

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Deborah Evangelista, et. al, West Haven

File No. 2010-040

FINDINGS AND CONCLUSIONS

Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b and alleges possible violations of the election administration statutes by Respondent Michelle Hufcut and Robert J. Symmes related to a close-vote recanvass held after the March 2, 2010 town committee primary in the City of West Haven. Specifically, the Complainants allege that the Respondents failed to equally divide recanvass officials, improperly named a relative of a candidate as a recanvass official, and tampered with secured ballots. After the investigation, the Commission makes the following findings and conclusions:

1. On March 2, 2010 a town committee primary was held in the City of West Haven for positions on the West Haven Democratic Town Committee.
2. The primary was contested, with full slates of candidates on both the endorsed and the challenge side.
3. At all times relevant to the instant Complaint, Respondent Michelle Hufcut was the Democratic Registrar of Voters in West Haven.
4. At all times relevant to the instant Complaint, Respondent Robert J. Symmes was the head moderator for the March 2, 2010 town committee primary.
5. After the primary, Respondent Symmes reviewed the results and determined that the results in Districts 1, 2, 3, 8, and 10 were within the margin requiring a recanvass under General Statutes § 9-445.
6. General Statutes § 9-445 (Rev. to May 10, 2010) reads, in relevant part:

Forthwith after a primary for nomination to a municipal office or for election of members of a town committee, or forthwith upon tabulation of the vote for a state or district office by the Secretary of the State when the plurality of an elected or nominated candidate over the vote for a defeated candidate receiving the next highest number of votes was either (1) less than a vote equivalent to one-half of one per cent of the total number of votes cast at the primary for the office or

position but not more than one thousand votes, or (2) less than twenty votes, there shall be a recanvass of the returns of the voting machine or voting machines used in such primary for said office or position unless within one day after the primary, in the case of nomination to a municipal office or for election of members of a town committee, or prior to the time the Secretary of the State notifies the town clerk of state and district offices which qualify for an automatic recanvass, the defeated candidate or defeated candidates, as the case may be, for such office or position file a written statement waiving this right to such recanvass with the municipal clerk in the case of a municipal office or town committee, or with the Secretary of the State in the case of a state or district 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 recanvass such returns of the office in question in the same manner as is provided for a recanvass in regular elections, except that the recanvass officials shall be divided equally, as nearly as may be, among the candidates for such office. 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 and place of such recanvass to each candidate for a municipal office which qualifies for an automatic recanvass under this section. For purposes of this section, “the total number of votes cast at the primary for the office or position” means, in the case of multiple openings for the same office or position, the total number of electors checked as having voted in the primary 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. Nothing in this section shall preclude the right to judicial proceedings in behalf of such defeated candidate under any provision of this chapter. (Emphasis added.)

7. General Statutes § 9-310 reads:

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.)

8. General Statutes § 9-311 (Rev. to July 13, 2011) provides:

(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.

(d) As used in this section, (1) "moderator" means, in the case of municipalities not divided into voting districts, the moderator of the election and, in the case of municipalities divided into voting districts,

the head moderator of the election, and (2) “registrars of voters”, in a municipality where there are different registrars of voters for different voting districts, means the registrars of voters in the voting district in which, at the last-preceding election, the presiding officer for the purpose of declaring the result of the vote of the whole municipality was moderator. (Emphasis added.)

9. After making the aforementioned determination, Respondent Symmes set the recanvass for Thursday, March 4, 2010 at 6 p.m. at West Haven City Hall.

