

ETHICS BOARD RESOLUTION

WHEREAS, an ethics complaint was filed on November 1, 2021 by Micaela Porta, the president of the New Canaan chapter of the League of Women Voters, against New Canaan First Selectman Kevin Moynihan. (The ethics complaint is referred to in this Resolution as the “Complaint”; Ms. Porta is referred to as the “Complainant”; and Mr. Moynihan is referred to as the “Respondent”). A copy of the Complaint is attached as Appendix A.

WHEREAS, the Complaint asserts that Respondent, using his position as First Selectman, violated several sections of the Town’s Ethics Code (the “Code,” available here: <https://ecode360.com/9044320>) when he sent an undated letter to “all new residents of New Canaan” prior to the town’s November 2, 2021 municipal election (this letter from Respondent to new residents is referred to as the “Letter”). A copy of the Letter is attached as Appendix B.

WHEREAS, the Letter bears this letterhead in bold:

**Kevin J. Moynihan
First Selectman
Town of New Canaan**

WHEREAS, the Letter is addressed to “Dear New Resident” and discusses the then-upcoming municipal election, states that it is written “to help explain the process for voting,” purports to explain that process and how the rules would apply to this election, and urges the recipient to vote only for certain candidates. In the body of the letter, Respondent states, among other things, that he is “proud to be leading the Republican slate of candidates... or Row B”. Towards the bottom of the page appears an all caps instruction:

REMEMBER: VOTE ROW B - ONLY!

In a smaller font than the text of the letter, there is a statement at the bottom of the page:

Paid for by the New Canaan RTC, Gene Goodman Treasurer

WHEREAS, the Complaint asserts that the Letter mischaracterized the voting rules at issue, that it was “misleading to voters seeking to understand how our municipal government works” in general and in the then-pending election, and that the Letter thereby granted preferential treatment to candidates preferred by the Respondent.

WHEREAS, upon receipt of the Complaint, members of the Ethics Board met in executive session to review its allegations, reviewed the Complaint and the Letter, interviewed the Complainant and the witnesses identified in the Complaint, and obtained copies of electronic communications relating thereto.

WHEREAS, the Respondent filed a Preliminary Reply to the Complaint on December 6, 2021 (the “Reply”). A copy of the Reply is attached as Appendix C.

WHEREAS, the Reply denies that there are any violations of the Ethics Code, and asserts several defenses to the allegations. Among other things, the Reply asserts that, “The statements

in the complaint are false and the complaint should be immediately dismissed as it fails to state a violation of the Code” and that the “...complaint is completely devoid of legal merit and attempts to politicize the Board of Ethics process in violation of my right of free speech guaranteed by Article I of the U.S. Constitution.”

WHEREAS, upon receipt of the Reply, the Ethics Board met again in executive session to discuss Respondent’s assertions, interviewed the Respondent on December 9, 2021, and obtained copies of electronic communications relating to the Letter.

WHEREAS, the Ethics Board met in multiple executive sessions to consider: the Complaint; the Letter; the Reply; in-person statements from the Complainant and the Respondent; witness commentary and electronic communications attendant to the Letter; statutes and treatises pertaining to defenses in the Reply; examples of certain Board of Selectman minutes; and discussed and analyzed the relevant sections of the Town’s Ethics Code, all in accordance with the mandates contained in Section 17-5B(2)(a) of that Code.

WHEREAS, after due deliberation, the Ethics Board has determined that:

- (1) The use of the title and office of First Selectman, Town of New Canaan, a position held in trust for all New Canaan residents, subjects the Letter to the Code.
- (2) The legend in the footer referencing the “RTC” and the reference in the Letter to “leading the Republican slate of candidates” may raise a question of whether the Letter was an expression of protected political speech.
- (3) Among the issues to be considered is whether the Letter can be protected political speech when Respondent used the authority of his town office, a valuable town resource, to influence new resident voters with what may be a partisan interpretation of local election dynamics. Other questions include whether the interpretation was correct, and what resources were used to create and send the Letter.
- (4) At this stage, the Ethics Board must decide only whether there is probable cause to believe a violation of the Code may have occurred. This is not a final determination on the merits of the Complaint but rather a preliminary finding that the allegations in the Complaint and the assertions in the Reply warrant further investigation.
- (5) We find there is a reasonable basis to believe that the Letter may breach Sections 17-2B(5)(c), 17-2B(6) and 17-2B(8) of the Code, requiring further investigation.
- (6) We find there is no reasonable basis to believe that the Letter breaches Section 17-2B(1)(b) of the Code.

