

**STATE OF CONNECTICUT**  
**STATE ELECTIONS ENFORCEMENT COMMISSION**

Complaint by William A. Warner,  
North Grosvenordale (Thompson)

File No. 2021-208

**FINDINGS AND CONCLUSIONS**

Complainant, William A. Warner, made this complaint pursuant to General Statutes § 9-7b. Complainant alleged that Francis J. McGarry and Aileen Witkowski (hereinafter “Respondents”), as Town of Thompson Registrars of Voters, violated elections laws regarding their administration of the November 2, 2021 municipal election in Thompson. After investigating the allegations raised in the complaint the Commission makes the following findings and conclusions:

1. At all times relevant to this complaint Respondents were the Registrars of Voters in the Town of Thompson.
2. By way of background, there were four qualified write-in candidates at the November 2, 2021 municipal election in the Town of Thompson. They included the following candidates for Commissioner to the Planning and Zoning Commission: Jane Salce, William A. Warner and Raymond (Ray) Williams. Further, James A. Niedzialkoski was a candidate for the office of Planning and Zoning Commission Alternate.
3. Ms. Salce and Mr. Williams were elected Commissioners to the Planning and Zoning Commission.
4. Complainant alleged that Respondents failed to:
  - (1) Post instructions in polling places regarding how to vote for a write-in candidate;
  - (2) Provide accurate instructions regarding how to complete write-in votes and to provide vote demonstrators;
  - (3) Follow “voter intent” when counting write-in votes; and,
  - (4) Provide notice and allow for the presence of public observers at an audit.
5. The allegations pertain to Respondents conduct as Registrars of Voters prior to and during the conduct of the November 2, 2021 election and immediately following the election during the post-election day audit held pursuant to General Statutes § 9-320f.

6. Regulations, Connecticut State Agencies § 9-242a-23 provides:

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. The law providing that the intent of the voter governs when counting absentee ballots shall apply to ballots counted by hand. Ballots counted by hand shall be counted by teams of two officials from opposing political parties and questions shall be submitted to the moderator for decision and endorsement on the ballot.

7. General Statutes § 9-150a, provides in pertinent part:

(k) If the intent of an absentee voter is difficult to ascertain due to uncertain, conflicting or incorrect ballot markings which are not clearly addressed in this section or in the procedure manual for counting absentee ballots provided by the Secretary of the State, the absentee ballot counters shall submit the ballot and their question to the moderator. They shall then count the ballot in accordance with the moderator's decision as to the voter's intent, if such intent is ascertainable. A ballot or part of a ballot on which the intent is determined by the moderator to be not ascertainable, shall not be counted. The moderator shall endorse on the ballot the question and his decision.

8. General Statutes § 9-255, provides:

The registrars of voters shall provide for all polling places using voting tabulators at least two sample ballots that shall contain the offices, party designations, names of candidates, write-in slots and questions to be voted upon. On each such sample ballot shall be printed instructions as to the use of the voting tabulator, which instructions shall be approved by the Secretary of the State. Such sample ballots shall be so posted inside the polling place as to be visible to those within the polling place during the whole day of election. At least one of such sample ballots shall be so posted as to be visible to an elector being instructed on the use of the voting tabulator under section 9-260.

9. General Statutes § 9-260, provides:

A demonstrator device shall be provided inside the polling place for the instruction of electors. Any such demonstrator device shall instruct electors on the proper method to cast their vote, including the proper method to cast a write-in vote using the voting equipment located in each polling place. Upon request by any elector who desires instruction after he has entered the polling place and prior to casting his vote, two election officials of different political parties jointly shall instruct such elector on the demonstrator device

10. General Statutes § 9-236b, provides in pertinent part:

(a) The Secretary of the State shall provide each municipality with sufficient quantities of a poster size copy, at least eighteen by twenty-four inches, of a Voter's Bill of Rights, which shall be posted conspicuously at each polling place. The text of the Voter's Bill of Rights shall be:

“VOTER'S BILL OF RIGHTS

Every registered voter in this state has the right to:

(1) Inspect a sample ballot before voting;



(2) Receive instructions concerning how to operate voting equipment, on sample voting equipment before voting;

...

