michael J. Brandi
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT 06106

Dated: 11/28/16

Adopted this 14th day of December, 2016 at Hartford, Connecticut by vote of the Commission.



Salvatore A. Brando, Chairman
By Order of the Commission

RECEIVED
STATE ELECTIONS

NOV 25 2016

ENFORCEMENT COMMISSION