STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Jeffrey P. Kerekes, New Haven

File No. 2007-388

AGREEMENT CONTAINING HENCEFORTH ORDER FOR A VIOLATION OF CONNECTICTUT GENERAL STATUTES § 9-236

This agreement, by and between Brian McGrath, (hereinafter referred to as "Respondent") of the City of New Haven, County of New Haven, State of Connecticut and the authorized representative of the State Elections Enforcement Commission, is entered into in accordance with section 9-7b-54 of the Regulations of Connecticut State Agencies and Connecticut General Statutes § 4-177 (c).

In accordance herewith, the parties agree that:

1. A municipal election was held on November 6, 2007 (hereinafter "Election Day") in New Haven.

2. In November 7, 2007, Melissa Bailey a reporter for the on-line news source *The New Haven Independent*, detailed in a story the voting experience of Vito Bonanno on Election Day. Mr. Bonanno is 25 years old and has been registered to vote since October 20, 2004; but first voted at the November 7, 2007 election. Mr. Bonanno has Asberger's syndrome which is one of the autistic spectrum disorders. He lives with a roommate in his own apartment and holds two jobs, which he commutes to using public transportation.

3. The Complainant, a resident of the City of New Haven, alleges that certain electors were "coerced into voting on November 6, 2007 in Ward 25 in the City of New Haven." He also questioned Mr. Bonanno's competence to vote. The Complainant appears to have filed his Complaint on the basis of that aforementioned article.

4. The Respondent and Stanley Saxe spent most of Election Day knocking on doors in two apartment buildings at 200-226 Fountain Street, New Haven. Ms. Bailey accompanied them on their get out the vote efforts.

5. According to the Respondent, he is a regular worker for the Democratic Party who drives people to the polls on Election Day. He said he tells people that it's Election Day and you are supposed to vote. He further stated that he makes it easy for people to vote by providing them with a ride to the polls. Melissa Bailey had traveled with him to the polls for the previous three years.

6. He stated that he does not accept not wanting to vote as a valid excuse for not voting. According to the Respondent, if people have an excuse not to vote, he provides solutions for them. He feels that there are no good reasons not to vote.

7. Mr. Saxe and Mr. Bonanno live across the hall from each other at 226 Fountain Street. The disposition of the Complaint with respect to Mr. Saxe and the Commission will be addressed under a separate document.

8. The Respondent and Mr. Saxe knocked on Mr. Bonanno's door because his name allegedly appeared on their voting list. Mr. Bonanno answered the door and was asked whether he had voted that day. Mr. Bonanno reacted in agitation to their inquiries to accompany them to the polls to vote.

9. According to Ms. Bailey, Mr. Bonanno was visibly upset at this time and was rocking back and forth and making high pitched squeals. Further, he alternated between expressing his desire *not to vote* and a desire *to vote*. Mr. Saxe indicated that he never witnessed Mr. Bonanno so agitated. To which, the Respondent responded "[t]hat's because you never pressed him."

10. Ms Bailey stated that she, the Respondent and Mr. Saxe remained outside of Mr. Bonanno's apartment while the Respondent and Mr. Saxe asked him to go vote. When Mr. Bonanno did not come out, they went down the hall to another apartment. Shortly thereafter Mr. Bonanno appeared with his coat on in the hallway, ready to go to the polls, and according to Ms. Bailey seemed "eager for the trip." She stated that they were surprised when they saw Mr. Bonanno in the hallway pulling on his coat to go vote.

11. The Respondent drove Mr. Bonanno to the polls at Edgewood Elementary School on Edgewood Avenue in New Haven. He was accompanied by Mr. Saxe and Ms. Bailey.

12. Ms. Bailey stated that during the drive, she did not witness the Respondent explicitly or implicitly telling Mr. Bonanno which candidate(s) to choose. She also did not witness the Respondent making Mr. Bonanno any promises in exchange for a particular vote.

13. Nancy Ahern, the moderator at Mr. Bonanno's polling place on Election Day, indicated that voting in Ward 25 took place inside the gymnasium of Edgewood Elementary School and that the Respondent and Mr. Saxe brought a "parade of people" in to vote there on November 4, 2007.

14. The evidence establishes that Mr. Saxe brought Mr. Bonanno into the gymnasium to vote, but the Respondent did not accompany them. Instead, the evidence establishes that the Respondent remained in the hallway leading up to the gymnasium.

15. General Statutes § 9-236 provides in pertinent part as follows:

> (a) On the day of any . . . election . . . no person shall . . . loiter . . . in any corridor, passageway or other approach leading from any such outside entrance to such polling place or in any room opening upon any such corridor, passageway or approach . . . .
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> . . .
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> (c) No person except those permitted or exempt under this section or section 9-236a and primary or election officials and party checkers appointed under section 9-235 shall be allowed within any polling place except for the purpose of casting his vote. . . .

16. General Statutes § 9-7b provides the following in relevant part:

> (a) The State Elections Enforcement Commission shall have the following duties and powers:
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> (2) To levy a civil penalty not to exceed (A) two thousand dollars per offense against any person the commission finds to be in violation of any provision of . . . part V of chapter 146, part I of chapter 147 . . . section 9-12 . . . (B) two thousand dollars per offense against any town clerk, registrar of voters, an appointee or designee of a town clerk or registrar of voters, or any other election or primary official whom the commission finds to have failed to discharge a duty imposed by any provision of chapter 146 or 147 . . . .

