

SEP 15 2011

ENFORCEMENT COMMISSION

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Kenneth Gronbach, Haddam

File No. 2009-148

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Marjorie DeBold, Ann Huffstetler & Patricia Hess of the Town of Haddam, County of Middlesex, 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 events surrounding a November 10, 2009 close-vote recanvass for the Regional District #17 Board of Education in the town of Haddam in which Republican candidate Chester Harris was initially recorded by the recanvass moderator, Marjorie DeBold as having won by a single vote over Democrat Sabrina Houlton. Complainant alleges that subsequent to the above recanvass, Respondent DeBold discovered a "perceived error" in the recanvass and, along with Respondent Town Clerk Ann Huffstetler and Respondent Democratic Registrar of Voters Patricia Hess, "inappropriately accessed and recounted the votes by opening and resealing the official envelopes containing the ballots" without any other persons present. The "perceived error" in counting returned a vote to Ms. Houlton, which then changed the recanvassed result to a tie vote and caused a new election to be held on November 24, 2009. After the new election, Mr. Harris prevailed by a margin significant enough to avoid an additional recanvass.
2. After the docketing of the instant Complaint, a preliminary impoundment order was issued by Commission staff, later ratified by the Commission, requiring the Respondents to, *inter alia*, forthwith:

...

2. Store the following in a safe and secure manner:

All memory cards, actual ballots, write-in ballots, absentee ballots, spoiled ballots, and their depository envelopes, moderator's returns, notes, worksheets, or other written materials used or produced at the November 3, 2009 election and all materials used or produced during any recanvass that occurred pursuant to Connecticut General Statutes §§ 9-311 or 9-311a, or otherwise, with respect to that election.

3. Do not permit access to the storage room, except as may be ordered by the Commission or a court of competent jurisdiction. . . .

3. General Statutes § 9-310 proscribes the procedures to follow to store and secure the materials related to an election after such election is completed, and reads, as follows:

As soon as the count is completed and the moderator's return required under the provisions of section 9-259 has been executed, the moderator shall place the sealed tabulator in the tabulator bag, and so seal the bag, *and the tabulator shall remain so sealed against voting or being tampered with for a period of fourteen days*, except as provided in section 9-311 or pursuant to an order issued by the State Elections Enforcement Commission. *If it is determined that a recanvass is required pursuant to section 9-311 or 9-311a, immediately upon such determination the tabulators, write-in ballots, absentee ballots, moderators' returns and all other notes, worksheets or written materials used at the election shall be impounded at the direction of the Secretary of the State. Such package shall be preserved for one hundred eighty days after such election and may be opened and its contents examined in accordance with section 9-311 or upon an order of a court of competent jurisdiction. At the end of one hundred eighty days, unless otherwise ordered by the court, such package and its contents may be destroyed.* Any person who unlocks the voting or operating mechanism of the tabulator or the counting compartment after it has been locked as above directed or breaks or destroys or tampers with the seal after it has been affixed as above directed or changes the indication of the counters on any voting tabulator within fourteen days after the election or within any longer period during which the tabulator is kept locked as ordered by a court of competent jurisdiction or by the State Elections Enforcement Commission in any special case, except as provided in section 9-311, shall be imprisoned for not more than five years. Any tabulator may be released in less than fourteen days, for use in another election, by order of a court, if there is no disagreement as to the returns from such machine and no order directing impoundment has been issued by the State Elections Enforcement Commission. (Emphasis added.)

