

STATE OF VERMONT  
WINDSOR COUNTY, SS.

IN RE: TOWN CLERK ELECTION )  
MARCH 4, 1997 )  
LUDLOW, VERMONT )

Docket No. 131-3-97 Wrcv

FINDINGS, CONCLUSIONS, AND ORDER

This matter came before the court for hearing on April 11, 1997 on the petition of Sarah Brewer Clark contesting the results of the election for Ludlow Town Clerk held in the Town of Ludlow on March 4, 1997. Petitioner is the candidate who was originally declared the winner but lost after Town and Court recounts. She was present and represented by Paul Gillies, Esq. The Town of Ludlow was represented by John E. Brady, Esq. Also present and participating was Nettie Gruber, the Town Clerk at the time of the election and the candidate who was declared the winner at the Town and Court Recounts.

Findings of Fact

Based on the evidence admitted at the hearing, the court finds as follows:

1. An election was held for the office of Town Clerk in the Town of Ludlow on March 4, 1997.
2. Nettie Gruber was the Town Clerk of Ludlow at the time of the election.
3. There were two candidates for Town Clerk: Nettie Gruber, the incumbent, and Sarah Brewer Clark, the petitioner in this action.
4. As the Town Clerk, Nettie Gruber was the presiding officer of the election, and responsible for the tasks identified in the statutes governing elections. 17 V.S.A. Sec 2452. By specific statute, a town clerk running for reelection is not disqualified from being presiding officer of the election in which he or she is a candidate. 17 V.S.A. Sec. 2456. Nettie Gruber understood that her job included appointing election officials to help conduct the election, and she appointed Ramona Komilainen and Lawrence Melen as election officials. Actually, it is the Board of Civil Authority that has the responsibility to appoint assistant election officers from among Town voters. 17 V.S.A. Sec 2454. By law, election officials consist of the Town Clerk as presiding officer, the members of the Board of Civil Authority, and the assistant election officers appointed not by the Town Clerk but by the Board of Civil Authority. 17 V.S.A. Sec. 2455. The presiding officer is responsible for supervision and allocation of responsibilities of the election officials. 17 V.S.A. Sec. 2453.

Ulla Cook assisted in the conduct of the election on March 4, 1997. Ulla Cook was the incumbent Treasurer, and had been appointed by Nettie Gruber on August 5, 1996 as Assistant Town Clerk. She was also candidate for Treasurer in the election, and was

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opposed by Sarah Brewer Clark. She worked at the election in the morning for several hours, until someone suggested to Nettie Gruber that Ulla Cook should not be working at the election. At that time, Ulla Cook stopped working as an election official until later in the evening as described below. Both Nettie Gruber and Ulla Cook insisted in their testimony that Ulla Cook assisted in the conduct of the election in her capacity as Assistant Town Clerk and not as a candidate for Treasurer. As a candidate for Treasurer, Ulla Cook was specifically disqualified by statute from serving as an election official, notwithstanding her position as Assistant Town Clerk. 17 V.S.A. Sec 2456. She was not appointed as an assistant election officer, and therefore was not an election official. No statutory provision authorizes an Assistant Town Clerk to be an election official unless independently appointed as an assistant election officer by the Board of Civil Authority.

6. Lawrence Melen was not ever appointed as an assistant election officer by the Board of Civil Authority, but he was sworn in as an election official by Nettie Gruber. He has worked for the Town of Ludlow in an administrative capacity since 1988, and is currently the Director of Planning Services. He works from an office in the municipal building where the Town Clerk's office and Police Department are also located. He has participated in elections in Ludlow as an election official since 1988, usually once or twice a year. Although he originally lived in Ludlow, at some point he moved to property he owns with lands in both Ludlow and Plymouth. His house is located on the portion of the property that lies in Plymouth. Nonetheless, he claims residency in Ludlow, and has remained on the voter checklist for the Town of Ludlow. He testified that he continued to claim Ludlow residency after his move to his dwelling house in Plymouth based on information he received after making a telephone call to the Secretary of State's office.
7. The polls were open until 7:00 p.m. on March 4, 1997. During the ballot counting process after the polls were closed, Larry Melen assisted Nettie Gruber in receiving the tally sheets from the ballot counters, who worked in pairs and bundled ballots in groups of 50. He also helped her transfer the results from the tally sheets on to summary sheets.
8. Ballot counting finished at approximately 1:15 a.m. on March 5, 1997. The results of the election for Town Clerk, based on the count following the completion of counting at that time, were as follows:

