

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Alvin Burgher, Jr., Hartford
Complaint of Timothy E. Denman, Hartford
Complaint of Richard V. Nelson, Hartford

File No. 2010-145
File No. 2010-146
File No. 2010-147

AGREEMENT CONTAINING A HENCEFORTH ORDER

This agreement by and between Patricia Connelly, Alba Montalvo, and Jacqueline D. McKinney of the City of Hartford, State of Connecticut, hereinafter referred to as the Respondents, and the undersigned authorized representative of the State Elections Enforcement Commission, is entered into in accordance with General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance herewith, the parties agree that:

1. Respondent Connelly served as head moderator for the City of Hartford during the November 2, 2010 general election. In addition, Respondents Montalvo and McKinney respectively served as Moderators of the polling places for the 9th and 14th voting districts during that election.
2. The Complainant alleged that they cast write-in votes for Todd Vachon, a registered write-in candidate for United States Senator in the November 2, 2010 election, that were not counted in those voting districts.
3. With respect to the 9th voting district, Respondent Montalvo recorded in her Moderator's Return a hand count total of four write-in votes on the tally form provided by the Registrars of Voters. Respondent Montalvo did not, however, identify the name of the write-in candidate(s) that received those votes.
4. Similarly, with respect to the 14th voting district, Respondent McKinney recorded in her Moderator's Return a tape count total of one write-in vote on the form provided by the Registrars of Voters. Respondent McKinney did not, however, identify the name of the write-in candidate that received that vote.
5. Furthermore, Respondent Connelly's Head Moderator's Return provided to the Secretary of the State's Office recorded only two write-in votes for the entire City of Hartford and those votes were for Brian K. Hill. No votes were recorded for registered write-in candidate Todd Vachon.
6. General Statutes § 9-265 (a) provides in pertinent part as follows:

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. [Emphasis added.]

7. General Statutes § 9-259 further provides as follows:

(c) The moderator's return which the moderator receives from the registrars of voters for all elections shall be in a form prescribed by the Secretary of the State. The moderator and the registrars of voters, or the assistant registrars of voters, as the case may be, before the polls are opened, shall indicate on the return:

(1) The delivery of the tabulator; and (2) the numbers on the seals. Additionally, the moderator and the registrars of voters, or the assistant registrars of voters, as the case may be, shall produce a zero tape indicating that the public counter is set at zero (000). The seal on the tabulator shall remain unbroken. If the seal is broken, the registrars of voters shall be notified immediately and the tabulator tape shall be produced. If the tape does not show all zeros, the registrars of voters shall be notified immediately and the tabulator shall not be used.

(d) In addition to the requirements established in subsection (c) of this section, the return shall include a certificate, which shall be filled out after the polls have been closed and which indicates that the tabulator has been locked against voting and remains sealed and that also indicates the number of electors as shown on the public counter along with the number on all the seals. **The moderators' returns shall show the total number of votes cast for each office, the number of votes cast for each candidate** and the number of votes for persons not nominated, which shall be certified by the moderator and registrars of voters, or assistant registrars, as the case may be. [Emphasis added.]

8. General Statutes § 9-314 (a) also states in relevant part as follows:

As used in this subsection, "moderator" means the moderator of each state election in each town not divided into voting districts and the head moderator in each town divided into voting districts. The moderator shall make out a duplicate list of the votes given in the moderator's town for each of the following officers . . . United States senator . . . when said officers are to be chosen. . . . The moderator may transmit such list to the Secretary of the State by facsimile machine or other electronic means prescribed by the Secretary of the State, not later than midnight on election day. If the moderator transmits such list by such electronic means, the moderator shall also seal and deliver one of such lists to the Secretary of the State not later than the third day after the election. If the moderator does not transmit such list by such electronic means, the moderator shall seal and deliver one of such lists by hand either (1) to the Secretary of the State not later than six o'clock p.m. of the day after the election, or (2) to the state police not later than four o'clock p.m. of the day after the election, in which case the state police shall deliver it by hand to the Secretary of the State not later than six o'clock p.m. of the day after the

election. Any such moderator who fails to so deliver such list to either the Secretary of the State or the state police by the time required shall pay a late filing fee of fifty dollars. The moderator shall also deliver one of such lists to the clerk of such town on or before the day after such election. The Secretary of the State shall enter the returns in tabular form in books kept by the Secretary for that purpose and present a printed report of the same, with the name of, and the total number of votes received by, each of the candidates for said offices, to the General Assembly at its next session. [Emphasis added.]

9. Section 9-242a-23 of the Regulations of Connecticut State Agencies further provides the individuals responsible for counting and recording the write-in ballots. That provision provides as follows, in pertinent part:

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 of 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.** [Emphasis added.]

10. A comprehensive field investigation was conducted concerning the write-in votes cast in the 9th and 14th voting districts in the City of Hartford on the optical scan voting machine for the November 2, 2010 election.
11. In the 9th voting district, the investigation revealed that a total of thirty write-in votes were recorded by the optical scan voting machine, four for United States Senator. Commission staff reviewed the ballots identified as having been found in the auxiliary and write-in bins and confirmed the machine and hand count of write-in votes. However, not all were cast for *registered* write-in candidates. Of those thirty votes, four write-in votes were properly cast for a *registered* write-in candidate for that office, Todd Vachon.
12. The investigation revealed that Respondent Montalvo recorded on her Moderator's Return a "Tape Count" total of four write-in votes for United States Senator, a "Hand Count" total of four write-in votes for that office and "Grand Total" of eight write-in votes for United States Senator. It appears that Respondent Montalvo erroneously added the "Tape Count" total with the "Hand Count" total resulting in the four additional write-in votes for the office of United States Senator. Respondent Montalvo appears to have made similar recording errors with respect to all of the write-in votes cast in the 9th voting district.

