

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

Complaint of Beth Denton, West Haven

File No. 2009-087

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Michelle Hufcut & Deborah Collins of the City of West Haven, County of New Haven, 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 instant Agreement concerns a Complaint alleging facts giving rise to 8 separate causes of action, all stemming from a September 15, 2009 Democratic primary held in the City of West Haven.
2. At all times relevant to the instant Complaint, Ms. Hufcut and Ms. Collins were the Democratic Registrar of Voters and the Town Clerk, respectively.

COUNT ONE: Failure to Notice Special Voter Registration Session

3. Complainant alleges that Respondent Democratic Registrar of Voters Michelle Hufcut failed to make proper public notice of the statutory enrollment session for admission of electors prior to the September 15, 2009 primary.
4. General Statutes § 9-16 provides::

The registrars of voters in each town shall give notice of the time and place of each session for the admission of electors held pursuant to section 9-17 by publication in a newspaper published or circulated in such town not more than fifteen nor less than five days before each such session. Nothing herein shall require that such publication be in the form of a legal advertisement.

5. General Statutes § 9-17 (a) provides, in pertinent part:

(a) For the purposes of this section, "primary day" means the day that a primary for state, district and municipal offices is being held in accordance with section 9-423, and "election day" means the day of each regular election. (1) The registrars of voters of each town shall hold sessions to examine the qualifications of electors and admit those found qualified on the dates and at the times set forth in this section. Such sessions shall be held on the following days during the hours indicated, except as provided in subdivision (2) of this subsection:

Day	Hours
<i>Fourteenth day before primary day</i>	<i>any two hours between 5:00 p.m. and 9:00 p.m.</i>
Saturday of third week before election day	10:00 a.m. to 2:00 p.m.
Seventh day before election day	9:00 a.m. to 8:00 p.m.

. . . (Emphasis added.)

6. In response to the instant Complaint, Respondent Hufcut presented a copy of an advertisement noticing that an enrollment session would be held in West Haven on September 1, 2009 between the hours of 5:00pm and 7:00pm. Included with the advertisement is a receipt from the Journal Register Company indicating that the advertisement was run in the New Haven Register on August 30, 2009, two days prior to the scheduled enrollment session. The New Haven Register's circulation area includes the City of West Haven.
7. Considering the aforesaid, the Commission concludes that the evidence is sufficient to show that Respondent Hufcut met her responsibility under General Statutes §§ 9-16 & 9-17 (a). This allegation is dismissed.

COUNTS TWO & THREE: Failure to Timely Inspect & Test Tabulators & Ballot Cards or to Notify the Candidates of the Testing Session

8. Here, the Complainant alleges that Respondent Hufcut failed to timely test the voting tabulators and ballot cards. The Complainant further alleges that Respondent Hufcut was required to notice the candidates of such testing session, but failed to do so.
9. Section 9-242a-5 of the Regulations of Connecticut State Agencies provides, in relevant part:

Beginning as soon as ballots and ballot cards are available and not later than the tenth day before the election or primary, the registrars shall conduct ballot card testing of every programmed memory card with samples of each different ballot card printed for the election or primary. The purpose of the test is to ensure that (1) ballots are printed properly, (2) timing, diagnostic and card identification marks are correctly located on the ballot, (3) memory cards are programmed with accurate information, and (4) the voting tabulators tally ballots correctly. . . . (Emphasis added.)

10. General Statutes § 9-244 provides, in relevant part:

(a) Such registrars of voters shall give written notice to the chairpersons of the town committees of the political parties of the day and place a mechanic or mechanics will begin the preparation, test voting and sealing of the machines for the election, including any additional machines required under section 9-238. Such notice shall be given at least one day before the work on the preparation of such machines begins.

(b) Each such chairperson and any candidate for an office appearing on the ballot may be present, or may designate a watcher who may be present, during the preparation of such machines, but such chairpersons, candidates and watchers shall not interfere with, or assist in, the preparation of the machines. . . . (Emphasis added.)

11. Respondent Hufcut admits that she conducted a testing session on September 8, 2009, 7 days prior to the primary. She also admits that she did not send notice to any specific candidate of the testing session, but she asserts that she sent written notice to the chairpersons of the respective political slate committees supporting the endorsed and challenge slate of candidates.

12. As an initial matter, the Registrar of Voters is not required to notice candidates in a primary of the date and time of the testing session. General Statutes § 9-244 required Respondent Hufcut to notice only the chairperson of the town committee, but not the candidates. No allegation has been made, or evidence presented of a failure to comply with § 9-244. This allegation is dismissed.

13. Turning to the next part of this allegation, the Commission concludes that by holding a testing session less than 10 days prior to the September 15, 2009 primary, Respondent Hufcut failed to comply with her responsibilities under § 9-242a-5 of the Regulations of Connecticut State Agencies. However, the Commission also finds that no evidence has been presented that Respondent Hufcut's error was material or negatively affected the outcome of the primary in West Haven. Moreover, this was Respondent Hufcut's first time serving as Registrar of Voters for a primary or election. In exchange for an agreement by this Respondent to henceforth comply the aforementioned regulation, the Commission will take no further action regarding this allegation.

COUNT FOUR: Failure to Supply Supplemental Voter List

14. Here, the Complainant alleges that Respondent Hufcut failed to supply supplementary voter lists, in violation of General Statutes § 9-55. The Complainant elaborated that "a supplemental list of voters who registered after the 9/14/2009 noon deadline was not provided to poll workers or to our campaign. No such list was available at the polls."

15. General Statutes § 9-55 provides, in relevant part:

(a) The registrars shall cause to be printed at least once during the calendar year a sufficient number of copies of complete, corrected enrollment lists certified by them as correct, provided a supplementary or updated list shall be printed within one week after a session held on the fourteenth day before a primary.

. . .

(d) Whenever a list is required by this section to be printed within one week after the session held on the fourteenth day before the primary, a supplement to such list shall be compiled by the registrars of persons who after such date and prior to twelve o'clock noon of the last business day before the primary become eligible to vote in such primary. *The registrars may combine such separate compilation with the foregoing printed list either by inserting the names in writing or by reprinting the list incorporating the supplementary or updated list into a single printed list.*

(e) The registrars shall file one copy of each such list with the town clerk which copy shall be available for public use in the office of the town clerk until the printing of the next completed, corrected enrollment list; and *they shall deliver to the chairman of the town committee of each political party five copies of each such list for each voting district in the town. Upon request the registrars shall give one complete set of such lists to each candidate for nomination for any office or for election as a town committee member.* They shall deliver a sufficient number of copies thereof to the moderator of each primary. With each printing the registrars shall retain at least six copies of each such list and such copies shall be available for public use in the office of the registrars until the printing of the next complete, corrected enrollment list. No petition brought under the provisions of section 9-63 shall operate to delay the completion and printing of such lists. If the petition of any elector is granted after any such list has been completed, the registrar or assistant registrar shall issue to such elector a certificate showing that the elector is entitled to the privileges accompanying enrollment in the political party named in the elector's petition. . . . (Emphasis added.)

16. Respondents Hufcut and Collins assert that for the primary, instead of using the printed supplements required by § 9-55 (d) along with the original list required by § 9-55 (a), they printed the entire combined list over after the registration deadline had passed and hand-wrote late-added supplemental voters. That original list, with hand-written additions as necessary, was the list that was available at the polls. Moreover, the Respondents assert that multiple copies of this full list were available at the Town Clerk's Office for the campaigns to pick up if they wanted. They stated that up to and including primary day, representatives of all of the campaigns eventually picked up

this list from the Town Clerk's office. No evidence has been presented that belies this statement.

17. As an initial matter, the Commission concludes that the evidence is insufficient to show that the Respondents failed to supply a voter list to the polling places that included all of the eligible voters on that day. The Registrars are permitted to reprint the entire list in lieu of adding supplements. No evidence has been presented that they failed to do this. This allegation is dismissed.
18. Concerning the allegation that the Respondents failed to provide the campaigns with a supplementary list, the Commission concludes that there is no affirmative duty to do so. Rather, General Statutes § 9-55 (e) requires that “[u]pon request the registrars shall give one complete set of [the original and supplementary] lists to each candidate for nomination for any office or for election as a town committee member.” (Emphasis added.) No evidence has been presented that upon request, the Respondents failed to give such lists to any candidate for any office in the September 15, 2009 primary. Accordingly, this allegation is dismissed.