Sarah Brewer Clark	369
Nettie Gruber	364
Blank	14
Write-in	12
Spoiled	4
Total	763

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9. At the conclusion of counting at 1:15 a.m. on March 5, 1997, everyone left except for Nettie Gruber, Larry Melen, and Ulla Cook. It is not known when Ulla Cook arrived. She had not worked at the election during the evening while votes were being counted.
10. In the presence of the three of them were the election materials from the day's election and two ballot boxes. One contained a ballot bag with ballots from the school election. Nettie Gruber had not been involved in the process of counting school ballots after they had been taken to a separate location for counting when the polls closed. The box had apparently been returned after completion of the counting, and the box contained a ballot bag of the type in which ballots are required to be secured and stored at the end of an election. 17 V.S.A. Sec 2590. The other was the ballot box for the election of Town officers, which is the one on which Nettie Gruber and Larry Melen had worked. As part of their work in checking the tally sheets for each bundle and transferring the results to the summary sheets, they had placed the rolled-up bundles of 50 ballots loose in the ballot box, where they remained. The box had a slide-off lid that was easy to open and shut. Unused ballots, tally sheets, summary sheets, entrance and exit checklists, pencils, and other election materials were also remaining. These were placed loose in a cardboard boxes without lids, apparently by Nettie Gruber or someone acting under her supervision. Neither the ballots in the ballot box, nor the other election materials in the cardboard boxes, were placed in ballot bags or sealed as required by 17 V.S.A. Sec 2590. Nettie Gruber knew that the law required her as the presiding officer to see that ballots and election materials were bagged and sealed using materials provided by the Secretary of State, but she decided not to do that at 1:15 a.m. because she was tired and so were others.
11. Nettie Gruber, Larry Melen, and Ulla Cook proceeded to carry the election items downstairs and into the Town Clerk's office to be placed in the vault. Larry Melen carried the two ballot boxes, Nettie Gruber carried the cardboard boxes of other election material, and Ulla Cook carried a calculator and opened doors for the others.
12. Nettie Gruber and Ulla Cook were the only two people with the combination for opening the vault in the Town Clerk's office. Ulla Cook opened the vault. Larry Melen placed the two ballot boxes under the overhang of the work table slightly to the right of entering the vault, with the school ballot box on top of the Town ballot box. Nettie Gruber placed the open cardboard boxes of election materials on or under the table. The vault was locked.
13. Nettie Gruber left the building at approximately 1:20 to 1:30. Larry Melen and Ulla Cook remained in the Town Clerk's office for another 10-15 minutes. Ulla Cook made telephone calls to newspapers with the results of the election. The two then locked the Town Clerk's office and left it. Larry Melen went to his own office down the hall for a few minutes before leaving the municipal building by the back door near the Police Department.

