

AUG 10 2009

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

ENFORCEMENT
COMMISSION

In the Matter of a Complaint by
Robert S. Kissel, Hamden

File No. 2008-159

AGREEMENT CONTAINING HENCEFORTH ORDER FOR VIOLATIONS
OF CONNECTICUT GENERAL STATUTES §§ 9-265 and 9-314.

This agreement by and between Peter H. Vining of the Town of Milford, County of New Haven, 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 Head Moderator in the Town of Hamden during the November 4, 2008 presidential election.
2. On November 6, 2009, Complainant reviewed the Office of the Secretary of the State's election results for the Town of Hamden and determined that the vote he had cast for electors for candidates for president and vice-president had not been recorded and included within the reported election results.
3. Complainant contacted the office of the Secretary of the State, the Registrars of Voters, the Commission, and the news media to voice his concern that his vote had not been counted. He filed a formal complaint with the Commission on November 12, 2008, alleging that he cast a valid write-in vote at the District 7 Dunbar Hill School polling place in Hamden, for electors representing one of four possible registered sets of write-in candidates for president and vice president, which was not counted.
4. On November 9, 2009 the Hamden Registrars of Voters became aware of Complainant's allegation that his write-in vote at the 7th District poll had not been counted via the news media.
5. On November 10, 2008, the Hamden Registrars of Voters examined the Moderator's Return from the District 7 Dunbar Hill School polling place. The Registrars discovered that the District 7 polling place Moderator had, in fact, recorded two write-in votes for registered write-in candidates for president and vice-president on the moderator's return, but that the Respondent had not included them in the totals of votes cast on the head moderator's return that was forwarded to the Office of the Secretary of the State on the evening of November 4, 2008. An Amended Return was faxed to the Office of the Secretary of the State and the paper copy was put in the mail to that office on November 10, 2008.

6. 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.]

7. General Statutes § 9-314 provides in pertinent part:

(b) As used in this subsection, "moderator" means the moderator of each municipal election in each town not divided into voting districts, and the head moderator in each town divided into voting districts. The moderator shall forthwith transmit to the Secretary of the State the results of the vote for each office contested at such election by facsimile machine or other electronic means prescribed by the Secretary of the State, not later than midnight on election day. ... 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. Such moderator shall include in such return a statement of the total number of names on the official check list of such town and the total number checked as having voted. Such return shall be on a form prescribed by the Secretary of the State.

[Emphasis added.]

8. On November 19, 2008, the Commission issued an impoundment order and subpoena to the Hamden Registrars of Voters pertaining to any and all documents and equipment relating to the November 4, 2008 election in the Town of Hamden.
9. The impoundment order described in paragraph 8, above, was lifted by the Commission at its March 12, 2009 special meeting, after an extensive field investigation, hand re-count of ballots from each voting district, and tabulator re-count of ballots from two voting districts for the November 4, 2008 election by Commission investigators.
10. The investigation revealed that manila envelopes labeled "Write-in votes for Registered Write in Candidates" provided by Registrars and intended for use by moderators in each voting district, were not utilized consistently throughout the voting districts.
11. While the investigation shows that there was ample information available to the Hamden Registrars of Voters and Election Officials prior to, during and after the polls were open on November 4, 2008 election pertaining to the handling, processing and counting of write-in ballots, and the declaration and transmission of the tally at the end of the day, the Respondent nevertheless failed to count all valid write-in votes from each voting district in the Town of Hamden. In addition to the two write-in votes not transposed onto the final moderator's return for District 7, six additional votes were discovered and reported in the Amended Return filed on November 10, 2008, and confirmed by Commission investigators.
12. The Commission investigation revealed that ballot bags for District 7 contained a manila envelope marked "write-ins," which was included with the ballots. A hand count of these ballots indicated that two were for registered candidates for presidential and vice-presidential electors, one vote for President who was not a registered write-in candidate and therefore could not be counted, and one write-in data field for President completed for "no name." The recount by Commission investigators and that of the Registrars' of Voters' office conducted on November 10, 2008, were consistent in their results.
13. The Commission concludes that Respondent violated General Statutes §§ 9-265 and 9-314 by failing to transpose two properly cast write-in votes for candidates for President and Vice-President, which were accurately recorded on the District 7 Moderator's Return, onto the Head Moderator's Return, thereby failing to count write-in votes for two persons who were registered write-in candidates at the November 4, 2008 election.
14. There is no indication that the Respondent's error was malicious or intentional, but it may contribute to an unfortunate perception that votes for other than major party candidates are not taken seriously.

15. 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.

16. 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.

17. Upon the Respondent's agreement to comply with the Order hereinafter stated, the Commission shall not initiate any further proceedings against him.

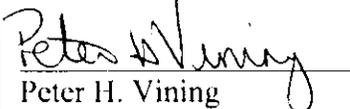
18. It is understood and agreed that this agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn and may not be used as an admission by the Respondent in any subsequent hearing, if the same becomes necessary.

ORDER

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

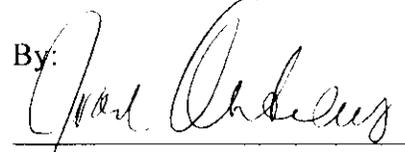
The Respondent

By:


Peter H. Vining
Milford, Connecticut

For the State of Connecticut

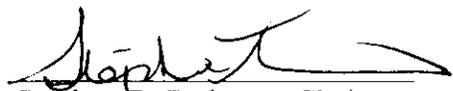
By:


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

Dated: 8-7-09

Dated: 8/10/09

Adopted this 15th day of Sept., 2009 at Hartford, Connecticut by vote of the Commission.


Stephen F. Cashman, Chairman
By Order of the Commission