(4) Ask for and receive assistance in voting, including assistance in languages other than English where required by federal or state law;

...

11. The Commission has interpreted General Statutes § 9-236b (a) as granting voters the rights enumerated in the Voter's Bill of Rights. *See In the Matter of a Complaint by Athena-Lee Maynard*, Voluntown File No. 2016-096; and, *In the Matter of a Complaint by Deborah Maynard*, Voluntown File No. 2016-097 (consolidated matters treated under a single disposition).

12. General Statutes § 9-320f provides:

(a) Not earlier than the fifteenth day after any election or primary and not later than two business days before the canvass of votes by the Secretary of the State, Treasurer and Comptroller, for any federal or state election or primary, or by the town clerk for any municipal election or primary, the registrars of voters shall conduct a manual audit or, for an election or primary held on or after January 1, 2016, an electronic audit authorized under section 9-320g of the votes recorded in not less than five per cent of the voting districts in the state, district or municipality, whichever is applicable. Such manual or electronic audit shall be noticed in advance and be open to public observation. Any election official who participates in the administration and conduct of an audit pursuant to this section shall be compensated by the municipality at the standard rate of pay established by such municipality for elections or primaries, as the case may be.

*Alleged Failure to Post Instructions in Polling Places Regarding How to Vote for a Write-in Candidate*

13. Complainant alleged that Respondents failed to post instructions for voters regarding how to complete write-in votes. More specifically, they allege that “[t]here were no instructions on how to fill in the circles per the Moderators Handbook ED-701 (Rev. 7/13).”<sup>1</sup>
14. Respondents dispute this allegation and assert that such instructions, specific to write-in votes, are subsumed by those incorporated in the Voter’s Bill of Rights as well as those triggered when voters seek such advice from election officials at the polls during the election.
15. Specifically, they assert that such instructions were incorporated within each sample ballot, posted within each privacy booth, and that they posted the “Voter’s Bill of Rights” in each polling place as required.
16. After investigation, the Commission finds a lack of evidence that Respondents failed to post instructions on how to vote in the polling places at the November 2, 2021 municipal election in Thompson.
17. The Commission finds that instructions on how to vote, as well as the right to seek assistance and instructions in operating voting equipment and casting ballots, were incorporated in the ballots, as well as the sample ballots and Voter’s Bill of Rights that were posted in polling locations at the Thompson municipal election on November 2, 2021. The Commission determines that such instructions and assistance would necessarily pertain to all candidates appearing on the ballot; including any qualified write-in candidates.
18. The Commission dismisses the allegation as it was not supported by the facts after investigation.

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<sup>1</sup> The moderator’s hand book does provide an explanation regarding write-in votes: “*Write-In – Electors may choose to vote for someone not listed on the ballot. They must fill in the designated oval and write in the person’s name in the designated area.*” It also provides “Instructions for Marking a Ballot” with a graphic, illustrating correct and incorrect examples of darkening ovals when voting a ballot. See *Moderator’s Handbook for Elections and Primaries*, ED-701 (Rev 7/13) – Secretary of the State.

*Alleged Failure to Provide Accurate Instructions Regarding How to Complete Write-in Votes and Provide Vote Demonstrators;*

19. Complainant alleged that election officials failed to provide accurate instructions regarding completing votes for write-in candidates and did not provide demonstrators at the November 2, 2021 election.
20. Respondents, in response to this complaint and investigation, assert that at the November 2, 2021 election in Thompson moderators served as “demonstrators” for individuals seeking instruction. Further, Respondents assert that “some voters sought clarification from the moderators who gave guidance accordingly.”
21. After investigation, there was a lack of facts to establish that election and polling place official at the November 2, 2021 municipal election in Thompson provided misleading instructions to individuals, or otherwise failed to provide accurate instructions regarding how to vote for write-in candidates.
22. General Statutes § 9-260 provides that every Registrar of Voters may choose to have an election official named as “Demonstrator” who is there to provide instructions pursuant to that section. Alternatively, such work may be performed by two elections officials of different parties. Pursuant to § 9-260 and § 9-236b such instruction must be accurate.
23. The Commission instructs Respondents that in future elections, referenda and primaries that they are required pursuant to General Statutes § 9-260 to either (1) designate an election official as a “Demonstrator;” or, (2) ensure that two election officials of different parties are available to perform such work when necessary.
24. The Commission determines that the allegation that voters were misled or received inaccurate instructions regarding voting for write-in candidates was not supported by the facts after investigation. Further, the Commission deems Respondents on notice of the requirements of General Statutes § 9-260.
25. The Commission believes that pursuant to this disposition Respondents are sufficiently on notice and advised to avoid future errors pertaining to the proper application of General Statutes § 9-260 and requirements regarding demonstrators; and therefore takes no further action regarding this allegation.