COUNT ONE: Failure to Equally Divide Recanvass Officials “As Nearly As May Be”

10. On Wednesday, March 3, 2010, Respondent Symmes made notice to the candidates and the chairman of the West Haven Democratic Town Committee and Respondent Hufcut secured the services of the number and type of recanvass officials required by General Statutes §§ 9-445 and 9-311.
11. At the time of the March 4, 2010 recanvass commenced, in view of the public, and after the tabulators and ballot bags had been produced, Complainant Charles Marino challenged the Respondents on the distribution of the recanvass officials between the approximately 60 candidates.
12. Specifically, the Complainants allege that the persons chosen as recanvass officials “were persons known to be for the A line [on the ballot], but none for the B line.”
13. The Complainants further allege that Respondent Hufcut was not aware of the requirements in § 9-445 that the recanvass officials be divided “as evenly as may be” among the candidates.
14. Respondents deny that Ms. Hufcut was unaware of the requirement and also deny that they failed to meet this requirement. Respondent Hufcut asserts that she made attempts to hire recanvass officials from the Row “B” candidate, but found that the individuals she called were either unwilling or unavailable to continue their service to the March 4, 2010 recanvass.
15. Respondent Symmes further asserts that after the challenge from Mr. Marino, Mr. Symmes took a poll of the recanvass officials and asked for their affiliation. He asserts that only a small minority of the officials would reveal their affiliations, as doing so would reveal their vote.

16. Neither party was able to produce any tangible evidence of their allegations or assertions concerning the distribution of recanvass officials among the candidates.
17. However, the parties do agree that Respondent Symmes, in light of the challenge from Mr. Marino, addressed the issue rather than dismissing the concerns expressed. Mr. Symmes offered a compromise of allowing representatives of the challenge slate to stand behind the recanvass officials while the recanvass was underway. Mr. Marino agreed that this accommodation was not ideal, but sufficiently satisfied his concerns such that the recanvass could commence.
18. After investigation, the Commission concludes that the evidence found during the investigation established that a challenge did occur at the March 4, 2010 recanvass and that Mr. Symmes' proposed solution to the challenge was implemented before the recanvass commenced. However, while there did not appear to be any first-hand involvement from the candidates in the selection of the recanvass officials, the investigation to date has been inconclusive as to whether or not the Respondents met the standard of "as nearly as may be" in the statute. In consideration of the solution brokered between the parties at the March 4, 2010 recanvass as well as the paucity of the available evidence at present, the Commission concludes that while the implementation of the requirements of § 9-445 was, at best, imperfect, additional agency resources should not be employed towards a further inquiry into this allegation. As such, the Commission will take no further action.

COUNT TWO: Appointment of a Candidate Relative as a Recanvass Official

19. After the issue in Count One was addressed, the recanvass commenced. However, shortly after commencing, Edward J. Leavitt, a member of the public and a candidate on the "B" line, protested that one of the recanvass officials working on the District 3 recanvass was the father of one of the candidates.
20. Respondent Symmes asserts that upon the protest, the recanvass was halted and he inquired of the recanvass official, who admitted that he was the step-father of one of the candidates in the district to which he was assigned.
21. The parties agree that upon the protest and the admission of the relationship, Respondent Symmes switched the recanvass official with one from another district and the recanvasses in those two districts were started over.
22. The Complainants here allege that assignment of a relative to the position of recanvass official in the same district as the candidate to whom such candidate was related was a violation by the Respondents.

23. In consideration of the aforesaid, the Commission concludes that assigning a relative of a candidate to the position of recanvass official is not a violation of any statute for which the Commission has jurisdiction. Certain relatives are proscribed from being absentee ballot counters, for instance, but there is no similar restriction on recanvass officials. *See, e.g.,* General Statutes § 9-147c. As such, Count Two is dismissed.

