

FEB 16 2010

STATE OF CONNECTICUT  
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by  
Marianne M. Allard, Taftville

File No. 2008-225

AGREEMENT CONTAINING HENCEFORTH ORDER FOR VIOLATIONS OF  
CONNECTICUT GENERAL STATUTES §§ 9-265 and 9-355.

This agreement by and between Ulric "Rick" F. Tetrault of the City of Norwich, County of New London, State of Connecticut, hereinafter referred to as the Respondent, and the undersigned 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. Respondent served as the moderator at the Knights of Columbus Precinct 3 polling place in the City of Norwich for the November 4, 2008 presidential election.
2. Complainant, a registered write-in candidate for state senate, alleged that she cast her ballot at the Precinct 3 polling place in Norwich at the November 4, 2008 presidential election but that the vote she cast for herself for State Senate for District 19 was not recorded in the results reported by the Office of the Secretary of the State.
3. The Precinct 3 Election Results Report tape, which was signed by Respondent, indicates that there were the following write-in totals by office according to the voting tabulator: President/Vice-President (3), Representative In Congress (1), State Senator (5), State Representative (0), Registrar of Voters (1). When the optical scan voting tabulator detects that an oval has been completed for a write-in vote, the other offices are counted by the tabulator and the ballot then is deflected to the separate write-in bin in the same ballot container for hand counting of the write-in votes by polling place officials. Respondent's Moderator's return for District 3 does not reflect any write-in votes, nor does the return include a data field to record such results, in contrast to the printed results.
4. The Office of the Secretary of the State listed four pairs of registered write-in candidates for President and Vice-President, one registered write-in candidate for Representative in Congress for the Second Congressional District, which includes Norwich, and two write-in candidates for State Senator for District 19, one of which was the Complainant. The Office of Secretary of the State Election Results Reports for President/Vice-President, Representatives in Congress, and State Senator District 19 for the November 4, 2008 reported no votes for any write-in candidates for the entire City of Norwich, based upon the City of Norwich's submission of election results showing none.

5. The Respondent had prior experience as a moderator in Norwich, and had been re-certified as a moderator on August 21, 2008. He did not recall whether there were any write-in votes or ballots at the end of the day or whether he checked the tabulator write-in bin at the close of the polls.
6. Respondent claims that after the polls closed he brought the election tally from Precinct 3 down to the Registrars' office. He does not remember any mention of write-in candidates by the Registrars that were registered for the November 4, 2008 election. However, Respondent does recall that prior to the election he was trained in the process to record and count write-ins at the November 4, 2008 election.
7. Allegations with respect to the Registrars of Voters, pertaining to the failure to record and count write-in votes at the November 4, 2008 City of Norwich election, are addressed in a separate document.
8. General Statutes § 9-373a provides:

Any person desiring to be a write-in candidate for any state, district or municipal office to be filled at any regular election shall register his candidacy with the Secretary of the State on a form prescribed by the secretary. The registration shall include the candidate's name and address, the designation and term of the office sought, a statement of consent to the candidacy, and any other information which the secretary deems necessary. In the case of a write-in candidacy for the office of Governor or Lieutenant Governor, the registration shall include a candidate for each of those offices, or shall be void. The registration shall not include a designation of any political party. The registration shall be filed with the secretary not more than ninety days prior to the election at which the office is to be filled and not later than four o'clock p.m. on the fourteenth day preceding the election, or the registration shall be void. No person nominated for an office by a major or minor party or by nominating petition shall register as a write-in candidate for that office under the provisions of this section, and any registration of a write-in candidacy filed by such a person shall be void.

Notwithstanding any provision of this section to the contrary, any person desiring to be a write-in candidate for the municipal office of town meeting member in any town having a representative town meeting which has seventy-five or more members shall register his candidacy with the town clerk of such town not later than the last business day preceding such election.

9. The Complainant was a registered write-in candidate for state Senate in the 19<sup>th</sup> Senatorial District, pursuant to General Statutes § 9-373a. Further, the Office of the Secretary of the State provided notice to the City of Norwich of registered write-in candidates prior to the November 4, 2008 election. This notice indicated that there were registered write-in candidates for the offices of President/Vice-President, Representative In Congress, State Senator, State Representative, and Registrar of Voters.

10. General Statutes § 9-265 provides in pertinent part:

(a) *A write-in vote for an office, cast for a person who has registered as a write-in candidate for the office* pursuant to subsection (b) of section 9-175 or section 9-373a, ***shall be counted and recorded.*** Except as otherwise provided in this section, a write-in vote cast for a person who has not registered shall not be counted or recorded.