17. The evidence establishes that Mr. Bonanno did not ask the Respondent to assist him while voting. However, the evidence also establishes that the Respondent was present inside the hallway leading up to the gymnasium where Mr. Bonanno voted for purposes other than casting his own vote. The Commission therefore concludes that the Respondent violated General Statutes § 9-236 by loitering in a "corridor, passageway or other approach leading from any such outside entrance to such polling place or in any room opening upon any such corridor, passageway or approach."

18. The Respondent does not believe he violated General Statutes § 9-236 as he claims that he was present in the hallway leading up to the polling place for the purpose of attending a bake sale. Thus, he does not believe he was loitering within the meaning of § 9-236.

19. The Commission has stated that "[l[oitering for the purposes of the Section 9-236 prohibition includes any conduct not specifically authorized by the election statutes." *Complaint by Debra Lewis, Simsbury and Dr. W. Michael Downes, Hartford, File Nos. 98-223 and 98-225.* Section 9-236 (a)(1) does permit parent-teacher associations or parent-teacher organizations from holding bake sales or other fund-raising activities on the day of any primary, referendum or

election in any school used as a polling place, provided such activities shall not be held in the room in which the election booths are located.

20. The Commission concludes that that provision expressly authorizes the presence of those individuals who work at the bake sale or fund-raiser to be present in the corridor, passageway or other approach leading from any such outside entrance to such polling place or in any room opening upon any such corridor, passageway or approach, which would otherwise be loitering. The Respondent does not maintain that he was one of those individuals.

21. The Commission further concludes that that provision implicitly permits only those individuals who have entered the school to vote to attend the bake sale immediately before or after voting. The evidence does not establish that the Respondent voted during his visit to the polling place with Mr. Bonanno.

22. Thus, even if the Commission found that the Respondent attended a bake sale, the Commission still concludes that he violated General Statutes § 9-236 as he did not attend that bake sale before or after voting.

23. The Respondent maintains that he was not aware of and disputes the Commission the interpretation of General Statutes § 9-236. However, the Respondent enters into this Agreement and Order only for the purpose of forestalling further litigation in this matter.

24. In addition, the Complaint also raises the issue of whether Mr. Bonanno was coerced into voting for a particular candidate(s). General Statutes § 9-236b provides as follows in pertinent part:

"VOTER'S BILL OF RIGHTS

Every registered voter in this state has the right to:. . .

(5) Vote free from coercion or intimidation by . . . any . . . person;
. . .

(9) Vote independently and in privacy at a polling place, regardless of physical disability. . . .

25. Assuming without deciding that § 9-236b creates substantive rights, here the evidence is insufficient to establish that the Respondent deprived Mr. Bonanno of his right to vote independently and in privacy. The Respondent did not accompany Mr. Bonanno into the polling place and, thus, could not have viewed his ballot choices.

26. In addition, while there is evidence that Mr. Bonanno was intimidated enough by the Respondent to go and vote, and that the Respondent provided Mr. Bonanno with a palm card and told him which candidates to select prior to arriving at the

polling place, that evidence does not establish that the Respondent was intimidated or coerced into voting for a particular candidate. Thus, the Commission cannot conclude that the Respondent violated General Statutes § 9-236b.

27. Finally, General Statutes § 9-364a provides the following in relevant part:

> Any person who influences or attempts to influence by force or threat the vote . . . of any person in a[n] . . . election . . . shall be fined not more than one thousand dollars or imprisoned not more than one year or be both fined and imprisoned.

28. As noted, there is evidence that Mr. Bonanno felt intimidated enough by the Respondent to leave his apartment and go vote. However, that alone is not sufficient to establish that Mr. Bonanno was influenced by the Respondent to vote for a particular candidate. Furthermore, the evidence is insufficient to establish that the Respondent used force or threats to influence or attempt to influence Mr. Bonanno's vote. While Mr. Bonanno was agitated before and during the voting process, there is no evidence that the Respondent made any explicit threat to Mr. Bonanno or used force against him to get him to vote a particular way. As such, the evidence is inadequate to establish that the Respondent violated General Statutes § 9-364a.

29. The Respondent admits all jurisdictional facts and agrees that this Agreement and Order shall have the same force and effect as a final decision and Order entered after a full hearing and shall become final when adopted by the Commission. The Respondent shall receive a copy hereof as provided in section 9-7b-56 of the Regulations of Connecticut State Agencies.

30. It is understood and agreed that this Agreement and Order will be submitted to the Commission at its next meeting and, if it is not accepted by the Commission, it is withdrawn by the Respondent and may not be used as an admission in any subsequent hearing, if the same becomes necessary.

31. The Respondent waives:

a. Any further procedural steps;
b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
c. All rights to seek judicial review or otherwise to challenge or contest the validity of the agreement or Order entered into pursuant to this agreement.

32. Upon the Respondent's agreement with the Order hereinafter stated, the Commission shall not initiate any further proceedings against him pertaining to this matter.

ORDER

IT IS HEREBY ORDERED that the Respondent shall pay a civil penalty of one hundred dollars ($100.00) to the Commission and the Respondent shall comply with General Statutes § 9-236 in the future.

For the State of Connecticut

Dated: 2/18/09

BY:

Joan M. Andrews, Esq.
Director of Legal Affairs
and Enforcement,
Authorized Representative
of the State Elections
Enforcement Commission
20 Trinity Street, Suite 101
Hartford, Connecticut

The Respondent

Dated: 2/13/09

Brian McGrath
105 Woodside Terrace
New Haven, Connecticut

Adopted this 19th day of February, 2009 at Hartford, Connecticut

Stephen F. Cashman, Chair
By Order of the Commission