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STATE OF CONNECTICUT ENFORCEMENT
COMMISSION
STATE ELECTIONS ENFORCEMENT COMMISSIONComplaint of Joaquina Abner
Bridgeport, Connecticut

File No. 2008-029

**AGREEMENT CONTAINING CONSENT ORDER CONCERNING A
VIOLATION OF SECTION 302 OF THE HELP AMERICA VOTE ACT OF 2002**

This Agreement, by and between J. Daniel Merena of Bridgeport, 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 Connecticut General Statutes § 4-177(c). In accordance herewith, the parties agree that:

1. The Complainant, a Bridgeport resident, filed a sworn affidavit of complaint alleging her difficulty in obtaining a provisional ballot during the February 5, 2008 presidential preference primary that took place in Bridgeport, Connecticut. Provisional ballots are required in elections for federal office by the Help America Vote Act of 2002, 42 U.S.C. § 15482 (hereinafter "HAVA"). Pursuant to General Statutes § 9-7b (a)(18), the State Elections Enforcement Commission has the authority to receive and determine that complaint as it alleges a HAVA violation. Notably, the Complainant had the right to request a hearing concerning this matter but she did not. See Regs., Conn. State Agencies § 9-7b-88. Furthermore, she waived her right to have the Commission determine the matter no later than ninety days after her complaint was filed. See Regs., Conn. State Agencies § 9-7b-90.
2. On February 5, 2008, the Complainant went to her polling place on or about 1:00 p.m. to vote in the presidential preference primary. The Moderator of that polling place was J. Daniel Merena (the "Respondent").
3. The Complainant attempted to check in as a registered Democrat but was informed by the official checker that she was not on the list of registered Democrats. She informed the official checker that she had voted at that polling place in the past and that she had always been a registered Democrat.
4. The checker took the Complainant's identifying information and relayed it to an individual at the Office of the Registrars of Voters in Bridgeport, Connecticut to see whether the Complainant was registered as a Democrat. After speaking with the Registrars' Office, the Complainant was informed that when she registered she did not affiliate with either party and, as such, could not vote at the presidential preference primary. She left the polling place without voting.
5. After being turned away at her polling place, the Complainant spoke with a "voter protection" volunteer attorney from the campaign of Barack Obama, who informed

the Complainant that she had the right under the Help America Vote Act to cast a provisional ballot in the primary.

6. The Complainant returned to the polling place at approximately 3:30 p.m., asked for a provisional ballot from the official checker and was referred to the moderator.
7. However, the Respondent was busy and the Complainant was instead referred to the Assistant Registrar, who informed her that no provisional ballots were being made available at the primary and again she was turned away.
8. After being turned away for a second time, the Complainant again spoke with volunteer attorneys at the Obama campaign, who encouraged her to return to the polling place and insist on a provisional ballot.
9. The Complainant returned to the polling place for a third time around 7:00 p.m. and asked for the Respondent specifically. This time, the Complainant had a local volunteer attorney from the Obama campaign waiting on her mobile telephone. The Complainant gave the telephone to the Respondent and the volunteer attorney informed the Respondent of the Complainant's right to a provisional ballot, even in a presidential preference primary.
10. In addition to the volunteer attorney, the Respondent also spoke with the Deputy Secretary of the State, Lesley Mara via the Complainant's mobile telephone. Ms. Mara also told the Respondent that the Complainant had a right to a provisional ballot and informed him that an envelope containing provisional ballots should have been provided to him.
11. The Respondent subsequently sought out and found the envelope containing provisional ballots and the Complainant was subsequently allowed to cast her provisional ballot after her third attempt.
12. Section 302 of the Help America Vote Act of 2002, 42 U.S.C. 15482, provides as follows in relevant part:

If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot as follows:

1. An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election. . . .
13. As noted, the Respondent was the moderator of the Complainant's polling place. The Respondent was the official that received specific instructions regarding the provisional ballot notification requirement from the Secretary of the State. As such,

the Respondent is deemed to be the election official responsible for notifying the Complainant that she could cast a provisional ballot in that election as required by the H.A.V.A.

14. Despite three visits to the polling place, the Complainant was not notified of her right to cast a provisional ballot when she checked in, a failure for which the Respondent takes full responsibility. As such, the Respondent is responsible for violating section 302 of the Help America Vote Act of 2002, 42 U.S.C. 15482.
15. The Respondent maintains that this violation of the law derived from his good faith misunderstanding of the availability of provisional ballots at primaries. The Respondent further maintains that once he understood the requirement, he made sure that all of the poll workers complied for the brief remainder of the night. The evidence does not contradict his claims. However, the Commission notes that the polls had been open for approximately thirteen hours at that point and there is no information regarding how many other persons may have been denied the right to a provision ballot under H.A.V.A.
16. While the Secretary of the State did provide moderators, including the Respondent, with instructions concerning the distribution and use of provisional ballots, those instructions did not plainly identify when an election official's duty arises to notify individuals about those provisional ballots. Had the Respondent read the instructions, he may not have fully understood the H.A.V.A. notification requirement unless he actually read H.A.V.A.. The Respondent admits that he did not read the applicable H.A.V.A. provision. Nonetheless, the Respondent was certainly required to provide the Complainant a provisional ballot upon request.
17. Fortunately, the Complainant made efforts to understand her voting rights. As a result, she returned persistently to her polling place and had both an Obama campaign representative and the Deputy Secretary of the State explain the provisional ballot H.A.V.A. requirements to the Respondent via telephone. It was only thereafter that the Respondent provided the Complainant with a provisional ballot and receipt. The Complainant cast that ballot but, according to the Connecticut Voter Registration System, that ballot was not counted since the Complainant had not, in fact, affiliated with the Democratic Party when she registered to vote.
18. Nonetheless, the Respondent's violation of section 302 of the Help America Vote Act of 2002, 42 U.S.C. 15482, is a serious offense; especially here where he only learned of and complied with that provision an hour or so before the polls closed. The provisional ballot requirements set forth in H.A.V.A. help prevent the disfranchisement of eligible voters. As such, election officials must understand and comply with those requirements during all federal elections.
19. 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.

