

FEB 17 2011

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Jean M. de Smet, Willimantic

File No. 2010-149

AGREEMENT CONTAINING A HENCEFORTH ORDER

This agreement by and between Susan Bucklin of the Town of Willimantic, 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 General Statutes § 4-177 (c) and Regulations of Connecticut State Agencies § 9-7b-54. In accordance herewith, the parties agree that:

1. Respondent served as the Moderator of the Windham High School Polling Place in Willimantic, Connecticut during the November 2, 2010 election.
2. The Complainant alleged that she cast a write-in vote for a particular registered write-in candidate for United States Senator in the November 2, 2010 election that was not counted. The Complainant voted at Windham High School.
3. The Respondent did not however record any votes for that candidate in her moderator's return.
4. 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.]

5. 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.]

6. 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.**

7. Commission staff conducted a comprehensive field investigation concerning the write-in votes cast at Windham High School on the optical scan voting machine for the November 2, 2010 election. The evidence from that investigation establishes that a total of 36 write-in votes were recorded by the optical scan voting machine, 9 of which were recorded for United States Senator. Commission staff reviewed the ballots identified as having been found in the auxiliary and write-in bins and found a total of 18 ballots cast for write-in candidates. Of those 18, 36 write-in votes were cast. That is consistent with the machine tallies.
8. However, not all were cast for *registered* write-in candidates. Of those 18 ballots, 9 write-in votes were cast for the office of United States Senator. Of that 9, 5 were properly cast for a *registered* write-in candidate for that office. Two write-in votes were properly cast for Brian Hill and 3 votes were properly cast for Jeff Russell.
9. The tally sheet completed by the ballot clerk (Sondra Stephens) and the tabulator tender (Winifred Chase) on the night of the election establishes that 4 write-in votes were tallied for the office of United States Senator along with all other write-in votes.

10. However, when the election officials crossed out the votes for the non-registered write-in candidates they mistakenly crossed out the votes for one of the registered write-in candidates for United States Senator as well. That tally sheet was incorporated into the Respondent's Moderator's Return.
11. As such, the Respondent's Moderator's Return reflected only 2 votes for registered write-in candidates for United States Senator. That Return was relied on by the Head Moderator when recording all properly cast write-in votes. The Respondent therefore violated General Statutes § 9-265 by failing to properly count and record the write-in votes cast at the Windham High School polling place of which she was the Moderator.
12. The Respondent does 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 Respondent's error 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 election officials to exercise extreme caution to ensure that all write-in votes are properly counted and recorded in the future.
13. Finally, the Commission notes that the Registrars of Voters have agreed to file an amendment of the election results with the Office of the Secretary of the State upon completion of this matter.
14. 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.
15. 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.
16. Upon the Respondent's agreement to comply with the Order hereinafter stated the Commission shall not initiate any further proceedings against her concerning this matter.
17. 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.

The Respondent

For the State of Connecticut

By:

By:



Susan Bucklin
Willimantic, Connecticut

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

Dated: _____

Dated: 2/17/11

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



Stephen F. Cashman, Chairman
By Order of the Commission