NOW THEREFORE IT IS HEREBY RESOLVED that the Ethics Board finds probable cause, under Section 17-2B(5)(c) of the Code, to conduct further proceedings to determine whether the Letter violates Sections 17-2B(5)(c), 17-2B(6) and 17-2B(8) of the Code.

IT IS HEREBY FURTHER RESOLVED that Respondent shall have until February 11, 2022 to file a response in accordance with Section 17-5(B)(3) of the Ethics Code, and that Respondent may request a further extension upon a showing of reasonable grounds therefor.

IT IS ALSO HEREBY RESOLVED that nothing herein shall be construed as a finding that Ethics Code breaches have occurred and all determinations of the existence or non-existence of such breaches will be made in accordance with Section 17-5B(4), (5) and (6) of that Code.

Appendix A

Complaint

Town of New Canaan
Board of Ethics

**COMPLAINT FOR ALLEGED VIOLATION
OF TOWN'S CODE OF ETHICS AND CONFLICT OF INTEREST RULES**

Clearly mark **CONFIDENTIAL** on the face of sealed envelope, and using First Class or Certified Mail,
please address to:

Chair, Board of Ethics
Town of New Canaan
P.O. Box 583
New Canaan, CT 06840

I. COMPLAINANT'S IDENTIFYING INFORMATION:

Name of Complainant: Micaela Porta

Address: 204 Park Street, unit 16, New Canaan, CT 06840

Phone number: (203) 594-7288

Email address: enginebooks@yahoo.com

II. ALLEGATION:

Please describe the alleged ethics violation by answering the following questions:

A. What section(s) of the Town of New Canaan's Code of Ethics ("Code") may have been violated?
Conflict of Interest 17-2, 1b, 5c, 8

B. Who allegedly violated the Code? [Please provide name(s) of Town Official/Employee.]
First Selectman Kevin Moynihan

C. When did the violation allegedly occur? [Please provide date/time period.]
Letter mailed to all new residents of New Canaan by First Selectman Kevin Moynihan, received on
October 29, 2021.

D. How was the Code violated? [Please provide details surrounding the alleged violation.]
First Selectman Kevin Moynihan used his position and access to resident names and addresses to give

preferential treatment to one slate of candidates by influencing the electorate in an erroneous explanation of how majority/minority rules work in our town government. He writes:

"Because Democrats, as the minority party in New Canaan, are guaranteed a minimum of 2 seats under CT law, there are only 3 Republican candidates for the 5 seats with 4-year terms versus 5 Democrat candidates. I urge you to vote ONLY for the "Row B" Republican candidates: Julie Toal, Phil Hagan, and Dan Bennett for 4-year terms, and Hugo Alves for the special election seat. The remaining two seats can be determined by voters under guaranteed minority representation."

This implies that the Democrats' status as a minority party in New Canaan is fixed where this Board of Education race is concerned. His explanation could lead voters to conclude that votes for Democratic candidates are wasted, as Democrats could only be apportioned two seats. This is incorrect.

CHS 9-167a limits the maximum number of members from one party on a given board/commission. Democrats are not specifically guaranteed any seats. In other words, if any one party wins more votes in a BOE election, that party becomes the majority party, and the remaining parties—Republicans, Independents, Greens, Unaffiliated, etc.—occupy the seats guaranteed to the minority. One party cannot have more than a 2/3 majority, which equals 6 on the BOE. In this election, Brendan Hayes is the only remaining Democrat on the BOE. This means that the Democrats could potentially take 5 seats in total more.

