

FEB 18 2009

ENFORCEMENT
COMMISSION

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 CIVIL PENALTY FOR A VIOLATION OF
CONNECTICUT GENERAL STATUTES § 9-236

This agreement, by and between Stanley Saxe, (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 the City of New Haven.
2. On 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.
3. Mr. Bonanno has Asperger's syndrome which is one of the autistic spectrum disorders. He lives with a roommate in his own apartment at 226 Fountain Street and holds two jobs, which he commutes to using public transportation. Respondent and Mr. Bonanno live across the hall from each other at 226 Fountain Street and knew each other before Election Day 2007.
4. The Respondent denies any knowledge of Mr. Bonanno's condition with regard to the Commission's finding that Mr. Bonanno has Asperger's syndrome.
5. 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.
6. The Respondent and Brian McGrath 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.
7. Mr. McGrath claims he is a regular worker for the Democratic Party who drives people to the polls on Election Day. 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. The disposition of the complaint concerning Mr. McGrath will be addressed in a separate document.

8. On the other hand, the Respondent claims he was asked by Ina Silverman, a candidate for Alderman in the November 7, 2007 election to help pull votes at 200-226 Fountain Street. Ms. Silverman also lives at 226 Fountain Street. According to Respondent, Ms. Silverman assigned 226 Fountain Street to him and Respondent McGrath. The Respondent stated that he had never met Respondent McGrath nor pulled votes prior to that election.
9. The Respondent and Mr. McGrath 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.
10. 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*. Respondent indicated that he never witnessed Mr. Bonanno so agitated. To which, the Mr. McGrath responded "[t]hat's because you never pressed him."
11. Ms Bailey stated that she, the Respondent and Mr. McGrath 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 putting on his coat to go vote.
12. The Respondent drove Mr. Bonanno to the polls at Edgewood Elementary School on Edgewood Avenue in New Haven. He was accompanied by Mr. McGrath and Ms. Bailey.
13. 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.
14. 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. McGrath brought a "parade of people" in to vote there on November 4, 2007.
15. The evidence establishes that Respondent brought Mr. Bonanno into the gymnasium to vote, and proceeded to help Mr. Bonanno to sign in, and escorted him to the privacy booth where he was to complete the ballot. The evidence is

inconclusive as to whether Mr. Bonanno initially asked the Respondent to assist him while voting. Respondent stood over Mr. Bonanno's shoulder and appeared ready to provide assistance.

16. A witness at the polls complained about the Respondent's presence in the gymnasium. Mr. Bonanno was then asked by an Assistant Registrar of Voters if he wanted Respondent's help. When he responded in the negative, Ms. Bailey indicates that the Respondent was asked to leave. Mr. Bonanno subsequently filled out up to four ballots before successfully voting.

17. 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

. . . .
(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. . . .

18. General Statutes § 9-264 (a) further provides, however, that:

An elector who requires assistance to vote, by reason of blindness, disability or inability to write or to read the ballot, may be given assistance by a person of the elector's choice, other than (1) the elector's employer, (2) an agent of such employer or (3) an officer or agent of the elector's union. The person assisting the elector may accompany the elector into the voting machine booth. Such person shall register such elector's vote upon the machine as such elector directs. . . .

19. The evidence establishes that the Respondent was at Mr. Bonanno's side while he attempted to vote but ultimately was asked by an Assistant Registrar of Voters to leave the polling place after Mr. Bonanno indicated that he did not want assistance.

20. Furthermore, the evidence establishes that after the Respondent was asked to leave the gymnasium he left the voting room but remained in the hallway leading to where Mr. Bonanno voted for purposes other than casting his own vote. As such, it is concluded that once Mr. Bonanno indicated that he did not want assistance, the Respondent was not permitted to be present in the polling place or hallway leading up the gymnasium.

21. 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.”

22. 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.
23. 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.
24. 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.
25. 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.
26. 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. Instead, he allegedly attended that bake sale after being asked to leave the polling place.
27. 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.
28. In addition, the Complainant 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. . . .

29. 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. While the Respondent did accompany Mr. Bonanno into the polling place; the evidence establishes that it was only after the Respondent left Mr. Bonanno's side that Mr. Bonanno was able to successfully cast a ballot. Therefore Respondent could not have viewed his final ballot choices.

30. 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 adequately 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.

31. 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.

32. As noted, there is evidence that Mr. Bonanno felt intimidated enough by the Respondent and Mr. McGrath 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.

33. The Complainant also questions Mr. Bonanno's capacity to vote. General Statutes § 9-12 does provide that "[n]o mentally incompetent person shall be *admitted* as an elector."

34. In the present case, Mr. Bonanno was admitted by the Registrars of Voters as an elector. As such, Mr. Bonanno was presumed competent to vote at the time Respondent accompanied him into the polling place and no evidence has been

uncovered to rebut that presumption. In fact, although Mr. Bonanno spoiled several ballots, he ultimately was able to successfully cast a ballot.

35. Moreover, General Statutes § 45a-703 provides that “[t]he guardian or conservator of an individual may file a petition in the probate court to determine such individual’s competency to vote in a primary, referendum, or election.” Section 45a-703 further provides that the probate court must hold a hearing on that petition no later than 15 days after the filing of the petition. Id. Mr. Bonanno’s parent, who also acts as his legal guardian, indicated that no such proceeding was commenced here. Instead, she maintains that Mr. Bonanno is competent to vote.
36. 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.
37. 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.
38. 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.
39. 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 two hundred fifty dollars (\$250.00) 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: 2-14-09



Stanley Saxe
226 Fountain Street
New Haven, Connecticut

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



Stephen F. Cashman, Chair
By Order of the Commission