4. General Statutes § 9-311a (Rev. to May 24, 2011) provides for the procedures that must be followed when the results of a primary, election or referendum are within a certain margin. It reads, in pertinent part:

For purposes of this section, state, district and municipal offices shall be as defined in section 9-372 except that the office of presidential elector shall be deemed a state office. Forthwith after a regular or

special election for municipal office, or forthwith upon tabulation of the vote for state and district offices by the Secretary of the State, *when at any such election the plurality of an elected candidate for an office over the vote for a defeated candidate receiving the next highest number of votes was . . . less than twenty votes, there shall be a recanvass of the returns of the voting machine or voting machines and absentee ballots used in such election for such office unless such defeated candidate or defeated candidates, as the case may be, for such office file a written statement waiving this right to such canvass with the municipal clerk in the case of a municipal office, or with the Secretary of the State in the case of a state or district office.* In the case of state and district offices, the Secretary of the State upon tabulation of the votes for such offices shall notify the town clerks in the state or district, as the case may be, of the state and district offices which qualify for an automatic recanvass and shall also notify each candidate for any such office. When a recanvass is to be held the municipal clerk shall promptly notify the moderator, as defined in section 9-311, who shall proceed forthwith to cause a recanvass of such returns of the office in question in the same manner as is provided in said section 9-311. In addition to the notice required under section 9-311, the moderator shall before such recanvass is made give notice in writing of the time when, and place where, such recanvass is to be made to each candidate for a municipal office which qualifies for an automatic recanvass under this section. Nothing in this section shall preclude the right to judicial proceedings on behalf of a candidate under any provision of chapter 149. For the purposes of this section, "the total number of votes cast for the office" means in the case of multiple openings for the same office, the total number of electors checked as having voted in the state, district, municipality or political subdivision, as the case may be. When a recanvass of the returns for an office for which there are multiple openings is required by the provisions of this section, the returns for all candidates for all openings for the office shall be recanvassed. No one other than a recanvass official shall take part in the recanvass. If any irregularity in the recanvass procedure is noted by a candidate, he shall be permitted to present evidence of such irregularity in any contest relating to the election. (Emphasis added.)

5. General Statutes § 9-311 (Rev. to July 13, 2011) outlines the specific procedures to follow in the event of close votes, tie votes, and circumstances in which the moderator finds a discrepancy in the voting returns:

(a) If, within three days after an election, it appears to the moderator that there is a discrepancy in the returns of any voting district, such moderator shall forthwith within said period summon, by written notice delivered personally, the recanvass officials, consisting of the mechanic or mechanics, at least two checkers of different political parties and at least two absentee ballot counters of different political parties who served at such election, and the registrars of voters and the clerk of the municipality in which the election was held. Such written notice shall require such clerk to bring with him the depository envelopes required by section 9-150a, the package of write-in ballots provided for in section 9-310, the absentee ballot applications, the list of absentee ballot applications, the registry list and the moderators' returns and shall require such recanvass officials to meet at a specified time not later than the fifth business day after such election to recanvass the returns of a voting machine or voting machines or absentee ballots or write-in ballots used in such district in such election. If any of such recanvass officials are unavailable at the time of the recanvass, the registrar of voters of the same political party as that of the recanvass official unable to attend shall designate another elector having previous training and experience in the conduct of elections to take his place. Before such recanvass is made, such moderator shall give notice, in writing, to the chairman of the town committee of each political party which nominated candidates for the election, and, in the case of a state election, to the Secretary of the State, of the time and place where such recanvass is to be made; and each such chairman may send two representatives to be present at such recanvass. Such representatives may observe, but no one other than a recanvass official may take part in the recanvass. If any irregularity in the recanvass procedure is noted by such a representative, he shall be permitted to present evidence of such irregularity in any contest relating to the election.

(b) The moderator shall determine the place or places where the recanvass shall be conducted and, if such recanvass is held before the machines are boxed and collected in the manner required by section 9-266, the moderator may either require that such recanvass of such machines be conducted in each place where the machines are located,

or he may require that they be removed to one central place, where such recanvass shall be conducted. All recanvassing procedures shall be open to public observation. Such recanvass officials shall, in the presence of such moderator and clerk, make a record of the number on the seal and the number on the protective counter, if one is provided, on each voting machine specified by such moderator. Such clerk in the presence of such moderator shall turn over the keys of each such machine to such recanvass officials, and such recanvass officials, in the presence of such clerk and moderator, shall immediately proceed to open the counter compartment of each such machine and, without unlocking such machine against voting, recanvass the vote cast thereon, and shall then open the package of absentee ballots and recanvass the vote cast thereon. In the course of the recanvass of the absentee ballot vote the recanvass officials shall check all outer envelopes for absentee ballots against the inner envelopes for such ballots and against the registry list to verify postmarks, addresses and registry list markings and also to determine whether the number of envelopes from which absentee ballots have been removed is the same as the number of persons checked as having voted by absentee ballot. The write-in ballots shall also be recanvassed at this time. All of the recanvass officials shall use the same forms for tallies and returns as were used at the original canvass and the absentee ballot counters shall also sign the tallies.

(c) The votes shall be announced and recorded in the manner prescribed in section 9-309 on return forms provided by the municipal clerk and appended thereto shall be a statement signed by the moderator indicating the time and place of the recanvass and the names, addresses, titles and party affiliations of the recanvass officials. The write-in ballots shall be replaced in a properly secured sealed package. Upon the completion of such recanvass, such machine shall be locked and sealed, the keys thereof shall immediately be returned to such clerk and such machine shall remain so locked until the expiration of fourteen days after such election or for such longer period as is ordered by a court of competent jurisdiction. The absentee ballots shall be replaced in their wrappers and be resealed by the moderator in the presence of the recanvass officials. Upon the completion of such recanvass, such moderator and at least two of the recanvass officials of different political parties shall forthwith prepare and sign such return forms which shall contain a written statement giving the result of such recanvass for each machine and each package

of absentee ballots whose returns were so recanvassed, setting forth whether or not the original canvass was correctly made and stating whether or not the discrepancy still remains unaccounted for. Such return forms containing such statement shall forthwith be filed by the moderator in the office of such clerk. If such recanvass reveals that the original canvass of returns was not correctly made, such return forms containing such statement so filed with the clerk shall constitute a corrected return. In the case of a state election, a recanvass return shall be made in duplicate on a form prescribed and provided by the Secretary of the State, and the moderator shall file one copy with the Secretary of the State and one copy with the town clerk not later than ten days after the election. Such recanvass return shall be substituted for the original return and shall have the same force and effect as an original return. (Emphasis added.)

6. On November 3, 2009 a municipal election was held in the town of Haddam. Among other contests contained on the ballot was an election for representatives on the Board of Education for the Regional School District 17. Six candidates were represented on the ballot, of which the top 3 would be elected. The tally from the Election Day canvass was as follows:

Steven N. Banaletti	1109*
Jonathan Gates Wintsch	1103*
<i>Sabrina Alexandra Houlton</i>	<i>1076*</i>
<i>Chester Frank Harris</i>	<i>1075</i>
Erika L. Fleig	1042
Joseph Anthony Zipoli	981

* *Elected*

7. After Election Day the final tally indicated a 1 vote margin between Republican candidate Chester Frank Harris and Democratic candidate Sabrina Houlton, with Ms. Houlton being indicated as the winner, 1076 to 1075. As the margin was less than 20 votes and as Mr. Harris did not affirmatively concede, an automatic recanvass was triggered pursuant to General Statutes § 9-311a. Per General Statutes § 9-310, all tabulators, write-in ballots, absentee ballots, moderators' returns and all other notes, worksheets or written materials used at the election were impounded at the direction of the Secretary of the State and a recanvass was set for November 10, 2009.
8. On November 10, 2009 a recanvass was held at the Haddam Firehouse polling place to recount the votes for the Regional School District 17 candidates. Respondent Marjorie

DeBold was chosen as the head moderator and was primarily responsible for the conduct of the recanvass that day. There is no allegation here, nor evidence suggesting that the recanvass held on November 10, 2009 was conducted improperly by Respondent DeBold and/or Respondent Huffstetler, including but not limited to impoundment, notice, and tallying of the ballots.