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14. Rita Wong is the police dispatcher who was on duty from 11:00 p.m. on March 4<sup>th</sup> to 11:00 a.m. on March 5<sup>th</sup>. The front door of the municipal building is normally locked by the dispatcher who precedes her. There is no information about who locked the front door the night of the election, or at what time. She heard the sounds of Larry Melen, Ulla Cook, and Nettie Gruber carrying materials downstairs to the Town Clerk's office after 1:00 a.m., and she saw Nettie Gruber leave alone followed by the others several minutes later. She saw no one else enter the building for the remainder of the night except police officers conducting police functions. A key to the Town Clerk's office is kept at the Police Department, and no one asked for it. She opened the front door to the municipal building at 6:00-7:00 a.m., as is her custom.
15. On March 5, 1997 at 7:40 a.m., Nettie Gruber arrived at the municipal building and entered by the back door by the Police Department. She delivered to Rita Wong a letter to be given to Ulla Cook as Assistant Town Clerk asking for a recount of the election, and left immediately by the back door. This was the time she normally arrived for work, but thought that she should not go to work as the Town Clerk since she had lost the election and was asking for a recount. She still had her key, but she did not enter the Town Clerk's office. There is no information that she contacted anyone on the Board of Civil Authority or anyone else about the responsibility to bag, secure, seal, and store the ballots and election materials.
16. At approximately 8:30 a.m., Sarah Brewer Clark, who had won the election for Town Clerk but lost the election for Town Treasurer to Ulla Cook, arrived at the municipal building and entered but found the Town Clerk's office locked. She went into the office of Paul Hughes, whose office is across the hall, and talked with him about what the next steps were.
17. At approximately 8:30 a.m., Ulla Cook arrived at the municipal building. As she arrived, Rita Wong handed her the envelope from Nettie Gruber containing the request for a recount. Ulla Cook proceeded to the Town Clerk's office and unlocked the door and opened the vault. It was payday, and as Treasurer, she was responsible for payroll. She took the paychecks out of the vault, and proceeded across the hall to Paul Hughes's office where she delivered a check to Paul Hughes and a bundle of other checks for others. Sarah Clark was there, and the three entered into a conversation that lasted for up to 3-4 minutes. During that time, the Town Clerk's office was unattended and the vault was open, with the ballots loose in the ballot box under the table and the unused ballots, tally sheets and summary sheets in the open cardboard boxes in the vault. Ulla Cook then returned to the Town Clerk's office, followed shortly thereafter by Sarah Clark. The Town Clerk's office remained open throughout the day, staffed by one or the other of them, except for the possibility of short breaks for the use of the restroom or short errands. There is no information that steps were

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taken to ensure that the office, the vault, or the election materials and ballots were specifically guarded or watched until such time as they were bagged and sealed.

18. The vault remained open throughout the day. There is a sign-in and sign-out sheet for the vault, and two persons signed in during the morning to use the land records. Town officers and employees are entitled to use the vault without signing in or out, and various town employees probably were in and out of the vault during the morning. Ulla Cook went in and out of the vault several times to get the various bank account records and other materials needed for her work as Treasurer. The place where the ballot boxes and election materials were stored, under and on the work table in the vault, is not visible at all times from the Town Clerk's office. Although there is a TV monitor that provides a view of the inside of the vault, Sarah Clark was not aware of it that day and did not use it.
19. The two persons who signed in that morning, as well as Ulla Cook, Sarah Clark, and Larry Melen, all testified that none of them saw anyone tamper with the ballots or any of the election materials in the vault that morning, and the court so finds. They all testified that they did not do so themselves, and the court so finds.
20. At approximately 9:00 a.m., Nettie Gruber called the Town Clerk's office. It is not clear what the specific purpose of the call was, or who she intended to contact. In any event, Sarah Clark answered the telephone. As a result, Nettie Gruber decided not to go to the Town Clerk's office. There is no information that she spoke to anyone. There is no information that she spoke to anyone at any time about the need to bag and seal and secure and store the ballots and election materials.
21. From the time Sarah Clark joined Ulla Cook in the Town Clerk's office shortly after 8:30 a.m., the first issue to be determined was who had the authority to act as Town Clerk at that time. Ulla Cook telephoned the Secretary of State's office, and was told to wait for a return call. She finally reached someone in the Secretary of State's office at approximately 10:00 a.m., who stated that Sarah Clark was the Town Clerk. Although Sarah Clark was not sworn in as Town Clerk until the following day and could not be sworn in on March 5<sup>th</sup> because the Chair of the Board of Civil Authority was out of town that day, she performed office staff functions as Town Clerk that day. She did not perform functions such as recording documents that only a Town Clerk can do.
22. There is conflicting testimony about how the issue of unsealed ballots and election materials came to be addressed by Sarah Clark and Ulla Cook at approximately 10:00 a.m. on the morning of March 5<sup>th</sup>. Sarah Clark testified that when Ulla Cook got off the telephone with the Secretary of State's office, she said, "We need to get the ballots sealed," and led Sarah Clark into the vault. Ulla Cook testified that there was no mention of ballots after her telephone call with the Secretary of State's office, and that instead Sarah Clark, in the vault

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and indicating in the direction of the ballot boxes, said, "What are those?" and pulled the ballot boxes out from under the table when Ulla Cook said they were the ballots. In any event, Sarah Clark pulled the boxes out from under the table. She lifted the lid of the top box, which was not secured in any way, and saw a ballot bag and a colored ballot indicating school ballots. She then slid the lid off the second box, which was not secured in any way, and saw the rolled up bundles of ballots loose in the ballot box. The entrance and exit checklists from the election were in a cardboard box to the left of the ballot boxes, and unused ballots were in a cardboard box without a top to the right of the ballot boxes.