Our First Selectman's statement is misleading to voters seeking to understand how our municipal government works, and could actually serve to suppress the vote for parties perceived to be in the minority. Further, numerous concerned citizens reached out to me in my capacity as President of the League of Women Voters of New Canaan, as they were confused by the letter's contents as well as its propriety. In my twelve years living in New Canaan, I have never heard of such a solicitation letter from an elected official—much less our highest elected official—and I hope never to hear of one again.

E. Is the alleged violation ongoing? If so, please explain:

While the election will be over Tuesday, the damage caused by the First Selectman's erroneous explanation extends beyond Election Day. This communication was not only a solicitation for this election, but a method of voter education used to explain how an important part of New Canaan's municipal government works. I take nonpartisan voter education seriously. We all have our personal political leanings, but when it comes to informing the public about the workings of government and elections, we must be clear and factual. Mr. Moynihan's letter could actually disengage citizens from the process by essentially suppressing the votes of all parties excepting Republicans.

III. SUPPORTING EVIDENCE

A. Name any witnesses who would be able to corroborate the facts surrounding these allegations: Selectman Kathleen Corbett, Beth Jones

B. Attach any documents (up to 10) that corroborate the facts surrounding these allegations. [If there are more than 10 relevant documents, please describe these documents generally to assist the Board in deciding whether to request them from you or others.]

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C. Please provide here (or in an attachment not to exceed 5 pages) any additional facts or law that may be relevant to the Board's consideration of this Complaint:

IV. CONFIDENTIALITY

The Board and the Complainant have a duty under Connecticut law and Town ordinance to maintain the confidentiality of this Complaint during the period of time that the Board considers whether there is probable cause to investigate further. Breach of this confidentiality obligation by the Complainant could result in dismissal of this Complaint.

V. TIMELY SUBMISSION

To be considered by the Board, this Complaint must be filed and received by the Board within one year after the matter in question has allegedly occurred.

VI. NOTARIZED STATEMENT

I, Micaela Perta [print name], have read this Complaint and its attachments (the "Complaint") and believe it to be true and accurate in all respects. I request that the Board of Ethics investigate this complaint.

Date: 11/1/21

Signature of Complainant

(To be signed in presence of notary, below)

STATE OF CONNECTICUT)
) ss: 042-74-8299
COUNTY OF FAIRFIELD)

On this 1 day of November, 2021 personally appeared Micaela Perta known to me to be the person whose name is subscribed to the within instrument, who signed this complaint in my presence, and swore or affirmed that the content of this complaint is a true and accurate statement to the best of his/her knowledge.

In witness whereof, I hereunto set my hand and seal.

Patrice Heubeck

Name:

Commissioner of the Superior Court/Notary Public

My Commission Expires: 10-31-2021

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PATRICE A HEUBECK
NOTARY PUBLIC
CONNECTICUT
MY COMMISSION EXPIRES 10-31-2024

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Appendix B
Letter

**Kevin J. Moynihan
First Selectman
Town of New Canaan**

Dear New Resident,

As a newcomer to New Canaan, you may not be familiar with the upcoming municipal election on Tuesday, November 2, and you may be confused by the ballot. I am writing to help explain the process for voting.

I am proud to be leading the Republican slate of candidates on the November 2 ballot, or "Row B". In addition to our unopposed incumbents in the offices of First Selectman, Selectmen, Town Treasurer, Town Clerk, Town Council and others, we have a very important contest for the Board of Education this election cycle.

This year, 5 of the 9 BOE seats with 4-year terms are up for election and there is also a special election for a BOE vacancy with a remaining 2 years of a 4-year term. Because Democrats, as the minority party in New Canaan, are guaranteed a minimum of 2 seats under CT law, there are only 3 Republican candidates for the 5 seats with 4-year terms versus 5 Democrat candidates.