COUNT FIVE: Failure to Supply Ballot Transfer Cases

19. Here, the Complainant alleges that “[b]allot transfer bags were not available at the close of polls to secure ballots” She alleges that the ballots were instead locked and sealed inside the ballot boxes and stored at the polling places.
20. Section 9-242a-27 of the Regulations of Connecticut State Agencies reads, in pertinent part:

After all election results reports have been produced, the moderator and assistant registrars of voters shall record on the moderator's return the number on the public counter, close down the tabulator and remove the tabulator from the ballot box according to the manufacturer's instructions. They shall not break the seal on the tabulator and they shall record such number on the moderator's return. They shall place the tabulator in its carrying case and seal the case and record such number on the moderator's return. They shall seal all depository envelopes with non-reusable tape. *They shall place in the ballot transfer case all depository envelopes from the polling place and all ballots from the regular bin.* The Secretary of the State may prescribe that the depository envelopes containing the empty envelopes and rejected absentee ballots, the depository envelope containing the challenged ballots and the depository envelope containing the spoiled ballots need not be placed in the ballot transfer case. If absentee ballots are counted at the polling place, the certificate of absentee ballot count shall be completed and the result of the absentee ballot count shall be entered on the moderator's returns in the manner prescribed by the Secretary of the State. The moderator shall announce the total results for each candidate and question. *The moderator and assistant registrars of voters shall*

indicate on the moderator's returns, the number of the seal that will be used to secure the ballot transfer case. They shall place a signed copy of the election results report, which was produced by the tabulator, in the ballot transfer case and seal the ballot transfer case. The moderator shall label the keys in accordance with instructions from the Secretary of the State and return the keys, the tabulator, the ballot transfer case, the original moderator's return with the original election results report attached, and other election materials to the registrars of voters. The registrars of voters shall file the original moderator's return and official registry list with the municipal clerk by noon of the day after the election or primary. The ballot transfer case shall be sealed for the period of time prescribed for sealing absentee ballots and then shall be unsealed and the contents destroyed. The tabulator shall be sealed for the period of time prescribed for sealing voting tabulators. (Adopted effective October 1, 1999; amended March 27, 2008; emphasis added.)

21. General Statutes § 9-259 (a) reads:

The moderator of the election in each municipality, voting district or ward shall appear at the office of the registrar of voters not later than eight o'clock p.m. of the day before the election *and there receive from the registrar of voters the sample ballot, all checklists and other supplies necessary to conduct the election that have not been delivered previously.* The moderator shall receive keys for each voting tabulator to be used in the polling place and sign a receipt for such. (Emphasis added.)

22. The Respondent does not generally deny that the ballot cases were not provided at the polling place. The town owned multiple cases, but the Respondent asserts that she believed that she had the discretion not to use them. Instead, she instructed moderators to lock the ballots inside the ballot boxes and keep the ballot boxes and tabulators locked inside large, blue rolling carts which were lockable from the outside and also had the ability to lock certain portions on the inside as well. Respondent Hufcut asserts that the tabulator was locked in the top left internally locking cabinet of the blue cart. She had only one ballot box at each polling place and would put the tabulator-less ballot box containing the ballots in the bottom portion and stack the folded privacy booths on the right side. The blue carts were heavy and unwieldy and required two strong individuals to lift. She did not believe that the ballot transfer cases were necessary if the materials were stored in such a manner. Respondent Hufcut attests that she has been using the ballot transfer bags from the November 2009 General Election forward.

23. Section 9-242a-27 of the Regulations of Connecticut State Agencies applies to the *moderator's* duty to use the ballot transfer case to store the ballots and return them to the registrar in the cases, but it does not in and of itself apply a duty upon the registrar to *provide* them. However, reading the regulation together with General Statutes § 9-259 (a) the Commission concludes that if the regulations require the moderator to

have and use a particular item at the polls, such as a ballot transfer case, then the registrar violates § 9-259 (a) by failing to provide the moderator with such item. See *Complaint by David Sochacki, Sandy Hook*, File No. 1998-268 (violation of § 9-259 (a) for failing to supply materials to a moderator that the Secretary of the State's written advice deemed necessary to be provided).

24. Considering the aforesaid, the Commission concludes that Respondent Hufcut violated General Statutes § 9-259 (a) by failing to provide the ballot transfer bags to the moderators at the September 15, 2009 Democratic primary held in the City of West Haven.
25. However, the Commission also finds that no evidence has been presented that Respondent Hufcut's error was material or negatively affected the outcome of the primary in West Haven. While the Respondent's failure to supply the transfer bags resulted in the ballots being secured in the non-standard manner described above, there has been no evidence presented that they were not sufficiently secured under the circumstances. Moreover, the Commission also notes that the responsibility of the registrar to supply the ballot cases was unclear in the written materials available to Respondent Hufcut here. Section II. A. of the Moderator's Handbook (Rev. October 2009) proscribes a specific list of items that the registrar must supply each moderator. And, while this list contains the "other supplies necessary" language from § 9-259, it does not specifically enumerate ballot transfer bags. In light of the lack of clarity in the Handbook, and in light of this Respondent's lack of experience and in exchange for an agreement by this Respondent to henceforth comply with the aforementioned statute and regulation, the Commission will take no further action regarding this allegation.

