

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Tracy Morrissey, West Haven

File No. 2013-170A

FINDINGS AND CONCLUSIONS

The Complainant alleges that during the November 5, 2013 Democratic election held in the City of West Haven, Respondent Michael DiMassa failed in his duties as head moderator by untimely filing the returns to the town clerk and by improperly calling for a discrepancy re-canvass. The Complainant made an additional allegation that the recanvass impoundment procedures were not followed, which will be addressed separately in File No. 2013-170B.¹

COUNT ONE: Failure to Timely File Returns

1. In Count One, the Complainant here alleges that the Respondent, the head moderator for the November 5, 2013 General Election for the City of West Haven, failed to timely file the head moderator's return with Town Clerk Deborah Collins after the election.
2. Specifically, the Complainant alleges that the Respondent did not file the return with the Town Clerk until November 8 at 5:00pm, 3 days after the election.²
3. Section 9-242a-27 of the Regulations of Connecticut State Agencies reads:

After all election results reports have been produced, the moderator and assistant registrars of voters shall record on the moderator's return the number on the public counter, close down the tabulator and remove the tabulator from the ballot box according to the manufacturer's instructions. They shall not break the seal on the tabulator and they shall

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.

² The Complainant further asserts that because it was filed so late on a Friday and because City Hall was closed on Monday, November 11, the return was not available for the public to review until six days after the election.

record such number on the moderator's return. They shall place the tabulator in its carrying case and seal the case and record such number on the moderator's return. They shall seal all depository envelopes with non-reusable tape. They shall place in the ballot transfer case all depository envelopes from the polling place and all ballots from the regular bin. The Secretary of the State may prescribe that the depository envelopes containing the empty envelopes and rejected absentee ballots, the depository envelope containing the challenged ballots and the depository envelope containing the spoiled ballots need not be placed in the ballot transfer case. If absentee ballots are counted at the polling place, the certificate of absentee ballot count shall be completed and the result of the absentee ballot count shall be entered on the moderator's returns in the manner prescribed by the Secretary of the State. The moderator shall announce the total results for each candidate and question. The moderator and assistant registrars of voters shall indicate on the moderator's returns, the number of the seal that will be used to secure the ballot transfer case. They shall place a signed copy of the election results report, which was produced by the tabulator, in the ballot transfer case and seal the ballot transfer case. The moderator shall label the keys in accordance with instructions from the Secretary of the State and return the keys, the tabulator, the ballot transfer case, the original moderator's return with the original election results report attached, and other election materials to the registrars of voters. The registrars of voters shall file the original moderator's return and official registry list with the municipal clerk by noon of the day after the election or primary. The ballot transfer case shall be sealed for the period of time prescribed for sealing absentee ballots and then shall be unsealed and the contents destroyed. The tabulator shall be sealed for the period of time prescribed for sealing voting tabulators. (Emphasis added.)

4. The Respondent generally denies the Complainant's allegations and asserts that he delivered the required materials to the registrars' office before he left after the close of polls sometime late on the night of the Election or in the early morning hours of the following day.
5. After investigation, the Commission finds support for the Respondent's defense. The official records of Town Clerk Deborah Collins include the Respondent's return, date stamped into the Town Clerk's office November 6, 2013 at 10:37am.

6. Considering the aforesaid, the Commission concludes that the evidence is insufficient to support the Complainant's allegation that the returns were untimely filed. Accordingly, Count One should be dismissed.

COUNT TWO: Improperly Calling for a Discrepancy Canvass

7. The Complainants here alleges that the Respondent "called each moderator (ten polling districts) into his office, interviewed them and asked them to provide a written statement saying they were not comfortable about the votes cast and tallied for the write-in-candidate. I do not believe this is part of the head moderator's role especially since each moderator's log did not specify any concerns."

8. General Statutes § 9-311 prescribes the rules for a discrepancy re-canvass and 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 recanvass 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 recanvass.

(d) As used in this section, (1) "moderator" means, in the case of municipalities not divided into voting districts, the moderator of the election and, in the case of municipalities divided into voting districts, the head moderator of the election, and (2) "registrars of voters", in a municipality where there are different registrars of voters for different voting districts, means the registrars of voters in the voting district in which, at the last-preceding election, the presiding officer for the purpose of declaring the result of the vote of the whole municipality was moderator.

9. The Respondent here asserts that the day after the election and after the results had been announced and filed with the Town Clerk and the Secretary of the State, he received a communication from district moderator Nicole Peckingham informing him that she had concerns about the accuracy of the vote totals in her district. More specifically she was concerned about the large number of write-in votes received for the incumbent mayor, who

was running as a write-in candidate. The Respondent asked Ms. Peckingham to reduce her concerns to writing, as these concerns were not included in the moderator's diary.

10. In her written statement to the Respondent, Ms. Peckingham expressed concern that the tabulator had been mis-reading write-in ballots and moving them to the regular bin rather than the write-in bin for hand-processing.
11. The Respondent further asserts that after speaking with Ms. Peckingham, he reached out to the other moderators and asked them if they had the same concerns and, if so, to put those concerns in writing.
12. After speaking with the Respondent, district moderators George Chambrelli, Tim Pittman, Ed Wise, Jeff Criscuolo, Arthur M. Hubbard, Jane Kelly, Richard C. Hannan, Jr., and Chris Belous drafted hand-written notes to the Respondent about their concerns regarding the write-in count.
13. After receiving the written concerns of the aforementioned moderators, the Respondent ordered a discrepancy canvass under General Statutes § 9-311, which was held on November 13, 2013.
14. The elections officials found during the canvass that some ballots with write-in candidates on them ended up in the bin for regular ballots and therefore the write-in votes had not been counted during the original canvass. After the canvass, the results of the vote for mayor included 74 previously unaccounted votes for the write-in candidate.
15. Turning to the question here, the Commission notes as an initial matter that it is the sole responsibility of the head moderator under General Statutes § 9-311 to determine whether or not a discrepancy canvass should be declared. Moreover, the Commission also notes that § 9-311 does not prescribe a specific method that a moderator must apply in making a determination of a discrepancy.
16. With the above in mind, the Commission concludes that contacting the moderators of the individual polling places and asking them to reduce their concerns in writing was not an improper method of making a discrepancy determination under General Statutes § 9-311. Where, as here, a moderator orally expressed a discrepancy concern and where the moderators had not previously recorded their concerns in the moderator's diary, the Respondent appropriately requested that the moderators record their statements for the public record. In the end, the results of the canvass bore out that the Respondents' decision was in the best interest of those 74 voters who otherwise would have been

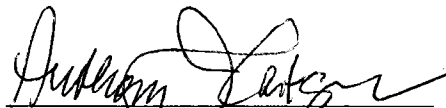
disenfranchised without a recanvass. Considering the aforesaid, Count Two should be dismissed.

ORDER

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

That the matter is dismissed.

Adopted this 16th day of June, 2015 at Hartford, Connecticut.

A handwritten signature in black ink, appearing to read "Anthony J. Castagno", written over a horizontal line.

Anthony J. Castagno, Chairperson
By Order of the Commission