I urge you to vote ONLY for the "Row B" Republican candidates: Julie Toal, Phil Hogan, and Dan Bennett for 4-year terms, and Hugo Alves for the special election seat. The remaining two seats can be determined by voters under guaranteed minority party representation.

The Republican BOE candidates all have young children in our schools and are accomplished individuals who stand for academic excellence, fiscal common sense, local control, better curriculum oversight, especially on new initiatives and improved communication to all parents.

Due to the ongoing coronavirus pandemic, there is "no excuse" absentee ballot voting under rules adopted by the CT legislature last summer. **If you will be unable or prefer not to vote in person on November 2nd you may go to Town Hall, 77 Main Street, any weekday between 8:00AM and 4:00PM and vote by absentee ballot at the Town Clerk's office.**

Sincerely,

Kevin

REMEMBER: VOTE ROW B - ONLY!

Paid for by the New Canaan RTC, Gene Goodman Treasurer

Appendix C

Reply

PRELIMINARY REPLY TO ETHICS COMPLAINT DATED NOVEMBER 1, 2021,

BY COMPLAINANT MICAELA PORTA

AGAINST

FIRST SELECTMAN KEVIN MOYNIHAN

By sworn statement dated November 1, 2021, Micaela Porta alleges that I, First Selectman Kevin Moynihan, violated the Code of Ethics (the "Code") of the Town of New Canaan by writing a campaign letter endorsing the Republican slate of candidates, and particularly the Republican Board of Education ("BOE") slate of candidates, for the November 2nd New Canaan municipal election.

The statements made in the complaint are false and the complaint should be immediately dismissed as it fails to state a violation of the Code.

Ms. Porta's complaint is completely devoid of legal merit and attempts to politicize the Board of Ethics process in violation of my right of free speech guaranteed by Article I of the U.S. Constitution.

In reply to the allegation that I used my "position and access to resident names and addresses to give preferential treatment to one slate of candidates by influencing the electorate in an erroneous explanation of how majority/minority rules work in our town government" I reply as follows:

1) The New Canaan Republican Town Committee ("RTC") was responsible for conducting the Republican slate's campaign for the 2021 municipal election, including my unopposed race for re-election as First Selectman and the Republican slate of candidates for the BOE.

2) When I was asked by the RTC to write a Letter to the Editor to the local media endorsing the Republican slate for the BOE I suggested that instead I write a letter to new voters to explain the ballot for the BOE race that many voters were finding confusing. I composed the letter myself.

3) I had nothing whatsoever to do with the mailing of the letter to new voters as that was the responsibility of the RTC. I had, and to this date I have, no knowledge of how the RTC compiled the list of new voters to whom my letter was mailed. I assume that the RTC used records they already had from their ongoing program of sending welcome letters to new voters throughout the year, and that they used voter registration lists that are freely available to the public, including the town political committees and candidates for office.

4) As First Selectman and a former member of the Town Council of New Canaan, as a former member and Vice Chairman of the RTC, and as a licensed attorney for 47 years, I believe that I well understand the Connecticut statute that guarantees minority party representation on municipal boards and commissions. In the context of the New Canaan 2021 municipal election where only Republican and Democratic candidates' names appeared on the ballot and where the

Republican Party is the majority party with a 2 to 1 registration advantage of Republicans over Democrats, I believed that it was entirely appropriate to word my letter to describe the Democratic Party candidates as being "guaranteed a minimum of 2 seats under CT law." Ms. Porta would have preferred that my letter include additional statements to the effect that it would be possible that Democrats could become the majority party by out-voting Republicans and if that were to occur Republicans would become the minority party and Democrats could then control the majority of seats on the BOE. In my opinion, it was not necessary for my letter to address arguments concerning theoretically possible election outcomes that were, in my judgement based upon consistent electoral results over the 40 years that I have lived in New Canaan, extremely unlikely despite the fevered partisan desire of Ms. Porta and some Democrat Party leaders.

5) My letter of endorsement of the Republican BOE candidates cannot provide the basis for a violation of the Code FIRSTLY, because nothing in the Code in any way prohibits my endorsement letter, and SECONDLY, because of my First Amendment right of free speech in an election campaign to express my views freely and to endorse candidates in whatever words I choose.