13. In addition, Respondent Montalvo did not identify the name identified on each write-in vote and whether that individual was a registered write-in candidate. As such, Respondent Montalvo's Moderator's Return does not identify the specific write-in votes cast for *each* registered write-in candidate in the 9th voting district.
14. According to the evidence, this error appears to have been caused, in part, by the form provided by the City of Hartford's Registrars of Voters and used by all moderators to tally the write-in votes. Unlike the suggested tally sheet entitled "*Write-In Votes for Registered Write-In Candidates*" provided by the Secretary of the State in the *Moderator's Handbook* which allows moderators to list each candidate's name and tally the total write-in votes cast for each candidate, the form provided by Hartford's Registrars of Voters does not provide sufficient space for or instructions to provide such information.
15. Similarly, in the 14th voting district, the investigation revealed that a total of eighty-eight write-in votes were recorded by the optical scan voting machine; one for United States Senator. The evidence confirmed the machine count of write-in votes. Of those eighty-eight votes, one write-in vote was properly cast for *registered* write-in candidate Todd Vachon for the office of United States Senator.
16. The evidence establishes that Respondent McKinney only recorded a "Tape Count" total of one write-in vote for United States Senator, no "Hand Count" total of write-in votes for that office and "Grand Total" of one write-in vote for United States Senator. Respondent McKinney also recorded that information on the form provided by the Registrars of Voters.
17. In addition, with respect to many other write-in votes cast in the 14th voting district, several offices reflect no "Hand Count" total of write-in votes. In addition, Respondent McKinney did not identify the name identified on the write-in vote for the office of United States Senator or any other office in which write-in votes were cast. As such, no record appears in Respondent McKinney's Moderator's Return that specifies the total write-in votes cast for *each* registered write-in candidate in the 14th voting district.
18. As explained herein, this error appears to have been caused, in part, by the form provided by the City of Hartford's Registrars of Voters to all moderators which does not provide the space necessary or instructions to record the write-in votes cast for each registered write-in candidate.
19. The investigation revealed that those Moderators' Returns were relied on by the Head Moderator, Respondent Connelly, when recording all properly cast write-in votes for United States Senator in her Head Moderator's Return. For example, Respondent Connelly's Return recorded "0" write-in votes for the office of United States Senator for the entire City of Hartford despite the fact that many write-in votes were recorded in Moderators' Returns throughout that city, albeit without specifying the candidate's for whom those votes were cast.

20. Respondent Connelly's errors appear to have been the result of her good faith misunderstanding of the results recorded by each moderator which likely arose because of the confusion created by the tally sheet provided by the Registrars of Voters as well as the fatigue experienced by Respondents Montalvo and McKinney when recording those votes at the conclusion of a long and busy day of voting.
21. Notably, the investigation did not reveal any evidence of fraud. Nevertheless, it appears that Respondents Montalvo and McKinney violated General Statutes § 9-265 and Respondent Connelly violated § 9-265 and 9-314 by failing to properly count and record the write-in votes cast in their respective voting districts or throughout the City of Hartford.
22. The Respondents do not have any history of previous violations of election law and the error in this matter can be attributed to human error rather than an intentional violation of the law. Nevertheless, the Respondents errors may have contributed to the perception that write-in votes were purposely and/or carelessly disregarded. As such, in addition to the Order set forth herein, the Commission strongly advises all moderators to exercise extreme caution to ensure that all write-in votes are properly counted and recorded in the future.
23. Finally, the Commission notes that the Registrars of Voters have agreed to ensure that the write-in votes cast throughout the City of Hartford on November 2, 2010 are properly counted and recorded and will file an amendment of the election results with the Office of the Secretary of the State upon completion of this matter. They have also agreed to change the write-in tally sheet provided to moderators in the City of Hartford for future elections in an effort to prevent these errors from occurring again.
24. 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 into after a full hearing and shall become final when adopted by the Commission.
25. 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.
26. Upon the Respondents' agreement to comply with the Order hereinafter stated the Commission shall not initiate any further proceedings against them concerning this matter.
27. 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.

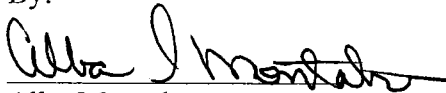
ORDER

IT IS HEREBY ORDERED THAT Respondents Montalvo and McKinney shall henceforth fully comply with the reporting requirements of General Statutes § 9-265 and Respondent Connelly shall henceforth strictly comply with General Statutes § 9-265 and 9-314.

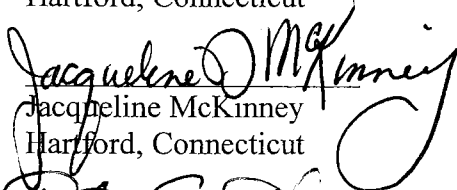
The Respondents

For the State of Connecticut

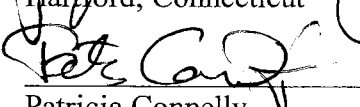
By:



Alba Montalvo
Hartford, Connecticut



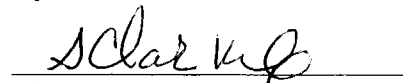
Jacqueline McKinney
Hartford, Connecticut



Patricia Connelly
Hartford, Connecticut

Dated: 3/11/11

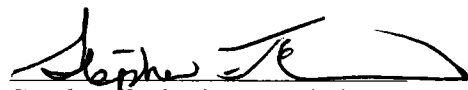
By:



Shannon Clark Kief, Esq.
Legal Program Director and Authorized
Representative of the State
Elections Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

Dated: 3/14/11

Adopted this 16th day of March, 2011 at Hartford, Connecticut by vote of the Commission.



Stephen F. Cashman, Chairman
By Order of the Commission