

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.

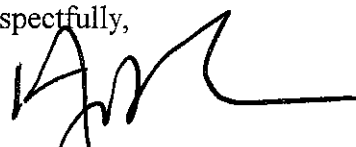
9) The mandate of the Ethics Board is to investigate complaints that allege a violation of the Code and to immediately dismiss any complaint that does not state probable cause of such a violation.

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,

A handwritten signature in black ink, appearing to read 'K. Moynihan', with a long horizontal flourish extending to the right.

Kevin Moynihan