6) Ms. Porta alleges in her complaint that my endorsement letter violates Sections 17-2 1(b), 5(c) and 8 of the Code. She is wrong on all counts.

Section 1(b) covers participation by officials in matters involving decisions or actions by bodies of Town government. It obviously has no application to my letter which involved no decision or action by any body of Town government.

Section 5(c) addresses granting preferential treatment, favors, services, or things of value to persons unless available to the general public. It would be nonsensical to apply Section 5 to political endorsements of candidates running for elective office which by their nature are intended to benefit specific candidates. Clearly that is not the intent of the rule. Moreover, applying the rule to prohibit political endorsements in election campaigns would violate the First Amendment rights of persons making the endorsements (see below).

Section 8 prohibits officials from using their position or special knowledge for the purpose of furthering their financial or personal interest. As detailed above, I did not use any such knowledge with respect to my letter and my letter in no way advanced any financial or personal interest of mine. Nor does Ms. Porta allege that I had any financial or personal interest in this matter. I note also that none of the candidates I endorsed was an "official, employee, relative, or business" within the Code's definition of personal interest.

For all these reasons, Ms. Porta's allegations that I violated the Code are false.

6) As a member of the Town Council in 2014, I drafted the first draft of the Ordinance to create an Ethics Board for the Town of New Canaan. As a member of the Town Council from 2013 to 2017, and as First Selectman since 2017, I know and well understand the words and meaning of the Code. As a leader of the Republican Party in New Canaan, along with the RTC, I am

expected to use my influence to endorse the Republican slate of candidates in municipal elections, and such action does not and cannot constitute a violation of the Code.

7) Ms. Porta's complaint claims that I "erroneously" explained "how majority/minority rules work in town government", but the issue is not whether my letter was accurate or not as I have the right, guaranteed by the U.S. Constitution, to express myself in election literature in whatever manner I believe to be true. Even if I was mistaken in my description of how the majority/minority rules work in New Canaan town government (and I do not believe that I was mistaken), my words cannot provide the basis for a violation of the Town of New Canaan Ethics Code.

8) Ms. Porta's complaint attempts to politicize the Ethics Board process and misuse the Code to cast aspersions on my character and my integrity and to chill my right of free speech guaranteed by Article I of the U.S. Constitution. Ms. Porta alleges that her capacity as President of the New Canaan League of Women Voters somehow gives her authority to complain about the propriety of my endorsement letter, but Ms. Porta is well known to have extreme anti-Republican opinions as a supporter of the 203Action political agenda in New Canaan. Further, that Ms. Porta's complaint names as witnesses Selectman Kathleen Corbett and former Selectman Beth Jones, who are two leading Democrats in New Canaan, further evidences Mr. Porta's attempt to politicize the Ethics Board process.

9) The mandate of the Ethics Board is to investigate complaints that allege a violation of the Code and to immediately dismiss any complaint that does not state probable cause of such a violation.

10) In concluding, I would note that it is not my habit to speak about my own ethics and character, but Ms. Porta's complaint compels me to do so. I have been a resident of New Canaan for 40 years during which time I have taken an active role in numerous charitable and community activities including town government. I have been an attorney and member of the bar for 47 years. I have always placed the highest importance on conducting myself in an ethical manner in my personal and professional life, including by adhering to the ethical precepts applicable to members of the bar and to New Canaan's Code of Ethics. My wife and I raised our two children in New Canaan and I value my reputation in New Canaan.

I have never in my life been accused of unethical conduct until Ms. Porta filed her complaint. I am deeply disturbed by this unfounded and malicious attack on my ethics, character and reputation. And I am saddened that New Canaan politics, which historically has been characterized by civility and mutual respect, has sunk to this lamentably low level in the 2021 election.

I urge the Ethics Board to immediately dismiss Ms. Porta's complaint.

Respectfully,



Kevin Moynihan