...  
(d) *Except as hereinafter provided, a write-in vote for the office of President or Vice-President cast for a person nominated for such office by a major or minor party or by nominating petition shall be counted and recorded and deemed to be a vote for each of the duly-nominated candidates for the office of presidential elector represented by such candidate for President or Vice-President.* A write-in vote for the office of President or Vice-President, cast for a person nominated for either of such offices by a major or minor party or by nominating petition, in conjunction with a write-in vote for the other such office cast for a person nominated for either office by a different party or petition, shall not be counted or recorded for either office. ...  
[Emphasis added.]

11. General Statutes § 9-175 provides in pertinent part:

(b) In the case of a write-in candidate for President of the United States, such candidate may register his candidacy with the Secretary of the State by submitting his name and the names of a vice presidential candidate and candidates for the office of elector in a number not exceeding the whole number of electors to which the state is then entitled. Such registration shall be on a form prescribed by the Secretary of the State, which form shall include a statement of consent to being a candidate by each proposed candidate for elector and by the candidate for Vice President. Such registration shall not include a designation of political party. A candidate for President may register at any time after January first of the election year and not later than four o'clock p.m. on the fourteenth day preceding the election at which the offices of

presidential elector and vice presidential elector are being contested. *If a candidate has so registered, a vote may be cast by write-in ballot for such candidate by writing in the last name of the candidate for President and the last name of the candidate for Vice President or only the last name of the candidate for President; such write-in ballot shall be counted, and shall be in all respects effective, as a vote for each of the presidential electors representing such candidates for President and Vice President.* No person nominated for the office of President, Vice President, or presidential elector by a major or minor party or by nominating petition shall register as a write-in candidate for such office under the provisions of this section and any such registration of a write-in candidacy filed by such a person shall be void. [Emphasis added.]

12. General Statutes § 9-309 provides in pertinent part:

As soon as the polls are closed, the moderator, in the presence of the other election officials, shall immediately lock the voting machine against voting and immediately open the counting compartments, giving a full view of all the counter numbers to all the election officials present. The moderator shall, in the order of the offices as their titles are arranged on the machine, read and announce in distinct tones the result as shown by the counter numbers, giving the number indicated by each counter and indicating the candidate to whom such counter belongs, and shall read the votes recorded for each office on the voting machine ballot label. He shall also, in the same manner, announce the vote on each constitutional amendment, proposition or other question voted on. The vote so announced by the moderator shall be taken down by each checker and recorded on the tally sheets. *Each checker shall record the number of votes received for each candidate on the voting machine ballot label and also the number received by each person for whom write-in ballots were cast.* ... [Emphasis added.]

13. Regulations of Connecticut State Agencies § 9-242a-23 provides:

The polling place officials shall complete the moderator's returns and shall be guided by instructions of the Secretary of the State. The moderator and assistant registrars of voters shall record on the moderator's returns the voting tabulator result totals for each candidate and question. *The moderator and assistant registrars of voters shall unlock and remove all the ballots from the write-in bin. They shall record the number of ballots in the write-in bin. They shall count by hand the votes cast for the office in which*

***the elector indicated a write-in vote. They shall record on the moderator's returns the write-in votes in accordance with the law governing write-in ballots. They shall seal the write-in ballots in a depository envelope marked "write-in bin" and place them in the ballot transfer case.*** The law providing that the intent of the voter governs when counting absentee ballots shall apply to ballots counted by hand. Ballots counted by hand shall be counted by teams of two officials from opposing political parties and questions shall be submitted to the moderator for decision and endorsement on the ballot.

[Emphasis added.]