COUNT SIX: *Absentee Ballots for Two Electors Accepted When Names Did Not Appear on Official Voter List*

26. Complainant alleges that Absentee Ballot envelopes were delivered on the morning of the primary for electors Diana and Luis Eduardo Murillo and that their names did not appear on the Supplemental List for District 10.
27. General Statutes § 9-23a provides, in relevant part:
 - (a) Except as provided in subsection (b) of this section, no person admitted as an elector after *twelve o'clock noon on the last business day before a primary* shall be permitted to vote in such primary. . . . (Emphasis added.)
28. General Statutes § 9-140c provides, in relevant part:
 - (a) The municipal clerk shall retain the envelopes containing absentee ballots received by him under section 9-140b and shall not open such envelopes. The municipal clerk shall endorse over his signature, upon each outer envelope as he receives it, the date and precise time of its receipt. The clerk shall make an affidavit attesting to the accuracy of all such endorsements, and at the

close of the polls shall deliver such affidavit to the head moderator, who shall endorse the time of its receipt and return it to the clerk after all counting is complete. The clerk shall preserve the affidavit for one hundred eighty days in accordance with the requirements of section 9-150b. The clerk shall keep a list of the names of the applicants who return absentee ballots to the clerk under section 9-140b. The list shall be preserved as a public record as required by section 9-150b.

(b) Beginning not earlier than the seventh day before the election, primary or referendum and on any weekday thereafter, all absentee ballots received by the municipal clerk not later than eleven o'clock a.m. of such day may be sorted into voting districts by the clerk and checked as provided in this subsection. On any such day, beginning as soon as the ballots have been sorted, the registrars of voters, without opening the outer envelopes, may check the names of the applicants returning ballots on the official checklist to be used at the election, primary or referendum by indicating "absentee" or "A" preceding each such name and, if unaffiliated electors are authorized under section 9-431 to vote in the primary of either of two parties, the designation of the party in which the applicants are voting preceding each such name. If central counting of absentee ballots has been designated by the registrars pursuant to section 9-147a, they shall also place such indication on a duplicate of the checklist to be retained by the municipal clerk until he delivers it to the registrars at twelve o'clock noon on election, primary or referendum day for the use of the absentee ballot counters pursuant to subsection (i) of this section. All absentee ballots received not later than eleven o'clock a.m. of the last day before the election, primary or referendum which is not a Sunday or legal holiday, shall be so sorted and checked not later than such day.

(c) If the name of the applicant returning the ballot is not on the official checklist for any polling place in such municipality . . . the outer envelope shall not be opened or the ballot counted.

. . .

(g) Any or all of such ballots received after eleven o'clock a.m. of such last day before an election, primary or referendum and before six o'clock p.m. on the day of the election, primary or referendum shall, upon request of the registrars, be delivered to the registrars by the municipal clerk at six o'clock p.m. on the day of the election, primary or referendum for checking and counting. . . (Emphasis added.)

29. Complainant, who was serving as a ballot clerk at the central counting location during the primary, alleges that Diana and Luis Eduardo Murillo did not appear on either the original voter list or the supplemental list in the central counting location and that their

ballots should not have been counted. She alleges that she raised the question of their eligibility and the head moderator contacted Respondent Hufcut. Respondent Hufcut told the head moderator that they were eligible and their ballots should be counted. Complainant counted the ballots under protest and filed the instant complaint.

30. After investigation, the Commission finds that Diana and Luis Eduardo Murillo became electors enrolled in the Democratic Party in West Haven as of September 11, 2009 and were eligible to vote in the September 15, 2009 primary. Moreover, the investigation revealed evidence contained within the materials impounded from the Town Clerk's Office showing that the electors' names did appear on the Official Voter List for District 10. At best, the Complainant has not presented evidence sufficient to support the allegation. Accordingly, this allegation is dismissed.

