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**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

Complaint by Jay Lewin, New Milford

File No. 2011-111

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Respondent Gerard Monaghan, of the town of New Milford, County of Litchfield, 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. "New Milford First" was, at all times relevant to the instant complaint, a validly formed minor party in the town of New Milford, qualified to nominate candidates for local offices in that town.
2. General Statutes § 9-452 prescribes the procedures that a minor party must follow to nominate candidates for elective office, and reads:

All minor parties nominating candidates for any elective office *shall make such nominations and certify and file a list of such nominations, as required by this section, not later than the sixty-second day prior to the day of the election at which such candidates are to be voted for.* A list of nominees in printed or typewritten form shall be certified by the presiding officer of the committee, meeting or other authority making such nomination and shall be filed by such presiding officer with the Secretary of the State, in the case of state or district office or the municipal office of state representative, state senator or judge of probate, or *with the clerk of the municipality, in the case of municipal office, not later than the sixty-second day prior to the day of the election.* The clerk of such municipality shall promptly verify and correct the names on any such list filed with him, or the names of nominees forwarded to him by the Secretary of the State, in accordance with the registry list of such municipality and endorse the same as having been so verified and corrected. For purposes of this section, a list of nominations shall be deemed to be filed when it is received by the secretary or clerk, as appropriate. (Emphasis added.)

3. General Statutes § 9-452a prescribes the notice requirements concerning minor party nominations, and reads:

Not later than five days before a minor party holds a party meeting to nominate a candidate for public office, the presiding officer of such meeting shall give written

notice of the date, time, location and purpose of the meeting to, in the case of a municipal office, the town clerk of the municipality served by such office, or in the case of a state office or district office, the Secretary of the State. Concomitantly, the presiding officer of such meeting shall cause the written notice of such meeting to be published in a newspaper with a general circulation in the applicable town for such office. As used in this section, the terms "minor party", "state office", "district office" and "municipal office" have the meanings assigned to such terms in section 9-372. (Emphasis added.)

4. On or about September 7, 2011, 62 days prior to the November 8, 2011 General Election, "New Milford First," by its caucus chairman, Respondent Gerard Monaghan, submitted a list of endorsed candidates to the New Milford town clerk. According to the certification, the party held a caucus on August 29, 2011 and nominated candidates for the offices of Town Council, Board of Finance, Zoning Commission, Planning Commission, Zoning Board of Appeals and Board of Assessment Appeals.
5. The Complainant in this matter alleges that the Respondent failed to file notice with the New Milford town clerk of the party meeting of "New Milford First," in violation of General Statutes § 9-452a.
6. After investigation, the Commission finds, and the Respondent does not deny, that no notice was filed with the New Milford town clerk regarding a "New Milford First" party meeting to select candidates.
7. When nominating candidates, minor parties must hold a party meeting and such meeting must be held "at one time and one place" and notice of the time and place of such meeting must be given no less than 5 days prior to its occurrence. See *Complaint of Christopher Johnson, Canterbury*, File No. 2011-112 (citing and incorporating the written opinion of the Secretary of the State per General Statutes § 9-3); General Statutes § 9-452a. However:

although the Connecticut General Statutes do impose a public notice requirement upon both major and minor parties with regarding to their caucuses and meetings respectively, ***they do not similarly impose a penalty for failure to post such notice.*** The state election laws instead appear to leave the dispute of such parties to the parties themselves. *Johnson* at ¶ 11. (Emphasis in original.)
8. Considering the aforesaid, the Commission concludes that Respondent, as chairman of "New Milford First" caucus violated General Statutes § 9-452a by failing to file notice with the New Milford town clerk of a party meeting to nominate candidates.

9. However, the Commission also concludes that such failure was not a fatal defect to the placement of such nominees on the November 8, 2011 ballot in the Town of New Milford. Where the legislature has intended that a statutory requirement be a necessary predicate to the placement of endorsed candidates on a ballot, it has done so explicitly. See, e.g., General Statutes § 9-388¹ and General Statutes § 9-391 (a).² No such explicit requirement exists here. Moreover, as General Statutes § 9-7b gives the Commission no authority to levy a civil penalty for a violation of § 9-452a, we will take no further action in this matter.

¹ General Statutes § 9-388 reads, in pertinent part

Whenever a convention of a political party is held for the endorsement of candidates for nomination to state or district office, each candidate endorsed at such convention shall file with the Secretary of the State a certificate, signed by him, stating that he was endorsed by such convention . . . and shall be received by the Secretary of the State not later than four o'clock p.m. on the fourteenth day after the close of such convention. . . . *If a certificate of a party's endorsement for a particular state or district office is not received by the Secretary of the State by such time, such certificate shall be invalid and such party, for purposes of section 9-416 and section 9-416a shall be deemed to have made no endorsement of any candidate for such office. . . .* (Emphasis added.)

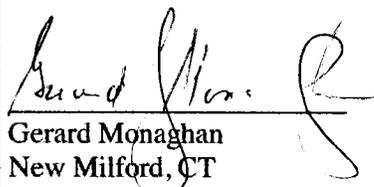
² General Statutes § 9-391 (a) reads:

Each endorsement of a candidate to run in a primary for the nomination of candidates for municipal office to be voted upon at a municipal election, or for the election of town committee members shall be made under the provisions of section 9-390 not earlier than the fifty-sixth day or later than the forty-ninth day preceding the day of such primary. The endorsement shall be certified to the clerk of the municipality by either (1) the chairman or presiding officer, or (2) the secretary of the town committee, caucus or convention, as the case may be, not later than four o'clock p.m. on the forty-eighth day preceding the day of such primary. Such certification shall contain the name and street address of each person so endorsed, the title of the office or the position as committee member and the name or number of the political subdivision or district, if any, for which each such person is endorsed. *If such a certificate of a party's endorsement is not received by the town clerk by such time, such certificate shall be invalid and such party, for purposes of sections 9-417, 9-418 and 9-419, shall be deemed to have neither made nor certified such endorsement of any candidate for such office.* (Emphasis added.)

ORDER

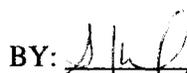
IT IS HEREBY ORDERED that Respondent Gerard Monaghan will henceforth strictly comply with the requirements of Connecticut General Statutes § 9-452a.

The Respondent:


Gerard Monaghan
New Milford, CT

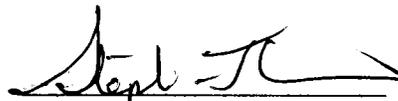
Dated: 10/25/11

For the State of Connecticut:

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

Dated: 10/27/11

Adopted this 16th day of November of 2011 at Hartford, Connecticut


Stephen F. Cashman, Chairman
By Order of the Commission

**RECEIVED
STATE ELECTIONS**

OCT 27 2011

**ENFORCEMENT
COMMISSION**