*Failing to Follow “voter intent” when Counting Write-in Votes*

26. Complainant alleges that the moderator at the Town Hall Polling Place in Thompson on November 2, 2021 failed to comply with General Statutes § 9-150a (k) pertaining to hand counting ballots, as governed by voter intent.
27. Regulations of Connecticut State Agencies § 9-243a-23 delineates the processing and counting of ballots with write-in votes by moderators and assistant registrars of voters and specifies that they “[t]hey shall count by hand the votes cast for the office in which the elector indicated a write-in vote.” Further, that section requires that “[t]he law providing that the intent of the voter governs when counting absentee ballots shall apply to ballots counted by hand.”
28. The law providing that the intent of the voter governs used when counting absentee ballots and those counted by hand, such as write-in ballots, is provided by General Statutes § 9-150a. That section pertains to standards for assessing and determining the intent of the voter when a moderator is challenged or where the intent of the voter is otherwise difficult to ascertain. *See* General Statutes § 9-150a.
29. After investigation, the Commission finds that the moderator at the Town Hall Polling Place read the write-in ballots to two election officials to tally and record the vote on the moderator’s return at the close of polls on November 2, 2021. The Commission further finds that during this process members of the public were present.
30. After investigation, the Commission finds a lack of evidence that during this process the moderator’s determination of the vote cast on any hand counted ballots containing write-in votes was challenged. Further, the Commission finds a lack of evidence that the moderator had difficulty in ascertaining the intent of voters on write-in ballots.
31. The Commission finds that the moderator at the Town Hall Polling place in Thompson conducted the hand count of ballots with write-in candidates consistent with the requirements of § 9-242a-23, R.,C.S.A.
32. The Commission further concludes that there was a lack of evidence to support the conclusion that General Statutes § 9-150a (k) was violated by the moderator.

33. The Commission dismisses this allegation as it was not supported by facts or the law after investigation.

*Alleged Failure to Provide Notice of an Audit and Allow for the Presence of the Public at an Audit*

34. General Statutes § 9-320f requires notice of an audit and that an audit be open to the public. Specifically it requires that audits “...shall be noticed in advance and be open to public observation.” Further, the Office of the Secretary of the State instructs that such process needs to be open and transparent.<sup>2</sup>

35. In response to this complaint and investigation, Respondents assert that while an audit was “*commenced on December 8, 2021 ...[and] completed on that same date;*” [it] was finished after the close of business, “*...at which time the room containing the fax machine where the audit was conducted was locked.*”

36. Further, Respondents assert that “*...audit report was faxed to the Secretary of State's office the following morning, December 9, 2021, when the office containing the fax machine reopened.*”

37. After investigation, the Commission determines that there is insufficient evidence to find that the public was denied notice or access for observance to an audit by Respondents after the November 2, 2021 municipal election in Thompson.

38. The Commission further finds there was credible evidence that such public observance was truncated at the close of business hours by Respondents between the completion of such audit and the recording of its results.

39. The Commission concludes that General Statutes § 9-320f requires that an audit be open to the public and must remain transparent and open until its conclusion, notwithstanding its completion after normal business hours. It follows that, pursuant to § 9-320f, in circumstances where an audit is paused, and scheduled for completion at another date and time, the requirements of public notice and for allowing the public to be present and observe that audit remain legally operative and necessary.

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<sup>2</sup> *Audit Procedure Manual* (Rev. 8/16), Office of the Secretary of the State.