COUNT SEVEN: Candidate's Name Misspelled on the Ballot

31. The Complainant alleges that Respondent Town Clerk Deborah Collins failed to verify and correct the misspelling of candidate Deborah Conlon's name on the primary ballot, in violation of General Statutes § 9-434.

32. General Statutes § 9-434 provides:

Upon the filing with the clerk of a municipality of the names of party-endorsed candidates pursuant to section 9-390 or upon the filing with such clerk of petitions for contesting candidates pursuant to section 9-412, *such clerk shall verify and correct the names of such candidates in accordance with the registry list of such municipality, endorse the same as having been so verified and corrected and use the same in the preparation of the ballot labels for the primary.* The provisions of this section shall not apply to the municipal offices of state senator and state representative. (Emphasis added.)

33. 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.)

34. Respondent admits that she failed to notice in her review of Ms. Conlon's name that it was misspelled as "Conlan." According to the Connecticut Voter Registration System, "Conlon" is the spelling that appears on the registry list for West Haven. Respondent asserts that she always makes a careful review of the ballots, but that she simply overlooked the "a" in lieu of the "o" in her review of the draft ballot for the primary. She pledges to endeavor to take care to review the ballot more closely in the future.
35. Considering the aforesaid, the Commission concludes that Respondent Collins violated General Statutes § 9-434 by failing to use the correct spelling of Ms. Conlon's name on the September 15, 2009 primary ballot in West Haven. However, the Commission also finds that no evidence has been presented that Respondent Collins' error was material or negatively affected the outcome of candidate Conlon's race. In exchange for an agreement by this Respondent to henceforth comply the aforementioned statutes, the Commission will take no further action regarding this allegation.

COUNT EIGHT: Polling Place Closed Prior to 8:00pm

36. Complainant alleges here that the District One polling place closed 3 minutes early, according to the time on the ending machine tape at the polling place.
37. General Statutes § 9-438 reads:
- In each municipality or voting district, the polling places for primaries held under sections 9-382 to 9-450, inclusive, shall be the same as those used for the election to be held. When unaffiliated electors are authorized under section 9-431 to vote in the primary of either of two parties, both parties shall hold their primaries in the same room of each such polling place. On the day of the primary, *the polls shall remain open for voting from six o'clock a.m. until eight o'clock p.m* (Emphasis added.)
38. The Complainant alleges that based on the timestamps on the closing tape, the polling place closed two minutes early. She alleges that the timestamp on the "Election Results Report" ending tape read 18:57:22. The Complainant implies in her Complaint that she is not alleging that the polling place closed over an hour early, but asserts that the above time stamp supports her allegation that "the polls closed 3 minutes or more ahead of time." No evidence other than the "Election Results Report" has been presented here that the polls were closed 3 minutes early, as alleged by the Complainant.
39. The investigation revealed that the "Election Zero Report" tape run at the opening of the polls showed a timestamp of 04:56:11. An examination of the "Election Results Report" tape run at the close of the polls showed a timestamp of 18:55:47.

40. Respondent Hufcut asserts that the moderators were instructed to choose a reliable clock and use the same clock to open and close the polls. She agrees with the Complainant's assertion that the tabulator's clock was not set to the current time and was, at the very least, 1 hour off the clock used at the District 1 polling place. However, she asserts, this did not affect the opening or closing of this polling place, as the moderator chose a correctly-set clock on the wall to both open and close the polls.
41. The Commission concludes that there is no requirement at law that a moderator must follow the clock on the tabulator or any other particular clock. Moreover, while the tabulator clock reports are *some* evidence that the polling place *might* have been open 24 seconds less than the 14 hours between 6:00am and 8:00pm, this evidence alone is insufficient to support the allegation. As such, this allegation is dismissed.
42. 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.
43. 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.

ORDER

IT IS HEREBY ORDERED that Respondent Michelle Hufcut will henceforth strictly comply with the requirements of § 9-242a-5 & 9-242a-27 of the Regulations of Connecticut State Agencies and General Statutes § 9-259.

IT IS HEREBY ORDERED that Respondent Deborah Collins will henceforth strictly comply with the requirements of General Statutes § 9-434.

The Respondents:

For the State of Connecticut:

Michelle Hufcut
Michelle Hufcut

Dated: _____

Deborah Collins
Deborah Collins

Dated: 8/17/11

BY: S. Kief
Shannon C. Kief Esq.
Legal Program Director
& Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: August 24, 2011

Adopted this 24th day of August of 20 11 at Hartford, Connecticut

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