

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Alida B. Cella
Wallingford

File No. 2020-084

FINDINGS & CONCLUSIONS

Complainant Alida B. Cella of Wallingford filed this complaint on December 10, 2020, pursuant to General Statutes § 9-7b, alleging that the Wallingford town clerk had failed to report election results accurately for a state representative election. Following an investigation into these allegations, the Commission adopts the following findings of fact and conclusions of law related to this complaint:

1. Complainant Cella, chairperson of the Wallingford Democratic Town Committee, filed this complaint against former Wallingford Town Clerk Barbara Thompson.
2. The allegations in the complaint concern the 2020 election for the 90th General Assembly district seat representing Cheshire and Wallingford. The election in the 90th General Assembly district was very close, necessitating a recount in the days after the election.
3. Several of the allegations listed in the complaint fell within the jurisdiction of the State Elections Enforcement Commission. Among that category of allegations, the complainant alleged that the Wallingford town clerk had failed to follow General Statutes § 9-322a (a)(2) which created new deadlines for the 2020 state elections, and had potentially discarded certain absentee ballots that were not delivered to the town clerk's office directly. As stated in General Statutes § 9-322a:
 - (2) Notwithstanding the provisions of subdivision (1) of this subsection, for the state election in 2020, (A) the results of the votes cast at the election required under said subdivision to be provided to the town clerk by the registrars of voters shall be so provided not later than ninety-six hours following the election, (B) the meeting to identify any error in the returns required under said subdivision among the head moderator, registrars of voters and town clerk for each town divided into voting districts shall occur not later than nine o'clock a.m. on the fifth day following the election, and (C) any identified error required under said subdivision to be corrected, and any amended return required under said subdivision to be filed with the Secretary of the State, the town clerk and the registrars of voters, by the head moderator shall be so corrected or filed, as applicable, not later than one o'clock p.m. on the fifth day following the election.

4. Complainant here alleged that the town clerk had not followed the timeline in General Statutes § 9-322a (a)(2) because the election results that were put into the state system were not complete. On Friday, Nov. 6 at 4:51 p.m., Respondent provided a vote tally to Larry Morgenstein, a member of the Wallingford Democratic Town Committee, via e-mail that included inaccurate numbers for one district in Wallingford.¹ Morgenstein sent an e-mail to Respondent at 7:26 a.m., on Monday, Nov. 9, 2020, pointing out the inaccurate numbers, and Respondent sent an e-mail back to Morgenstein at 2:28 p.m., on Nov. 9, stating that she had updated the numbers again through the state system.
5. In responding to this investigation, the Wallingford Town Clerk's office² stated that it had complied with General Statutes § 9-322a (a)(2) and had held both the post-election meeting within 5 days of the election and updated any election returns with the Secretary of the State within 5 days of the election.
6. The Wallingford Town Clerk's office stated that an amended head moderator's return was submitted to the Connecticut Secretary of the State's Elections Management System on November 5, 2020. In addition, on November 6, 2020, Respondent sent a copy of the Election Results by Voting District report to Morgenstein. According to the response from the Wallingford Town Clerk's office, Respondent had not reviewed the report when she sent it to Morgenstein. Once the errors were pointed out to Respondent, and she verified the inaccurate numbers and corrected them, she filed an amended return to the EMS on November 9.
7. The Secretary of the State's office confirmed that the Wallingford Town Clerk's office filed an amended report through EMS on November 5, 2020 at 11:01 a.m. and that it filed an additional report on November 9, 2020 at 12:01 p.m.
8. The margin in the race for the 90th General Assembly district required a recanvass, and those recount results were filed with the EMS on November 13, 2020 at 11:23 a.m. Initially, the Wallingford results in the 90th district race showed that candidate Jim Jinks received 4,778 votes and candidate Craig Fishbein received 5,173 votes. After the recount, the vote in Wallingford in the 90th General Assembly seat was certified as 4,791 for Jinks and 5,172 for Fishbein.

¹ Those inaccuracies reported for the 7th District in Wallingford included zeros in the numbers reported for in-person voters in the 90th House district and zeros in the lines for Independent Party and Working Families Party in the 34th Senate district.

² The Wallingford Town Clerk's office responded to this complaint through the Wallingford Corporation Counsel's office. In preparing the response, counsel stated that she had consulted with former Town Clerk Barbara Thompson (the respondent in this matter), incumbent Town Clerk Deborah McKierman, 2020 Election Head Moderator Emilia Menna-Erdmann, and 2020 Absentee Head Moderator and Recount Head Moderator Colleen Makepeace.

9. The Wallingford Town Clerk stated in response to this complaint that: “staff firmly believes that entries with zeros would have been seen by the staff at the time of entering the results on November 5th. It would have been a red flag to all who participated in the process if zeros appeared. Those involved in the reporting do not know how the error occurred.”
10. In addition, Complainant alleged that completed absentee ballots could have improperly been placed in a payment slot at Town Hall that is used to receive payments for municipal utilities.³ Complainant stated that a sign above the slot in the 2020 primary and before the absentee ballot boxes were installed relayed that “Ballots left in the drop box will not be counted. Ballots must be given in person to Town Clerk’s office or put in US Mail.” That sign was subsequently removed under direction from the office of the Connecticut Secretary of the State.
11. Complainant stated in her complaint that “there is a question as to whether any ballots that were deposited in the payment slot were discarded and, if so, whether the voters were notified that their ballots had been discarded.”
12. In response to this complaint, the Wallingford Town Clerk’s office stated that no absentee ballots in the 2020 election that were placed in the “payment slot” were rejected. The Wallingford Town Clerk’s office estimated that a maximum of six ballots were placed in the slot. All of those absentee ballots were accepted, and all votes were counted. None of the ballots before either the primary or the election that were placed in the slot were rejected for that reason and none were discarded.
13. The Wallingford Town Clerk office’s responses as well as the EMS records provided by the Secretary of the State’s office about the failure of the office to adhere to the timeline in General Statutes § 9-322a refute the allegation that an amended report was not filed with the Secretary of the State’s office within the requisite timeframe. In addition, there is no evidence that absentee ballots were discarded in the November 3, 2020 election. The allegations against the Respondent in connection with the 2020 election cycle will be dismissed.

³ General Statutes § 9-140b (a) (requiring casting of absentee ballots either through mail or in person by applicant or designee).

ORDER

IT IS HEREBY ORDERED THAT the Commission shall dismiss this matter.

Adopted this 2nd day of Feb, 2022 at Hartford, Connecticut by vote of the Commission.



Commissioner
By Order of the Commission