9. After the recanvass, all recanvass materials were returned to the Registrars' possession, were resealed, as required, and were locked in a vault at the polling place in which the recanvass took place, with the Registrars maintaining possession of the keys to the polling place. According to Respondent DeBold, the recanvass started at approximately 10am and ended at approximately 3:30pm.
10. After the recanvass, the new vote tally changed as follows:

	Original Tally	Recanvass Tally
Steven N. Banaletti	1109*	1110*
Jonathan Gates Wintsch	1103*	1105*
<i>Sabrina Alexandra Houlton</i>	<i>1076*</i>	<i>1075</i>
<i>Chester Frank Harris</i>	<i>1075</i>	<i>1076*</i>
Erika L. Fleig	1042	1042
Joseph Anthony Zipoli	981	981

* *Elected*

11. Notably, Mr. Harris gained a single vote and Ms. Houlton lost a single vote in the recanvass, reversing the result of the original canvass. After the recanvass was completed, Respondent DeBold filled out a Recanvass Return Form (SOTS Form ED-653a/PR) and sent it to the Secretary of the State—as required by General Statutes §9-311a.
12. According to Respondent DeBold, she maintained her own notes and a spreadsheet of the totals associated with the Election Day canvass and the November 10 recanvass. She also made photocopies of the tally sheets used to compile the votes during the recanvass. After the the recanvass, she took copies of her spreadsheets and the tally sheets home with her, while leaving the originals to be locked up by Respondent Huffstetler, who then turned over possession of the keys to Respondent Hess.
13. Respondent DeBold asserts that on the morning of November 11, 2009 she was organizing her copies of the recanvass materials and became curious as to how Ms. Houlton came to lose a vote. Mr. Harris's vote gain was apparent; a provisional ballot in Mr. Harris' favor was not counted during the original canvass. However, it was unclear how Ms. Houlton came to lose a vote. She began to scrutinize the tally sheets when she noticed first that she

did not have the tally sheet for District 2, and second that the tally sheet for the hand-counted absentee ballots appeared to have an undercounted vote for Ms. Houlton.

14. When tallying the votes on the tally sheets, the counters first wrote hash marks representing a single vote next to the name of the candidate for whom the vote was made. The hash marks were then added up and re-written as a numeral to the right of the hash marks, and divided up per district (Haddam had 3 voting districts). However, Respondent DeBold asserts that on the tally sheet for the hand counted absentee ballots there appeared to be 4 hash marks next to Ms. Houlton's name, but the numeral 3 was written to the right of the hash marks. Other than for Ms. Houlton, the remainder of the hash marks on the tally sheet for the hand counted absentee ballots matched their corresponding numeral.
15. Respondent DeBold asserts that she became concerned that an error may have occurred at the November 10 recanvass. Since November 11 was a holiday and the municipal offices were closed, she went to the Registrar of Voters' office the morning of November 12 to relay her concerns. At the time, only Respondents Hess and Huffstetler were present at Town Hall. Respondent DeBold expressed her concerns to the other Respondents. Respondent Hess asserts that she attempted to make contact with Jane Sibley, the Republican Registrar of Voters, but that Ms. Sibley was not available that morning. Respondent DeBold asked if she could access the materials at the polling place to see if there was a mistake in the tally. Instead of waiting to consult Ms. Sibley, Respondent Hess gave Respondents DeBold and Huffstetler the keys to the polling place and the impounded materials and DeBold and Huffstetler went to the polling place.
16. At the polling place, Respondents DeBold and Huffstetler assert that they proceeded to unlock the impounded materials. They first unsealed the ballot bag containing the ballots for District 2. They removed and recounted only the hand-counted ballots for District 2 and found that the count matched up with Respondent DeBold's spreadsheet. They replaced the ballots, resealed the ballot bag and noted the new seal number. They then proceeded to unseal the bag containing the absentee ballots for all three districts. They counted only the hand-counted absentee ballots and found that there were 4 votes for Ms. Houlton in District 1, 1 more than the 3 indicated on the recanvass tally sheet for the hand counted absentee ballots. The votes for the remaining candidates matched up.
17. Respondents DeBold and Huffstetler assert that after finding the alleged discrepancy, they resealed the bag containing the absentee ballots and noted the new seal number. They returned to Town Hall and informed Respondent Hess of their findings. At this point, an unofficial representative of the Haddam Republicans, former Senator Ed Munster, was present in Respondent Hess' office. Upon their return, Respondents DeBold and Huffstetler informed Mr. Munster of their findings and also informed him that there would need to be a tie vote election between Ms. Houlton and Mr. Harris.