14. There were a total of 10 write-in votes recorded on the Election Result Reports identified by the voting tabulators used in Norwich for the November 2008 election for Precinct 3, where Respondent served as moderator. Despite the tabulators identifying and separating ten write-in ballots, no write-in votes were tallied and recorded in the vote totals by Respondent or the assistant registrars of voters under his direction, for the November 4, 2008 election.
15. According to such printed results as described in paragraph 14 above, ten ballots should have been visually inspected by the Respondent to determine if they contained votes properly cast for registered write-in candidates.
16. The Commission's enabling statute, General Statutes § 9-7b empowers it to investigate alleged violations of General Statutes pertaining to elections, primaries and referenda, and does not extend to the regulations promulgated by the Office of the Secretary of the State, it is note worthy that the Respondent, as moderator of Precinct 3, failed to ensure that either he or his assistant registrars unlocked and removed all the ballots from the write-in bins, recorded the number of ballots in the write-in bins, and that they count and record on the moderator's returns the write-in votes for Precinct 3 in accordance with the law governing write-in ballots as required by § 9-242a-23 Regulations of Connecticut State Agencies.
17. General Statutes § 9-355 provides:  
***Any person who, without reasonable cause, neglects to perform any of the duties required of him by the laws relating to elections or primaries and for which neglect no other punishment is provided,*** and any person who is guilty of fraud in the performance of any such duty, and any person who makes any unlawful alteration in any list required by law, shall be fined not more than three hundred dollars or be imprisoned not more than one year or be both fined and imprisoned. Any official who is convicted of fraud in the performance of any duty imposed upon him by any law relating to the registration or admission of electors or to the conduct of any election shall be disfranchised. Any public officer or any election official upon whom any duty is imposed by part I

of chapter 147 and sections 9-308 to 9-311, inclusive, who wilfully omits or neglects to perform any such duty or does any act prohibited therein for which punishment is not otherwise provided shall be fined not more than two thousand dollars or imprisoned not more than three years or both.

[Emphasis added.]

18. Respondent claims that he was not aware prior to the election or at the time of the election that any registered write-in votes had been cast in Precinct 3. Further, Respondent claims that the Registrars of Voters did not make him aware of any registered write-in candidates.
19. Even accepting the Respondent's argument that he was not informed by the Registrars prior to the election that there were certified write-in candidates on the ballot in the City of Norwich, he should have been aware during the tally and prior to certification of the Precinct 3 moderator's return that the tabulators had identified and diverted 10 write-in ballots, which printed on the election results for report for Precinct 3.
20. Respondent had a duty to count all write-in votes for registered write-in candidates in Precinct 3 pursuant to General Statutes §§ 9-265, 9-355 and Regulations of Connecticut State Agencies § 9-242a-23.
21. The Commission concludes that by failing to perform his duties in assuring that that write-in votes for registered write-in candidates were counted in Precinct 3 at the November 4, 2008 election in the City of Norwich, the Respondent violated General Statutes § 9-265.
22. The Commission rejects the notion that the Respondent was not responsible for counting properly cast write-in votes because the Registrars may not have informed him that there were registered write-in candidates on the ballot in Precinct 3.
23. Montville Registrar of Voters Lorraine Elliott conducted the training sessions for the Norwich election officials prior to the November 4, 2008 election. Records indicate that Respondent attended the August 21, 2008 training session in Norwich. Further, the Commission finds that this session included specific details on how to check for write-in votes and report and tally such votes at the close of the polls on Election Day.
24. The Commission lacks the authority to impose civil penalties for violations of the Regulations of the Secretary of the State or General Statutes §§ 9-175 and 9-355, pursuant to General Statutes § 9-7b(a)(2). The Commission has the authority to impose a civil penalty for violations of Conn. Gen. Stat. § 9-265, pursuant to General Statutes § 9-7b(a)(2).
25. The Commission concludes that Respondent failed to comply with the procedures for write-in ballots prescribed by Regulations of Connecticut State Agencies § 9-242a-23. The Commission further concludes that Respondents thereby failed to comply with a duty required by election law for which no other punishment is provided. The Commission therefore finds that the Respondent violated General Statutes § 9-355.

26. 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 into after a full hearing and shall become final when adopted by the Commission.
27. 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.
28. 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 Respondent in any subsequent hearing, if the same becomes necessary.
29. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against him with respect to this matter.

**ORDER**

IT IS HEREBY ORDERED THAT the Respondent shall henceforth strictly comply with the requirements of General Statutes §§ 9-265 and 9-355.

The Respondent

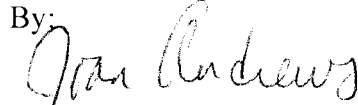
For the State of Connecticut

By:



Rick F. Tetrault  
73 Hunters Avenue  
Norwich, Connecticut

By:

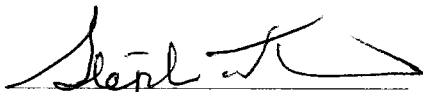


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Enforcement and Authorized  
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20 Trinity Street, Suite 101  
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Dated: 2/12/10

Dated: 2/16/10

Adopted this 17<sup>th</sup> day of February 2010 at Hartford, Connecticut by vote of the Commission.



Stephen F. Cashman, Chairman  
By Order of the Commission