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STATE ELECTIONS

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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 § 9-175, AND
PAYMENT OF A CIVIL PENALTY FOR VIOLATIONS
OF CONNECTICUT GENERAL STATUTES §§ 9-265 and 9-309.

This agreement by and between Nancy DePietro and Gerald Kortfelt of the City of Norwich, County of New London, 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 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. Respondents served as the Republican and Democratic Registrars of Voters, respectively, in the City of Norwich. The Democratic Registrar Nancy DePietro has served in that office for approximately ten years. The Republican Registrar Gerald Kortfelt has served in that office for approximately ten years.
2. Complainant, a registered write-in candidate, alleged that she cast her ballot at the Precinct Three 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. 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 city clerk of such town not later than the last business day preceding such election.

4. The Complainant was a registered write-in candidate for state senator for the 19th 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.
5. The Election Results Report printout, which was signed by Precinct 3 Moderator Rick Tetrault, indicates that there were the following write-in totals by office according to the voting tabulator for that district: 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 is then deflected to the separate write-in bin in the same ballot container for hand counting of the write-in votes by polling place officials. The 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.
6. Further, the Office of Secretary of the State Election Results Reports for the November 4, 2008 election *reported no votes for any registered write-in candidates for the entire City of Norwich*, based upon the City of Norwich's submission of election results showing none.
7. The moderator of Precinct 3 had prior experience as 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 write-in bin of the tabulator at the close of the polls.
8. The Precinct 3 moderator claims that after the polls closed he brought the election tally from Precinct 3 down to the Respondents' office. He does not remember any mention of write-in candidates by Respondents that were registered for the November 4, 2008 election. However, he 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.
9. Allegations with respect to the Moderator of Precinct 3, 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.

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. The Registrars are the local election officials responsible for the conduct and administration of elections. They are jointly responsible for proper voting machine preparation, polling place preparation, poll worker and other duties as required by Connecticut election law, including, but not limited to, assuring the accurate tally of results of an election. *See* General Statutes, Title 9, Chapters 146, 147 and 148.
14. The City of Norwich has ten voting precincts, and city-wide in Norwich there were a total of 205 write-in votes recorded on the Election Result Reports produced by the voting tabulators used in Norwich for the November 2008 election. According to such printed results, 205 ballots should have been visually inspected by polling place officials to determine if they contained votes properly cast for the registered write-in candidates.
15. The investigation revealed that of the 205 write-in votes recorded that 102 write-in votes were cast with a named candidate and the requisite oval being darkened. Comparing the 102 write-in votes with the certified registered write-in candidates list from the Office of the Secretary of the State indicated that twelve (12) votes were accurately cast for certified registered candidates in the City of Norwich at the November 4, 2008 election; 9 for President of the United States, 1 for Representative in Congress, and 2 for State Senate.

16. However, no write-in candidates were reported on the moderator's returns or those election results certified to the Office of the Secretary of the State by the City of Norwich for the November 4, 2008 election.

17. 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.]

18. Respondents ~~claim they~~^{DK} were not aware prior to the election or at the time of the election of any registered write-in candidates. Further, Respondents claim that the City Clerk did not make them aware of any registered write-in candidates as has been the past practice of the City Clerk's office. Upon investigation it was determined that there were announcements pertaining to registered write-in candidates for the November 4, 2008 election from the Office of the Secretary of the State forwarded to the Norwich City Clerk, who has since retired.

19. The Commission recognizes that the past practice has been for the Secretary of the State's Office to forward lists of certified write-in candidates to the City Clerk's office who in turn would forward such lists to the Respondents prior to the election; however, the parties agree that the Respondents should have inquired of the City Clerk's office after they became aware that a large number of write-in ballots had been identified and diverted by the tabulators.

20. Further, training sessions for the Norwich election officials prior to the November 4, 2008 election were conducted by a Registrar of Voters. Respondents attended the August 21, 2008 training session in Norwich. Records indicate that the Precinct 3 moderator, as well as other election moderators in Norwich, also attended this training session. Further, 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.

21. The Commission concludes that Respondents had a duty to inquire as to whether there were registered write-in candidates, so that they could administer the obligation under General Statutes §§ 9-265 and 9-175 that such votes "shall be counted," and so that the checkers could record the number of votes for each write-in candidate as required by General Statutes § 9-309 and Regulations of Connecticut State Agencies § 9-242a-23.
22. The Commission concludes that by failing to count and record or ensure that moderators counted and recorded, approximately twelve (12) write-in votes that were properly cast for registered write-in candidates at the November 4, 2008 election in the City of Norwich, the Respondents violated General Statutes §§ 9-265, 9-175 and 9-309.
23. Pursuant to its enabling statute, General Statutes § 9-7b(a)(2), the Commission lacks the statutory authority to impose civil penalties for violations of the Regulations of the Secretary of the State, or General Statutes § 9-175. The Commission does, however, have the authority to impose a civil penalty of up to \$2,000 per violation for violations of Conn. Gen. Stat. §§ 9-265 and 9-309, pursuant to General Statutes § 9-7b(a)(2).
24. The Commission further concludes that the failure to count, record and report write-in votes in the City of Norwich for the November 4, 2008 election, resulted in a system wide failure and deprived several individuals, including Complainant, of their fundamental right to cast a ballot for the candidate or candidates of their choice.
25. 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.
26. 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.
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.
28. Upon the Respondents' compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings against them with respect to this matter.

ORDER

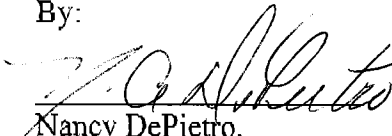
IT IS HEREBY ORDERED THAT the Respondents shall each pay a civil penalty in the amount of five hundred dollars (\$500.00) by April 20, 2010 and shall henceforth strictly comply with the requirements of General Statutes §§ 9-175, 9-265, 9-309.


The Respondent

For the State of Connecticut

By:


By:


Nancy DePietro,
Democratic Registrar of Voters
Norwich, Connecticut


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: 4-15-10

Dated: 4/23/10


Gerald Kortfelt,
Republican Registrar of Voters
Norwich, Connecticut

Dated: 4-13-10

Adopted this 21st day of April, 2010 at Hartford, Connecticut by vote of the Commission.


Stephen F. Cashman, Chairman
By Order of the Commission