

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In re: Referral of the Office of the Secretary of the State

File No. 2012-167

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Susan M. Pawluk, Town Clerk of Stratford, Connecticut, in her official capacity, hereinafter referred to as the "Respondent," and the authorized representative of the State Elections Enforcement Commission, is entered into in accordance with General Statutes § 4-177 (c) and section 9-7b-54 of the Regulations of Connecticut State Agencies. In accordance herewith, the parties agree that:

1. At all times relevant hereto, the Respondent was Town Clerk for Stratford, Connecticut.
2. A general election was held on Tuesday, November 6, 2012.
3. On or about November 14, 2012, in organizing the election materials from such general election, the Respondent discovered thirty-five presidential ballots had not been counted (the "misplaced presidential ballots"). The Respondent then immediately and of her own volition contacted the Office of the Secretary of State for advice.
4. Due, in part, to this timely self-reporting and advice seeking, the misplaced presidential ballots were, in fact, counted and included in the final totals with the State of Connecticut and reports were amended as necessary to reflect this change.
5. No elector was disenfranchised or otherwise lost their vote as a result of the misplaced presidential ballots.
6. The Respondent attributes the initial omission of the misplaced presidential ballots to staff fatigue during a busy election day.
7. General Statutes § 9-158m, regarding the handling of presidential ballots, provides, in relevant part, "Except as otherwise provided in sections 9-158a to 9-158m, inclusive, the provisions of law relating to absentee ballots shall apply to the distribution, casting and counting of presidential and overseas ballots under said sections and to the furnishing of election supplies and ballots, canvassing of ballots and making returns of the results of the election under said sections."
8. General Statutes § 9-140c (a), designates the Respondent as the custodian of the misplaced presidential ballots and provides, in relevant part, "The municipal clerk shall retain the

envelopes containing absentee ballots received by him under section 9-140b and shall not open such envelopes.”

9. General Statutes § 9-140c (h) requires that, “Absentee ballots received after six o’clock p.m. and any ballots received prior to six o’clock p.m. which were not delivered earlier shall be delivered to the registrars at the close of the polls for checking.”
10. The Respondent acknowledges and admits to an unintentional violation of § 9-140c (h) in that the misplaced presidential ballots were not provided to the registrars in the time and manner required.
11. The Respondent has cooperated fully with the investigation into this matter.
12. The Respondent agrees and understands that any duties under § 9-140c (h) and any associated liability for acts or omission in violation of such statute remain with the Respondent even if such duties are delegated by the Respondent to an Assistant Clerk or other subordinate staff.
13. The Respondent agrees and understands that any failure of an Assistant Clerk or other subordinate staff to perform such duties shall not be considered as a defense in any future similar action.
14. Connecticut General Statutes § 9-7b (a) (2) (A), provides that the Commission may assess a civil penalty of two thousand dollars per offense for any violation of § 9-140c (h). Pursuant to Section 9-7b-48 of the Regulations of Connecticut State Agencies, in determining the amount of a civil penalty, the Commission shall consider, among other mitigating and aggravating factors:
 - (1) the gravity of the act or omission;
 - (2) the amount necessary to insure immediate and continued compliance;
 - (3) the previous history of similar acts or omissions; and
 - (4) whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes.
15. The Commission finds that the Respondent’s good faith error, self-reporting of the issue to the Office of the Secretary of the State, and the lack of actual disenfranchisement were mitigating factors in this matter.
16. The Commission finds that the risk of disenfranchisement was significant given the magnitude of the potential harm and that such risk represents an aggravating factor.

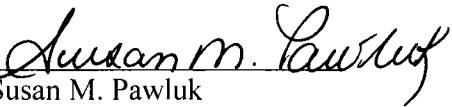
17. Considering both the aggravating and mitigating facts in this matter, the Commission concludes that the specific facts of this case warrant a suspended civil penalty for the Respondent.
18. The Respondent admits all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. The Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
19. 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.
 - d. All right to challenge the validity of any vote by the Commission, pursuant to Section 9-7b-35 of the Regulations of State Agencies, as identified in this Agreement and Order.
20. The Respondent agrees and understands that any vote, pursuant to Section 9-7b-35 of the Regulations of State Agencies, as identified in this Agreement and Order, shall be conducted in accordance with the requirements of such regulation, which does not include the right for the Respondent to be present or offer argument or evidence. The Respondent agrees and understands that any such vote shall be considered final upon the Commission's adoption of the minutes recording such vote, and that any payment required under the Order shall be due no later than thirty days of the issuance of notice to the Respondent of such a vote having occurred.
21. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next available 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.
22. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

ORDER

IT IS ORDERED THAT:

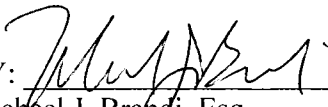
- a. The Respondent shall henceforth strictly comply with the requirements of General Statutes § 9-140c.
- b. The Respondent shall pay a penalty of one thousand dollars (\$1,000.00) for the Respondent's violation of § 9-140c (h), but that the payment of such penalty shall be suspended unless and until the Commission finds, pursuant to Section 9-7b-35 of the Regulations of Connecticut State Agencies, that there is reason to believe that the Respondent violated any of the General Statutes within the Commission's jurisdiction when, and only when, such a violation was due to her duties, actions or omissions as a Town Clerk in relation to ballots, ballot applications, or requests for ballot applications. For purposes of this order, "ballot" and "ballots" shall include, but not be limited to, absentee ballots, overseas ballots, presidential ballots, or any other statutorily designated instrument by which an elector exercises the franchise to vote.
- c. Such payment shall remain suspended if such finding is limited to a violation or violations occurring prior to the year 2013.
- d. That such suspended penalty shall be automatically vacated after the expiration of four years from the execution of this Consent Agreement and Order unless and until the Commission votes, pursuant to Section 9-7b-35 of the Regulations of Connecticut State Agencies, in the manner described above and prior to the expiration of such period.

The Respondent:


Susan M. Pawluk
Stratford Town Clerk
Town Hall
2725 Main Street
Stratford, CT 06615

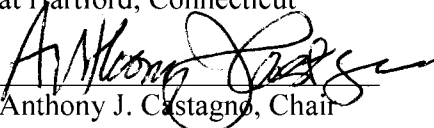
Dated: July 8, 2013

For the State of Connecticut:

BY: 
Michael J. Brandi, Esq.
Executive Director & General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: July 10, 2013

Adopted this 17th day of July of 2013 at Hartford, Connecticut


Anthony J. Castagno, Chair
By Order of the Commission