18. Respondent DeBold wrote up an amended return for the November 10, 2009 recanvass and faxed it to the Secretary of the State's office along with a copy of the original return, amended on its face and initialed by Ms. DeBold.
19. General Statutes § 9-310 proscribes that after any election in which a recanvass is required pursuant to General Statutes §§ 9-311 or 9-311a, the impounded elections materials "shall be preserved for one hundred eighty days after such election and may be opened and its contents examined in accordance with section 9-311 or upon an order of a court of competent jurisdiction." (Emphasis added.)
20. Here, Respondents DeBold and Huffstetler accessed the impounded materials using keys given to them by Respondent Hess, who knew their purpose and participated in their efforts by giving them the keys. There is no evidence that they made any attempt to follow the procedures provided in § 9-311, which require certain persons to be present when accessing the elections materials, including but not limited to representatives of all of the parties involved in the election. Considering the aforesaid, the Commission concludes that in accessing the materials without following the procedures provided in § 9-311, all three Respondents violated General Statutes § 9-310.
21. However, the investigation has not revealed any evidence that the Respondents' actions amounted to fraud and/or illegal manipulation of the results of the November 3, 2009 election. In fact, as described below, the investigation revealed that their actions resulted in the discovery and correction of an outcome-determinative discrepancy in the recanvass totals.
22. After the impoundment referenced in Paragraph 1, Commission staff took possession of some of the impounded materials, including but not limited to the re-sealed ballot bag for District 2 and the re-sealed ballot bag containing all of the absentee ballots. Since only those bags were accessed by the above Respondents on November 12, 2009—as evidenced by the new seal numbers—the bags containing the machine and hand counted ballots for Districts 1 and 3 were left impounded in the Haddam Town Hall. The materials taken by Commission staff, were logged and removed in the presence of Respondents DeBold and Huffstetler, taken back to Commission offices and placed in a secure, locked evidence cabinet to which only the Clerk of the Commission had direct access for the duration of the instant investigation.
23. In the interest of verifying the count, Commission staff conducted an independent recanvass of all of the ballots contained in the District 2 and Absentee ballot bags. After the Commission staff recanvass, the results were as follows:

	<i>11/10/09 Recanvass w/Error Corrected*</i>	<i>SEEC Recanvass</i>
D2 Machine Counted Ballots		
<i>Harris</i>	235	235
<i>Houlton</i>	250	250
D2 Hand Counted Ballots		
<i>Harris</i>	13	13
<i>Houlton</i>	9	9
AB Machine Counted Ballots		
<i>Harris</i>	37	37
<i>Houlton</i>	21	21
AB Hand Counted Ballots		
<i>Harris</i>	13	13
<i>Houlton</i>	4*	4

24. According to the above tally by Commission staff, the original November 10, 2011 recanvass miscounted a single vote for Ms. Houlton, causing the recanvass result to appear to be a one-vote margin for Mr. Harris when in fact the correct result was a tie between the candidates.
25. As shown above, these Respondents do not generally deny the Complainant's allegations. Respondent DeBold asserts that it was her first time conducting a recanvass as a moderator. For the November 10, 2009 recanvass, she asserts that she was very concerned about "getting it right" and was very careful to follow the recanvass manual published by the Secretary of the State. When she discovered the mistake in her notes, she was very concerned that the "will of the voters" had not been accounted for and thought that it was "better to be sure that she did not make a mistake." The Respondents all assert that their intentions were genuine, and that they did not appreciate the gravity of the acts that they took in accessing the materials after the November 10, 2009 recanvass.
26. They realized very quickly that they had made a mistake and they made efforts to make amends with the candidates affected by their acts as well as representatives of the Republican Party in Haddam. Ms. DeBold agreed to step down as moderator for the tie-vote election. Before the new election, and upon the advice of the Office of the Secretary of the State, the Respondents called a meeting of all of the affected parties to attempt to explain and apologize for accessing the election materials on their own. The meeting was heavily attended and was covered by statewide newspapers and television stations. The

Respondents received considerable criticism during this meeting and in the press for their actions.