23. Ulla Cook then found an official ballot bag for the ballots. There is conflicting testimony about where she found the bag. Ulla Cook testified that it was in one of the cardboard boxes full of election materials that came downstairs the night before and was in the vault. Sarah Clark testified that Ulla Cook found it in a storage cabinet in the Town Clerk's office after a 10-20 minute search. Ulla Cook held the bag open and Sarah Clark put the ballots in the bag. Neither of them could locate a seal of the type provided by the Secretary of State for sealing election materials, so Sarah Clark attempted to seal the bag with rubber bands and twine. Sarah Clark made a label for the ballot bag, and they put the ballot bag in the ballot box, which they put back under the table. No seal from the Secretary of State's office was ever put on the ballot bag.
24. On March 6, 1997, Sarah Clark was sworn in as Town Clerk.
25. On March 7, 1997, a recount was held in the Town of Ludlow. The results were:
- |                    |     |
|--------------------|-----|
| Nettie Gruber      | 369 |
| Sarah Brewer Clark | 366 |
26. Thus, upon recount, Nettie Gruber had five additional votes, and Sarah Brewer Clark had three fewer votes, than at the time of the original count.
27. As a result of the recount, Nettie Gruber was sworn in as Town Clerk.
28. Sarah Brewer Clark petitioned the court for a recount, which was conducted by the court on March 13, 1997. The results of the court recount were identical to the results of the Town recount on March 7, 1997.
29. There is no evidence that shows actual tampering with ballots, checklists, tally sheets, summary sheets, or unused ballots with respect to the election for Town Clerk.
30. There is no evidence that explains why the results of the recount were different from the original count results.
31. Sarah Brewer Clark does not trust the results of the recount because of the fact that the ballots were not properly bagged and secured until 10:00 a.m. on March 5<sup>th</sup>, and the results of the recount changed the outcome of the election.

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32. The only two persons with keys to the Town Clerk's office were Nettie Gruber and Ulla Cook, except for the extra key in the Police Department which no one requested. The only two persons with the combination to open the vault in the Town Clerk's office were Nettie Gruber and Ulla Cook. Both were under challenge from Sarah Brewer Clark, who ran against both incumbents in an effort to unseat them both and become Town Clerk and Town Treasurer.
33. There were numerous errors in the conduct of the election, including specifically:
- a. The ballots cast by the voters were not securely sealed in official ballot bags by the presiding officer of the election (Nettie Gruber) before being returned to the Town Clerk (Nettie Gruber) for storage in accordance with 17 V.S.A. Sec. 2590(a).
  - b. The tally sheets and entrance and exit checklists were not securely sealed with the ballots as required by 17 V.S.A. Sec. 2583 and 2590.
  - c. The entrance and exit checklists and other election material was not securely sealed as soon as possible after the closing of the polls. 17 V.S.A. Sec. 2583.
  - d. Spoiled and unused ballots were not securely sealed in the same manner as required for ballots. 17 V.S.A. Sec. 2568.
  - e. Ulla Cook, a person specifically disqualified from service as an election official, and not appointed as an assistant election officer by the Board of Civil Authority even if she were so qualified, participated in the conduct of the election early in the day, and participated in the process of storing the ballots and other election material after the counting was completed at 1:15 a.m. and from 8:30 a.m. to 10:00 a.m. on March 5<sup>th</sup>.
  - f. Nettie Gruber, as Town Clerk, after receiving the ballots and election material from herself as presiding officer of the election, did not fulfill her statutory obligation to "safely store them, and . . . not permit them to be removed from his or her custody or permit them to be tampered with in any way except under court order. . . If necessary for safe storage of the containers, the town clerk may store them in a bank vault or other secure place, within or without the town, provided that access to them cannot reasonably be had without the town clerk's consent." 17 V.S.A. Sec. 2590. She permitted them to remain in the vault unlocked and unsecured during the morning hours of March 5<sup>th</sup>, during which time several people had access to them without her consent. Although she may not have been sure when transfer of Town Clerk responsibilities to Sarah Clark was going to take place, she took no steps at all to fulfill her responsibilities from the night before, or assure that they were being fulfilled by other election officials or by a duly authorized Town Clerk.