COUNT THREE: Tampering with Ballots

24. After the concerns in Counts One and Two were addressed, the March 4, 2010 recanvass continued in earnest for all districts.
25. The parties agree that the recanvasses in the 1st, 2nd, and 10th Districts were finished first and the results, with no change in outcome, were announced to the public by Respondent Symmes.
26. However, upon review of the results in the 3rd and 8th District races, the Complainants allege that Mr. Symmes announced the 8th District result and also announced that there had been no change in the outcome from the original canvass. They allege that after these announcements, a number of individuals in the room pointed out to Mr. Symmes that the outcome had actually changed from the original canvass, with one Row "A" candidate, previously a winner, now losing out to a Row "B" candidate.
27. The Complainants allege that at the discovery of the above change, Respondent Symmes, Respondent Hufcut and Town Clerk Deborah Collins had a discussion, after which Mr. Symmes announced that the recanvass would be suspended and resumed at a later date.
28. Respondent Symmes asserts that upon review of the District 3 and District 8 results after the recanvass, he noticed significant changes from the original canvass. In District 3, 12 votes changed for the candidates on lines 4A, 5A and 5B. In District 8, the number of the votes tallied at the recanvass exceeded the number of ballots counted by 21.
29. He asserts that he made the determination that he would certify the results for the 1st, 2nd, and 10th Districts, but would order that the ballots in the 3rd and 8th be recounted again. He asserts that at that point, Respondent Hufcut and Ms. Collins noted that the time was approximately 9:30 p.m. and that City Hall would be closing at 10 p.m. and recommended that the recanvass be suspended and restarted at a later date.
30. Mr. Symmes asserts that he announced that the recanvass would be suspended and resumed on Saturday, March 6th at 10 a.m.

31. The parties agree that after Mr. Symmes suspended the March 4, 2010 recanvass, the ballots from the recanvass were put back into ballot transfer bags and the ballot transfer bags were sealed and the serial numbers on the seals were noted by Respondent Symmes, the head moderator. Complainant Marino also recorded the seal numbers for bags specifically related the 3rd and 8th Districts.
32. The Complainants allege that those bags for the districts for which a result had already been announced and certified remained unsealed.
33. Respondent Symmes asserts that he ordered all tabulators and bags to be re-sealed and that all materials and tabulators be returned to the vault under Respondent Hufcut's control. Respondent Symmes asserts that he noted that the padlock on the vault would be changed and Respondent Hufcut placed a notice on the vault that the entire vault had been impounded pending the March 6, 2010 resumption of the recanvass.
34. Complainants allege as follows as concerns the March 6, 2010 resumption of the recanvass: that the sealed ballot transfer bags for the 3rd and 8th Districts, along with the tabulators, were brought back into the recanvass room in view of the public. Upon unsealing the bag in which Respondent Symmes announced and recorded that the 8th District ballots had been placed, it was discovered that the bag did not contain any 8th District ballots, but rather held 1st District ballots. Respondent Symmes then ordered Respondent Hufcut to retrieve the remaining bags from the vault. She returned with three bags, two of which were unsealed. District 8 ballots were discovered in the sealed bag marked "4A." At this point, the counting for District 3 and District 8 commenced. However, shortly into the count, one of the recanvass officials discovered that District 10 ballots were mixed into the District 8 ballots. At this point, Respondent Symmes announced that the March 6, 2010 recanvass would be suspended pending a consultation with the Secretary of the State's Office. All bags and tabulators were re-sealed, as was the vault itself and all seal numbers were noted by Respondent Symmes and Complainant Marino.
35. At or about 3:30 p.m. on March 9, 2010, the recanvass reconvened. The Complainants do not make any allegations regarding this part of the recanvass.
36. The Complainants do not make any allegations regarding the March 9, 2010 portion of the recanvass. Based on its investigation, the Commission finds the following facts regarding the March 9, 2010 recanvass:
 - a. Present at the March 9, 2010 recanvass were: the Respondents; Town Clerk Deborah Collins; recanvass officials evenly representing the candidates as nearly as may be; representatives from the Secretary of the State's Office including Deputy Secretary of the State Lesley Mara, Staff Attorney Ted Bromley, and Administrative

Liaison Lucian Pawlek; and members of the public, including some representatives and/or candidates from the challenging "B" slate.