27. While § 9-310 has been good law for decades, the Commission only gained civil penalty jurisdiction over this law, or any law in Chapter 148, upon the passage of Public Act 95-122 of the 1995 Public Acts. Since that time, only one case exists that is on point.

28. In *Complaint of Peter J. Jurzynski, Naugatuck*, File No. 2001-134, the Registrar of Voters, after the close of polls, directed two different moderators and a machine mechanic to return to their respective polling places and open the machines, after discrepancies were found on each moderator's return between the total votes cast and the number recorded for each individual candidate. After opening the machines, the moderators found discrepancies of 400 and 200 votes for two different candidates. After the discrepancies were found, the Registrar of Voters changed the moderators' returns to reflect the new totals. All Respondents were concluded to have violated § 9-311. However, the Commission found that:

11. None of the Respondents realized that the discrepancy recanvass procedures of the § 9-311 applied in these instances. They were motivated to reopen the machines and recheck the numbers only by their interest in an accurate count. *Their decision was made in good faith with the sole purpose of assuring accurate results.*

12. None of the discrepancies in the recording of the vote totals affected the total recorded for the Complainant. (Emphasis added.)

The Commission issued a henceforth order, but no civil penalties were levied.

29. Here, as stated above, there does not appear to be any evidence suggesting that the Respondents acted in bad faith. Moreover, the evidence appears to show that their acts, while in violation of General Statutes § 9-310, found an outcome-determinative discrepancy in the recanvass. They realized quickly that they had made a mistake and made efforts to make amends. They were publicly scolded by their peers and by the media.

30. However, while the above considerations mitigate, to a degree, the Commission's determination of a civil penalty in this matter, unlike in *Jurzynski*, they do not excuse the Respondents' failure here. Their breach of the § 9-311 protocols was grave and caused considerable consternation in the town of Haddam and cast the entire result in question. While the evidence appears to show that their acts were not fraudulent, the Commission

agrees that “when you go by yourselves, just you two, it gives the appearance of impropriety.”¹

31. Moreover, unlike in *Jurzynski*, the result here necessitated a second tie-vote election per General Statutes § 9-311b, which this time Mr. Harris won by a margin large enough to avoid a recanvass. The day before the tie-vote election, the Hartford Courant published an editorial condemning the Respondents’ rush to access the elections materials without any representative of the Republican Party present and criticized them for failing to “maintain trust” in the electoral process.² There is no telling whether or how the uproar fomented by the Respondents’ poor judgment may have affected the outcome of this tie-vote election. In consideration of extenuating circumstances related to Ms. Hess’ health, the Commission will take no further action against this Respondent. However, as concerns the other two Respondents, a civil penalty must be assessed here.
32. 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.
33. 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.

¹ *Only One Party Observed Haddam Vote Count*, Hartford Courant, November 23, 2009 (Statement of candidate Chester Harris).

² *Id.*

ORDER

IT IS HEREBY ORDERED that Respondent Majorie DeBold shall pay a civil penalty of One Hundred Fifty Dollars (\$150) and that the Respondent will henceforth strictly comply with the requirements of General Statutes §§ 9-310, 9-311, & 9-311a.

IT IS HEREBY ORDERED that Respondent Ann Huffstetler shall pay a civil penalty of One Hundred Fifty Dollars (\$150) and that the Respondent will henceforth strictly comply with the requirements of General Statutes §§ 9-310, 9-311, & 9-311a.

The Respondents:

For the State of Connecticut:

Majorie DeBold
Majorie DeBold

Dated: 9/13/11

Ann Huffstetler
Ann Huffstetler

Dated: 9/13/11

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

Dated: 9/15/11

Adopted this 21st day of September of 20 11 at Hartford, Connecticut

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