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- g. Larry Melen, a person unqualified to be a voter of the Town of Ludlow because his dwelling place was not located in Ludlow, and therefore a person not eligible to be appointed as an assistant election officer, and not appointed by the Board of Civil Authority even if he were so qualified, participated in the election by counting ballots and tallying results, and participated in the process of storing ballots and other election materials after the counting was finished at 1:15 a.m.
- h. Assistant election officers were appointed by the Town Clerk and were not appointed by the Board of Civil Authority as required by statute. 17 V.S.A. Sec. 2454.
- i. Ballots, unused and spoiled ballots, entrance and exit checklists, tally sheets, and summary sheets were left unsecured and completely unattended for at least one period of 3-4 minutes in an open vault in an open Town Clerk's office in an open municipal building after the election. This would be an error in any election, but is a particularly egregious error when the results are close and a request for a recount is likely.
- j. Town employees and members of the public had access to the unlocked and unsecured ballots, unused and spoiled ballots, entrance and exit checklists, tally sheets, and summary sheets for the period from 8:30 a.m. to 10:00 a.m. on the morning after the election and before the material was secured and sealed. This access was in the open vault and out of the direct line of vision of any election official. A recount had already been requested, and the original count showed only a margin of five votes between the candidates.
- k. When the ballots and other election materials were finally bagged and secured, it was done by Ulla Cook and Sarah Clark, neither of whom had been appointed as assistant election officers by anyone, and therefore were not proper election officials. While it is understandable that Ulla Cook may have believed that she could undertake such action as the Assistant Town Clerk, and while she did seek and obtain advice from the Secretary of State's office that Sarah Clark could function as Town Clerk, and while it is better for the act to have been done than not done at that point given the void in the exercise of responsibility by Nettie Gruber as Town Clerk and the Board of Civil Authority, this nonetheless remains an error in the handling of election materials.
- l. The Board of Civil Authority, which has charge of the conduct of elections within the Town, appears not to have exercised that responsibility with respect to this election in that no member of the Board of Civil Authority was checking to assure the safety of the storage of the election materials in view of the outcome of the

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election and the fact that due to the absence of the Chair of the Board of Civil Authority, there was a delay in the swearing in of the newly elected Town Clerk and there was a high likelihood of a recount.

- m. It was Nettie Gruber's responsibility as Town Clerk prior to the election to request sufficient quantities of official seals from the Secretary of State for purposes of sealing ballot bags after counting the ballots. This was not done, as there was no seal available to seal the ballots and related election material from Town elections at the time it was required by statute to be done. 17 V.S.A. Sec. 2590.
34. The errors that were committed were of a type sufficient to change the ultimate result of the election because of the facts that a) the election was extremely close, b) changes in only three votes would change the outcome of the election, c) election materials needed to make such changes were available to interested persons and members of the public, and d) the changes that would need to be made to change the outcome could easily have been accomplished in the amounts of time during which the election materials were available in an unsecured manner.

#### Conclusions of Law

Based on the foregoing Findings of Fact and applicable law, the court concludes:

1. Election results are invalid pursuant to 17 V.S.A. Sec. 2603(b) if it is shown:
  - (1) That errors were committed in the conduct of the election or in the count or return of votes, sufficient to change the ultimate result;
  - (2) That there was fraud in the electoral process, sufficient to change the ultimate result; or
  - (3) That for any other reason, the result of the election is not valid

The second basis is inapplicable to this case, as there is no evidence of fraud. As shown in the Findings of Fact as stated above, there were errors in the manner in which election materials were stored between the original count and the recount. They were of a nature, given the specific facts of the election and the errors themselves, sufficient to change the result of the election. The court concludes that the Petitioner has sustained her burden to show that the election for Town Clerk, as ultimately determined after the recount processes, was invalid. While there is no proof that there was actual tampering of the ballots, the standard is whether the errors that were made were sufficient to result in a change in outcome. In this case, the facts show that there was access to unsecured election materials, including all of the different materials needed to change the outcome of the election, for a period long enough to permit tampering sufficient to change 3 to 5

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votes; that changes in 3 to 5 votes would have changed the outcome of the election; and that upon recount there were changes in 3 to 5 votes counted such that the outcome of the election was changed. The Town argues that the court should interpret prior Vermont cases to mean that the Petitioner has to prove that there was a change in the number of ballots counted for each candidate, and that the changes were the result of actual tampering. That would impose an unrealistic burden on petitioners to have to prove the details of activities that by their very nature are likely to be carried on under covert, surreptitious circumstances. In addition, changes in the numbers of votes upon recount are common due to a variety of cumulative human errors, and it is unreasonably burdensome to require a petitioner to show that number changes on recount were caused by tampering activity rather than by incorrect counting. The cases stand for the principle that irregularities, while unfortunate, will not result in an election being overturned unless they were of such a character that they were sufficient to cause an actual change in the outcome, and the Petitioner has shown that in this case. In other words, if all other facts in the case were the same except for one fact that showed that it would take a person longer to get into the ballots and change them than opportunity allowed, then the Petitioner would not have sustained her burden. Because both the means and opportunity were available sufficient to change the outcome, and the outcome was in fact changed, the Petitioner has proved her case under the first basis. All she needs to prove is the opportunity for the election to be tainted in a manner that could result in a change of outcome, and not that it actually was tainted. This is sound policy which assures voters of a sense of confidence in the conduct of elections, and therefore in the results. Accordingly, just cause has been shown under the first category for a declaration that the results of the election as finally ended by the court recount are invalid.

2. In addition, the court concludes that the Petitioner has also shown that the election is invalid under the third category, which permits an election to be declared invalid "for any other reason" without the Petitioner having to prove that errors were sufficient to change the ultimate result. This was not just a case of a few minor irregularities, which can be expected to occur in any election. In this election, there were numerous errors, many of them quite serious, that show a pattern of failure to observe the clearly defined statutory requirements for maintaining the integrity of fair elections in a democratic society. There was inattention to proper procedures for appointing duly constituted election officials. There was a laxity and informality in determining who was permitted to assist in the conduct of the election. There was a failure to plan in advance for the proper bagging and sealing and storage of the ballots. There was a decision to put off

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securing ballots and related balloting material in a close race involving an incumbent town clerk until morning since counting ended late at night; then this key step in protecting the integrity of elections in a democratic society was neglected for a time when interpersonal relations between winning and losing candidates was awkward. There was a lack of responsibility on the part of the defeated incumbent Town Clerk and the Board of Civil Authority to follow through with proper security of ballots and related election materials, even though it became immediately apparent that a recount would be needed. Town employees and members of the public had actual access to ballots and other election materials for a significant period of time prior to the recount. There was a failure on the part of the Board of Civil Authority to assume responsibility for assuring the integrity of electoral procedures in an election in which Sarah Clark was challenging both incumbents Nettie Gruber and Ulla Cook, and the race was close and Nettie Gruber and Ulla Cook undertook significant roles as election officials. There was a further failure on the part of the Board of Civil Authority to exercise responsibility over the situation once the initial outcome showed the high likelihood of the possibility of a recount. The cumulative effect of all of these errors is an election sufficiently flawed that the citizens' ability to have confidence in the fairness and outcome of the election is compromised. Citizens have a constitutional right to fair and secure elections: "That all elections ought to be free and without corruption, and that all voters, having a sufficient, evident, common interest with, and attachment to the community, have a right to elect officers, and be elected into office, agreeably to the regulations made in this constitution." Vermont Constitution, Chapter I, Article 8<sup>th</sup>. This principle is so strong that the word 'corruption' in this context means not only actual tampering, but the taint of impropriety. Given the closeness of the vote, the change in the outcome upon recount, and the pervasiveness of irregularities in this election and in the handling of ballots between the original count and the recount, including some significant and serious ones, the court concludes that the election for Town Clerk as conducted and ultimately concluded does not satisfy minimum standards for a fair election, and that just cause exists for the election to be declared invalid under 17 V.S.A. Sec. 2603(b)(3).

3. The relief requested by Petitioner at the hearing included a declaration that the results of the recounts were invalid, and a further declaration that she is the winner based on the results of the original count. Pursuant to 17 V.S.A. Sec 2603(e), upon finding of just cause, this court has the authority to grant appropriate relief "which may include, without limitation, ordering a recount, or ordering a new election." Recounts have already been conducted by both the Town and the court, and resulted in the change of outcome that has been a significant fact in this decision. A declaration that Sarah

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Brewer Clark is the winner of the election would not cure the defects in the election procedures, or alter the lack of confidence the citizens are likely to have in the flawed election. The only way to assure a fair outcome as between the candidates, and for the community, is to order a new election.

4. Pursuant to 17 V.S.A. Sec. 2603(e), if a new election is ordered, the court shall set a date for it, after consulting with the secretary of state. In the interests of notifying the parties promptly of the outcome of the case, the court hereby issues its order for a new election without specifying a date. The court will direct the court Clerk to consult with the Secretary of State, and a supplemental Order shall be issued specifying the date of the new election.
5. Pursuant to 17 V.S.A. Sec. 2603(e), the court, in ordering a new election, "shall have the authority to issue appropriate orders, either to provide for special cases not covered by law, or to supersede provisions of law which may conflict with the needs of a particular situation." Due to the effect of this ruling, at this time there has been no Town Clerk elected in 1997, and the issue arises as to who is authorized to be presiding officer of the new election to be held, since 17 V.S.A. Sec. 2452 provides that the Town Clerk shall be presiding officer except in identified circumstances not applicable here. Under 17 V.S.A. Sec. 2646, a Town Clerk shall serve "until the next annual meeting and until successors are chosen, unless otherwise provided by law." The court is unaware of any other applicable provision of law. Therefore, the court hereby orders that Nettie Gruber continues as Town Clerk by virtue of her position of incumbency, and as such shall be presiding officer of the new election. Despite the errors detailed in these Findings, the court concludes that the process that has occurred, including the involvement of the Town attorney and the issuance of these Findings and Conclusions, is sufficient to provide appropriate guidance to assure that all requirements of law are properly observed in the new election. The court further orders the Board of Civil Authority to exercise its responsibility under 17 V.S.A. Sec. 2451 "to have charge of the conduct of the elections within the political subdivision for which it is elected," and therefore to assume responsibility to assure full compliance with all applicable requirements of law in the conduct of the new election, which includes responsibility for assuring full compliance with requirements for securing, sealing, and storing ballots and election materials following the completion of vote counting and prior to final determination of the outcome.

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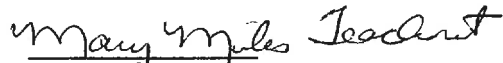
**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, **IT IS HEREBY**

**ORDERED:**

1. The election of Town Clerk held on March 4, 1997, and the results of the election as established by Order of this court upon recount on March 13, 1997, are hereby declared invalid.
2. A new election shall be held for the office of Town Clerk in the Town of Ludlow.
3. The court shall set a specific date for the new election after the Clerk has conferred with the Secretary of State, and shall issue a supplemental Order specifying such date.
4. Nettie Gruber shall continue as Town Clerk until such time as her successor is chosen pursuant to the new election, and as Town Clerk she is authorized to serve as presiding officer of the new election.
5. The Board of Civil Authority shall assume all of its statutory obligations to have charge of the conduct of the new election, including exercising exclusive authority to appoint assistant election officers, and including assuring compliance with all statutory requirements for securing, sealing, and storing ballots and related election materials following the vote count.

Dated at Woodstock this 14<sup>th</sup> day of April, 1997.

  
 Mary Miles Teachout  
 Presiding Judge

  
 William Boardman  
 Assistant Judge

  
 Gilbert Carey  
 Assistant Judge

**FILED**

APR 14 1997

GAIL P. BRADY  
 WINDSOR COUNTY CLERK