- b. After consultation with the representatives of the Secretary of the State, Respondent Symmes instructed the Registrar to produce the tabulator and ballot bags for the 3rd and 8th Districts, as well as the bag containing the absentee ballots for all districts, which she did.
 - c. The memory card for the 8th District was non-functional, so Respondent Symmes ordered a hand recount in that district.
 - d. The recanvass for the 8th and 3rd Districts were completed at 8:40 p.m. and 9:20 p.m., respectively.
 - e. Upon total completion of the recanvass process on March 9, 2010, Respondent Symmes, in the presence of the above-mentioned individuals, announced and certified that the tallies from the original canvass and from the final recanvass marginally differed, but did not change the outcome in any race.
 - f. The representatives of the Secretary of the State did not witness any acts in the conduct of the recanvass that they observed on March 9, 2010 that would rise to the level of a violation by the Respondents or would constitute evidence that the result had been altered by the Respondents.
37. The Complainants here allege that based on the facts alleged concerning the portions of the recanvass that occurred on March 4, 2010 and March 6, 2010, the results in the 8th District race may have been "tampered with." Once elections materials have been impounded pursuant to General Statutes § 9-310, they may not be accessed, except as indicated in that statute. Their allegations give rise to potential violations of § 9-310, which carries both civil and criminal penalties.
38. During the investigation, the Respondents asserted that while they erred in allowing ballots from different districts to become intermingled in the ballot transfer bags, this was not a violation of any regulation or statute. They asserted that all materials associated with the March 2, 2010 recanvass were impounded pursuant to General Statutes § 9-310 and remained so, except when the materials were removed for the purpose of recanvassing. Finally, they assert that the result of the March 9, 2010 continuance of the recanvass is proof enough that no tampering occurred.
39. Upon the filing of the instant Complaint, as well as the Complaint in File No. 2010-039, the Commission, pursuant to its authority to issue investigatory subpoenas under § 9-7b-28 of the Regulations of Connecticut State Agencies, ordered that the materials associated with the March 2, 2010 town committee primary be impounded.
40. Commission staff visited the West Haven City Hall and inspected the materials associated with the allegations here.

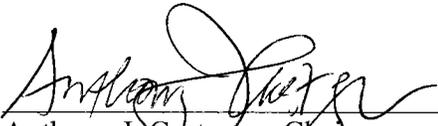
41. Based on its investigation, the Commission finds as an initial matter that it sympathizes with the Complainants' concerns. The March 4, 2010 recanvass and March 6, 2010 appear to have been poorly organized from the start and badly managed while underway.
42. Specifically, the Commission finds that the Respondents displayed regrettable judgment in continuing the recanvass to another day based on a regular closing time for West Haven City Hall. All of the interested parties were gathered in the counting room on March 4, 2010, including representatives supported by Mayor Picard; it would have been reasonable for the Respondents to seek permission from the town authorities to continue the counting for the two remaining districts. An environment of mistrust and confusion had already pervaded the count at this juncture. Stopping the recanvass after an error occurred that appeared to give a Row "B" candidate a recounted victory added fuel to an already smoldering fire.
43. However, the Commission concludes that nothing in the facts presented by the parties or found during the instant investigation reveals a specific violation by the Respondents here. The intermingling of the ballots was not, per se, a violation. The ballots remained within a sealed bag; even if such bag was incorrectly labeled and/or recorded, there does not appear to be a question that the missing District 8 ballots were found in a sealed container. Moreover, all of the elections materials, sealed or unsealed, were held in a vault which itself had been sealed. Finally, the results of the town committee primary in the contested districts did not differ substantially from the original canvass to the recanvass held on March 9, 2010, which was conducted in the presence of, *inter alia*, representatives of the Secretary of the State.
44. Considering the aforesaid, the Commission dismisses Count Three.

ORDER

The following Order is recommended on the basis of the aforementioned findings:

That the matter is dismissed.

Adopted this 19th day of June, 2013 at Hartford, Connecticut.


Anthony J. Castagno, Chairperson
By Order of the Commission