

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint of Robert Kissel, Hamden

File No. 2012-234

FINDINGS & CONCLUSIONS

The Complainant alleged that during the 2012 General Election in the Town of Hamden, write-in votes were not properly counted and report to the head moderator by the Respondent Dominic Tamaro, who was moderator for the 3rd District polling place.¹

1. The events of this matter concern the November 6, 2012 general election held in the Town of Hamden.
2. Steve Packard was a registered write-in candidate for United States Representative in the 3rd Congressional District in the 2012 General Election, which district includes, *inter alia*, the Town of Hamden.
3. When the final head moderator's return for the Town of Hamden was submitted to the Secretary of the State, only 1 vote was recorded for Mr. Packard.
4. The Complainant alleges that he voted for Mr. Packard at the 7th District polling place in the Town of Hamden, which vote appeared to be counted and reported by the head moderator.
5. However, Mr. Packard's own home polling place, the 3rd District in Hamden, reported no votes for Mr. Packard.
6. The Complainant submitted statements from Mr. Packard that he voted for himself and that there should have been at least one vote recorded for him there.

¹ The following are the Commission's findings and conclusions based on those portions of the Complainant's statement of complaint which the Commission could reasonably construe as alleging facts amounting to a specific violation of those laws within the Commission's jurisdiction. Any statements within the Complaint not addressed herein either did not specifically allege a violation or alleged facts which if proven true would not have amounted to a violation within the Commission's jurisdiction.

7. During all times relevant to the instant Complaint, Respondent Dominic Tammaro was the moderator for the 3rd District polling place in the Town of Hamden for the November 6, 2012 General Election.
8. The investigation revealed that on or about November 12, 2012, Hamden Registrars of Voters Anthony Esposito and Rose Mentone discovered a discrepancy in the machine tapes and the moderators' returns after what they characterized as a standard internal review of all moderator's returns. After a review of the materials available to them, they discovered that 3 write-in votes had been recorded on the tabulator tape in the 3rd District polling place, but none had been reported on the moderator's return.
9. After discovering the discrepancy, the registrars contacted the Respondent moderator who asserted to them that no write-in ballots were found in the write-in ballot bin at the close of polls.
10. Assistant registrars Cathy Mosher and Sallie Lowry also assert that they were present when the Respondent reviewed the bins no write-in ballots were found.
11. On or about November 26, 2012, the registrars removed the ballot bags containing the 3rd district ballots and after reviewing the approximately 600 ballots, found 3 write-in ballots for the 3rd District mixed in among the regular ballots for that district. Two write-in votes were attributable to Mr. Packard and 1 was attributable to a candidate in a different race. The registrars amended the head moderator's return and submitted the amended return to the Secretary of the State December 6, 2012.
12. General Statutes § 9-265, reads in pertinent part:

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.]
[Emphasis added.]

13. The tabulators used in Connecticut have a mechanism that recognize when a voter fills in the oval indicating that such voter wishes to record a vote for a write-in candidate. When such a selection is made, the tabulator is programmed to move the ballot to a bin segregating the write-in ballots from the other ballots so that the moderator and assistant registrars of voters may review the write-in ballots by hand and record the selections on the moderator's returns.

14. Section 9-242a-23 of the Regulations of Connecticut State Agencies, reads 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 for 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. They shall seal the write-in ballots in a depository envelope marked "write-in bin" and place them in the ballot transfer case. . . . [Emphasis added.]

15. If a tabulator records the casting of a write-in ballot, but fails to move the ballot into the segregated bin, the result is a discrepancy, which must be immediately rectified or a canvass must be called per General Statutes § 9-311, which reads in pertinent part

(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 canvass officials, consisting of 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 of the municipality in which the election was held and such other officials as may be required to conduct such canvass.* . . . [Emphasis added.]

16. Prior to the election at issue here, Respondent Dominic Tammaro had served as a certified moderator for approximately 8 years. Prior to that, he had been volunteering in various roles in elections in Hamden for at least 3 decades.

17. The Respondent did not generally deny that he failed to report the 3 write-ins. He recalled inspecting the write-in bin and finding no ballots. He did not recall seeing the write-ins indicated on the machine tape, otherwise he would have made a deeper inquiry into the issue.

18. The Respondent asserted that if he did indeed make the mistake, then he was truly sorry for failing to record the write-in votes. The Respondent asserted that it was a very heavy turnout election in a presidential year and that between the very small number of write-ins

(3) and the fact that no actual write-in ballots made it into the proper bin, he simply did not realize that there was any issue. He asserted that he did not know Mr. Packard and would have had no reason to deprive him of votes. He also asserted that he took his position very seriously and that he would endeavor to check the tabulator tapes more carefully in the future to assure that this error did not occur again with him as moderator.

19. Considering the aforesaid, the Commission concludes that the evidence showed that the tapes indicated that there were write-in votes to be counted and that the 3 write-in ballots were in fact eventually found mixed in with the regular ballots after an examination by the registrars.
20. The evidence does support a finding that the tabulator suffered a malfunction and that the swing arm that normally pushes the write-ins into their own bin, did not work properly.
21. Turning to the question, § 9-311 puts the responsibility and discretion within the hands of the moderator to call a recanvass if a discrepancy is discovered: “If, within three days after an election, it appears to the moderator that there is a discrepancy in the returns of any voting district . . .”
22. The Respondent is still liable for not calling for a discrepancy recanvass as required by General Statutes § 9-311, as the tabulator tapes reported write-in votes as having been cast. Considering the aforesaid, the Respondent is liable for violations of General Statutes §§ 9-265 and 9-311.
23. Objectively, this is a serious omission; 3 electors nearly lost their votes in the congressional race due to the Respondent’s omission. But for the work of the Hamden registrars in reviewing the returns, the Respondent’s error would have resulted in lost votes—an unacceptable outcome.
24. However, the Commission notes that ultimately no votes or outcomes were affected by this error; the discrepancy was repaired and the votes counted after the registrars’ review. Moreover, the investigation in this matter did not reveal any intent on the part of the Respondent to prevent these votes from being counted. The evidence showed that the Respondent likely failed to notice the discrepancy due to the confluence of a malfunctioning tabulator and a very busy presidential election. The Respondent is remorseful for his omission and is a long-time election worker with no prior history of election administration violations before the Commission.
25. Considering the aforementioned, the Commission will take no further action in this matter, and expects that the Respondent will henceforth strictly comply with the provisions of General Statutes §§ 9-265 & 9-311.

ORDER

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

No Further Action

Adopted this 13th day of July, 2016 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission