

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Referral of the Secretary of the State

File No. 2012-187

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between George M. Souto, of the City of Middletown, 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. At all times relevant to the instant Complaint the Respondent was the head moderator for the City of Middletown for the November 6, 2012 General Election.
2. The Secretary of State referred this matter to the Commission alleging that the Respondent refused to comply with newly-enacted statutory requirements concerning the method of assigning party endorsements to votes for cross-endorsed candidates in which the voter selected the candidate on more than one line.
3. Prior to a revision effective July 13, 2011, General Statutes § 9-242 read, in pertinent part:

...

(b) It shall be so constructed as to prevent an elector from voting for more than one person for the same office, except when he is lawfully entitled to vote for more than one person for that office, and it shall afford him an opportunity to vote for only as many persons for that office as he is by law entitled to vote for, at the same time preventing his voting for the same person twice. It shall be so constructed that all votes cast will be registered or recorded by the machine.

(c) Notwithstanding the provisions of subsection (b) of this section, the Secretary of the State may approve a voting machine which requires the elector in the polls to place his ballot into the recording device and which meets the voluntary performance and test standards for voting systems adopted by (1) the Federal Election Commission on January 25, 1990, as amended from time to time, or (2) the Election Assistance Commission pursuant to the Help America Vote Act of 2002, P.L. 107-252, 42 USC 15481-85, as amended from time to time, whichever standards are most current at the time of the Secretary of the State's approval, and regulations which the Secretary of the State may adopt

in accordance with the provisions of chapter 54, provided the voting machine shall (A) warn the elector of overvotes, (B) not record overvotes, and (C) not record more than one vote of an elector for the same person for an office.

....

4. General Statutes § 9-242 was altered by Public Act 11-173 of the 2011 Public Acts in pertinent part, as follows:

Sec. 39. Section 9-242 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(b) It shall be so constructed as to prevent an elector from voting for more than one person for the same office, except when [he] the elector is lawfully entitled to vote for more than one person for that office, and it shall afford [him] the elector an opportunity to vote for only as many persons for that office as [he] the elector is by law entitled to vote for, at the same time preventing [his] the elector from voting for the same person twice. It shall be so constructed that all votes cast will be registered or recorded by the machine. In the event that a candidate is cross endorsed and an elector casts more than one vote for such candidate, such vote shall be attributed by the head moderator to the endorsing parties as provided for in this subsection. The head moderator shall (1) determine the percentage of all attributable votes the candidate received that are attributable to each endorsing party, (2) determine the number of ballots upon which an elector voted for the candidate more than once, and (3) apply the percentage determined under subdivision (1) of this subsection for an endorsing party to the total determined under subdivision (2) of this subsection. The resulting number from the calculation under subdivision (3) of this subsection shall be the number of votes the head moderator attributes to the endorsing party associated with the percentage used in the calculation under subdivision (3) of this subsection. The head moderator shall repeat the calculation in subdivision (3) of this subsection for each endorsing party. For any result under subdivision (3) of this subsection that is a fractional number, the head moderator shall round such result to the nearest whole number, provided a half number shall be rounded to the next highest whole number, and provided further that each such endorsing party with a percentage greater than zero under subdivision (1) of this subsection shall receive at least one such vote, with the remaining parties receiving a proportional reduction in votes, if

necessary. If any vote remains that can not be evenly attributed to such parties, such vote shall be attributed to the endorsing party with the most votes.

(c) Notwithstanding the provisions of subsection (b) of this section, the Secretary of the State may approve a voting [machine] tabulator which requires the elector in the polls to place [his] the elector's ballot into the recording device and which meets the voluntary performance and test standards for voting systems adopted by (1) the Federal Election Commission on January 25, 1990, as amended from time to time, or (2) the Election Assistance Commission pursuant to the Help America Vote Act of 2002, P. L. 107-252, 42 USC 15481-85, as amended from time to time, whichever standards are most current at the time of the Secretary of the State's approval, and regulations which the Secretary of the State may adopt in accordance with the provisions of chapter 54, provided the voting [machine] tabulator shall (A) warn the elector of overvotes, (B) not record overvotes, and (C) not record more than one vote of an elector for the same person for an office. In the event that a candidate is cross endorsed and an elector casts more than one vote for such candidate, such vote shall be attributed by the head moderator to the endorsing parties as provided for in this subsection. The head moderator shall (i) determine the percentage of all attributable votes the candidate received that are attributable to each endorsing party, (ii) determine the number of ballots upon which an elector voted for the candidate more than once, and (iii) apply the percentage determined under subparagraph (C)(i) of this subsection for an endorsing party to the total determined under subparagraph (C)(ii) of this subsection. The resulting number from the calculation under subparagraph (C)(iii) of this subsection shall be the number of votes the head moderator attributes to the endorsing party associated with the percentage used in the calculation under subparagraph (C)(iii) of this subsection. The head moderator shall repeat the calculation in subparagraph (C)(iii) of this subsection for each endorsing party. For any result under subparagraph (C)(iii) of this subsection that is a fractional number, the head moderator shall round such result to the nearest whole number, provided a half number shall be rounded to the next highest whole number, and provided further that each such endorsing party with a percentage greater than zero under subparagraph (C)(i) of this subsection shall receive at least one such vote, with the remaining parties receiving a proportional reduction in votes, if necessary. If any

vote remains that can not be evenly attributed to such parties, such vote shall be attributed to the endorsing party with the most votes.

5. In its "Legislative Update 2011" newsletter sent to the Registrars of Voters and Town Clerks, the Secretary summarized this portion of the public act as follows:

Unknown Votes

The Public Act amends § 9-242 and establishes a procedure for assigning "unknown votes" (i.e., votes cross-endorsed candidates receive when electors vote for them under more than one party designation). For each cross-endorsed candidate, the head moderator must (1) determine how many unknown votes the candidate received, (2) determine what percent of his or her known votes were received under each endorsing party, and (3) attribute the unknown votes to each endorsing party based on this percentage. (For example, if a candidate receives 70 votes under Party X and 30 votes under Party Y, 70% of his or her unknown votes go to Party X and 30% to Party Y.)

6. The Secretary alleges, and the Respondent does not deny, that after the November 6, 2012 General Election, Mr. Souto refused to follow the new procedure. Instead, he reported "unknown" votes for cross-endorsed candidates as "unknown" and did not do the percentages breakdown required by the statute. According to the head moderator's November 14, 2012 amended return, the number of "unknown" votes in Middletown were as follows:

<u>Candidate</u>	<u>Parties</u>	<u>Votes</u>
<i>U.S. Senate</i>		
Christopher Murphy	Democratic & Working Family	467
Linda McMahon	Republican & Independent	100
<i>Representative in Congress</i>		
Rosa DeLauro	Democratic & Working Families	316
<i>State Senator</i>		
Dante Bartolomeo	Democratic & Working Families	57

Len Suzio	Republican, Independent & We the People	25
<i>State Representative</i>		
Matthew Lesser	Democratic & Working Families	115
Deborah Kleckowski	Republican & Independent	17

7. According to the Secretary of the State's office, the failure to report the pro rata distribution of the "unknown" votes did not affect any party's ability to achieve/maintain minor party status.
8. The Respondent included with his results to the Secretary a letter explaining that it was his belief that assigning party endorsement to the "unknown" votes "would be an inaccurate and false account of vote totals in Middletown, Connecticut, and as a result a false report of the actual votes cast in Middletown, Connecticut." In his letter, the Respondent went on to state:

Public Act [11-173] makes an inaccurate and false assumption that if a voter voted for a crossed endorsed-candidate "under more than one party designation", that the voter intended the vote to be assigned to one of the Political Parties. There is no evidence or even slightest indication in the voting records to indicate that this was the voter's intent. In fact the reasonable conclusion would be that the voter intended to vote for the candidate, but did not want their vote to be associated with either Political Party, and therefore, an Unknown Vote. Public Act [11-173] is instructing Head Moderators to ignore voter intent, and falsify Election Returns in order to credit Political Parties with more votes than the Party actually received. The purpose of an election is to vote for and elect a candidate, and not the Political Parties, Public Act [11-173] completely ignores that fact. i will not be a party to reporting inaccurate Election Returns, therefore, the attached Head Moderator Returns reflect the true and accurate vote totals as tabulated and physically counted on November 6, 2012 in Middletown, Connecticut. The votes are broken down by actual votes cast for each candidate under the Political Party that they were cast in, and Unknown Votes where the vote was cast "under more than one party designation". If the Secretary of State wants Public Act [11-173] followed, the staff for

the Secretary of State will have to alter my Official Head Moderator Returns. The figures in the attached Head Moderator Returns contain a sufficient breakdown of figures to enable the staff for the Secretary of State to do so.