20. It is understood and agreed that this fully executed Agreement will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, will be deemed withdrawn by the Respondent and will not be used as an admission in any subsequent hearing, if the same becomes necessary.
21. 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.
19. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against him pertaining to this matter.

ORDER

IT IS HEREBY ORDERED that henceforth, the Respondent shall strictly comply with the requirements of section 302 of the Help America Vote Act of 2002, 42 U.S.C. 15482.

IT IS FURTHER ORDERED that the Respondent shall read and initial section 302 of the Help America Vote Act of 2002, 42 U.S.C. 15482, which has been provided herewith, and return that document to the Commission along with this Agreement.

For the Respondent:

BY: *Daniel Merena* 1-11-10
Date
Daniel Merena
32 Eastway Road
Bridgeport, Connecticut

For the State of Connecticut

BY: *Joan Andrews*
Joan M. Andrews, Esq.
Director of Legal Affairs,
and Enforcement and
Authorized Representative
of the State Elections
Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut
1/19/10

Adopted this 20th day of January, 2010 at Hartford, Connecticut by vote of the Commission.

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

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Joaquina Abner
Bridgeport, Connecticut

File No. 2008-029

Section 302 of the Help America Vote Act of 2002
42 U.S.C. 15482

United States Code Annotated Currentness

Title 42. The Public Health and Welfare

Chapter 146. Election Administration Improvement

*Subchapter III. Uniform and Nondiscriminatory Election Technology and Administration Requirements

*Part A. Requirements

➔§ 15482. Provisional voting and voting information requirements

(a) Provisional voting requirements

If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot as follows:

(1) An election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election.

(2) The individual shall be permitted to cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place stating that the individual is--

(A) a registered voter in the jurisdiction in which the individual desires to vote; and

(B) eligible to vote in that election.

(3) An election official at the polling place shall transmit the ballot cast by the individual or the voter information contained in the written affirmation executed by the individual under

paragraph (2) to an appropriate State or local election official for prompt verification under paragraph (4).

(4) If the appropriate State or local election official to whom the ballot or voter information is transmitted under paragraph (3) determines that the individual is eligible under State law to vote, the individual's provisional ballot shall be counted as a vote in that election in accordance with State law.

(5)(A) At the time that an individual casts a provisional ballot, the appropriate State or local election official shall give the individual written information that states that any individual who casts a provisional ballot will be able to ascertain under the system established under subparagraph (B) whether the vote was counted, and, if the vote was not counted, the reason that the vote was not counted.

(B) The appropriate State or local election official shall establish a free access system (such as a toll-free telephone number or an Internet website) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.

States described in section 1973gg-2(b) of this title may meet the requirements of this subsection using voter registration procedures established under applicable State law. The appropriate State or local official shall establish and maintain reasonable procedures necessary to protect the security, confidentiality, and integrity of personal information collected, stored, or otherwise used by the free access system established under paragraph (5)(B). Access to information about an individual provisional ballot shall be restricted to the individual who cast the ballot.

(b) Voting information requirements

(1) Public posting on election day

The appropriate State or local election official shall cause voting information to be publicly posted at each polling place on the day of each election for Federal office.

(2) Voting information defined

In this section, the term "voting information" means--

(A) a sample version of the ballot that will be used for that election;

(B) information regarding the date of the election and the hours during which polling places will be open;

(C) instructions on how to vote, including how to cast a vote and how to cast a provisional ballot;

(D) instructions for mail-in registrants and first-time voters under section 15483(b) of this title;

(E) general information on voting rights under applicable Federal and State laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and

(F) general information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation.

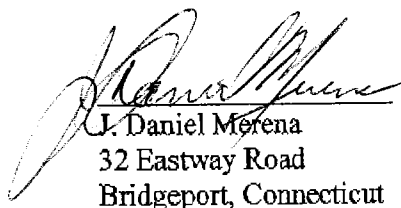
(c) Voters who vote after the polls close

Any individual who votes in an election for Federal office as a result of a Federal or State court order or any other order extending the time established for closing the polls by a State law in effect 10 days before the date of that election may only vote in that election by casting a provisional ballot under subsection (a) of this section. Any such ballot cast under the preceding sentence shall be separated and held apart from other provisional ballots cast by those not affected by the order.

(d) Effective date for provisional voting and voting information

Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2004.

I, J. Daniel Merena, certify, by my signature below, that on the date below, I read section 302 of the Help America Vote Act of 2002, 42 U.S.C. 15482.


J. Daniel Merena
32 Eastway Road
Bridgeport, Connecticut

1-11-10
Date