9. Here, Respondent stands by his statement to the Secretary of the State. He knew what his duties were under the statute, but believes that the act that he was being asked to take was unlawful and potentially unconstitutional. He recognizes and accepts that his act of civil disobedience may have consequences and he is prepared to accept them.
10. Considering the aforesaid, the Commission concludes that the Respondent intentionally violated General Statutes § 9-242 by refusing to allocate the “unknown” votes via the new pro rata procedure enacted in Public Act 11-173 of the 2011 Public Acts.
11. Connecticut General Statutes § 9-7b (a) (2) provides that the Commission may assess a civil penalty of two thousand dollars per offense against any town clerk, registrar of voters, an appointee or designee of a town clerk or registrar of voters, or any other election or primary official whom the Commission finds to have failed to discharge a duty imposed by any provision of chapter 146 or 147. Pursuant to Regulations of Connecticut State Agencies § 9-7b-48, 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.
12. Here Respondent, a longtime head moderator, knowingly and willfully violated General Statutes § 9-242 by failing to allocate the “unknown” votes as enumerated in the statute. The Respondent’s job was to execute the directives of the statute, as written, without administratively applying a line-item veto to those passages with which he personally disagreed.
13. Mitigating here is that the Respondent’s act of defiance did not affect any party’s ability to maintain/achieve party status. He provided sufficient information to the Secretary of the State such that her office could determine the correct allocation. Moreover, while the Respondent knowingly failed to administer his task, he did so openly and according to his conscience. That is, while he did not show good faith in attempting to comply with the applicable provision of the General Statutes, he did believe that he was showing good faith

to the entire constitutional and statutory elements concerning the rights of voters. Finally, this is the first matter before the Commission concerning this Respondent.

14. However, the Respondent's actions merit consequences. Considering both the aggravating and mitigating facts in this matter, the Commission concludes that the specific facts of this case warrant a civil penalty of \$500 for this Respondent.
15. However, the Commission agrees to waive the aforementioned civil penalty provided the Respondent agrees to do the following:
 - a. Refrain from serving as an election, primary or referendum official or unofficial checker or in any capacity at the polls on the day of an election, primary or referendum for a period of three years from the date of the adoption of this Agreement.
 - b. Henceforth strictly comply with General Statutes § 9-242 if he should serve as an election official in the future; and
16. The Respondent agrees that should he fail to refrain from serving as an election, primary or referendum official or unofficial checker or in any capacity at the polls on the day of an election, primary or referendum for a period of three years from the date of the adoption of this Agreement, he shall be responsible for the full \$500 civil penalty.
17. 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.
18. 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.
19. 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.

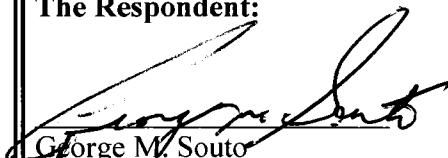
20. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

ORDER

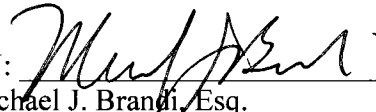
IT IS ORDERED THAT:

- a. The Respondent will henceforth strictly comply with General Statutes § 9-242;
- b. The Respondent's eligibility to serve as an election, primary or referendum official or unofficial checker or in any capacity at the polls on the day of an election, primary or referendum is revoked for a period of three years from the date of the adoption of this Agreement; and
- c. The Respondent will pay a civil penalty of \$500 which payment is waived provided he adheres to section (b) of this order during the entire period.

The Respondent:


George M. Souto
Middletown, CT

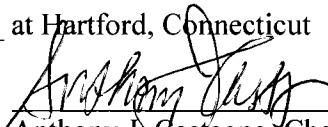
For the State of Connecticut:

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

Dated: 5/6/13

Dated: 5/13/13

Adopted this 15th day of may of 20__ at Hartford, Connecticut


Anthony J. Castagno, Chair
By Order of the Commission