

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint of Thomas Appleby,
Rowayton

File No. 2010-150

FINDINGS AND CONCLUSIONS

The Complainant, Thomas Appleby of 51 Hunt Street, Rowayton, Connecticut, News Director and General Manager of News 12 Connecticut ("News 12"), alleges that News 12's right to access the polling place, pursuant to General Statutes § 9-236 was violated when unidentified moderators interfered with News 12's photographers ability to videotape candidates voting. The Complainant alleges that such violations took place on election day, November 2, 2010, in two separate incidents at polling places in Greenwich and Shelton, Connecticut.

After an investigation of the matter, the Commission makes the following findings and conclusions:

1. At all times relevant hereto, the Complainant was Thomas Appleby of 51 Hunt Street, Rowayton, Connecticut, News Director and General Manager News 12.
2. The Complainant alleges that on election day, November 2, 2010, News 12's photographer's ability to videotape candidates voting was interfered with by moderators at the North Street School polling place in Greenwich, CT and the Mohegan School polling place in Shelton, CT.
3. The Complaint states that the Complainant possessed video documentation to support the allegations in the Complaint. Upon request, and after conducting a search, the Complainant was unable to provide such video documentation.
4. The Complainant has provided no additional evidence to corroborate his allegations.
5. The City of Shelton and the Town of Greenwich, and their agents, have cooperated fully with the investigation.
6. At all times relevant hereto, Maria Socorro Heagney ("Ms. Heagney") served as moderator at North Street School polling place in Greenwich, Connecticut
7. Ms. Heagney states that there were approximately thirty members of the media at North Street School polling place and that the heavy media

presence coincided with gubernatorial candidate Linda McMahon's appearance at the polling place to cast her vote.

8. Ms. Heagney states that she was notified about the presence of the members of the news media in advance and that members of the news media were given access to the polling place.
9. Ms. Heagney states that the town registrar repeatedly asked the members of the news media to move their location within the polling place to prevent the polling place's exit from being blocked.
10. Ms. Heagney reports that voters were having a difficult time exiting the polling place because the members of the news media were blocking the exit and states, "there were just too many of them in such a small space."
11. At all times relevant hereto, Ms. Sylvia Brody ("Ms. Brody") was serving as moderator at the Mohegan School polling place in Shelton, Connecticut.
12. Ms. Brody states that, within the same time period of the alleged violation, that an unidentified man passed the checker's table without responding to her request to identify himself, then proceeded to set up a camera and tripod in the area restricted to voters and continued taking pictures while ignoring her repeated requests to identify himself.
13. Ms. Brody states that during this period, the man never identified himself as being a member of the news media and no identification was ever shown to her.
14. Ms. Brody's statement regarding the potential confusion over the identity of the photographer is corroborated by Robert Zaleski, Shelton registrar, ("Mr. Zaleski") who states he was present at the alleged violation.
15. Mr. Zaleski reports that the unidentified photographer never came to the checker's table or made an attempt to identify himself.
16. Mr. Zaleski corroborates the Complainant's allegations to the extent that he states that an election official, Russell Bonaccorso, challenged the unidentified photographer when he passed the checker's table without identifying himself and blocked the unidentified photographer's camera lense, stating that he could not record from behind the checkers table.
17. General Statutes § 9-236 (c), provides in relevant part:

No person except those permitted or exempt under this section ... 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. Representatives of the news media shall be allowed to enter, remain within and leave any polling place or restricted area surrounding any polling place to observe the election, provided any such representative who in any way interferes with the orderly process of voting shall be evicted by the moderator. ... Any person who violates any provision of this section or, while the polls are open for voting ... shall be fined not more than fifty dollars or imprisoned not more than three months, or both

18. General Statutes § 9-236 (a), provides in relevant part:

On the day of any ... election, no person shall ... loiter ... within a radius of seventy-five feet of any outside entrance in use as an entry to any polling place or 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...The registrars may jointly impose such conditions and limitations on such nonpartisan activity as deemed necessary to *ensure the orderly process of voting.* *The moderator shall evict any person who in any way interferes with the orderly process of voting.* ...[Emphasis added.]

19. The right of a Connecticut voter to cast his ballot in secret is guaranteed by Article XXIV of the Amendments to the Connecticut Constitution and General Statutes § 9-621.

20. General Statutes § 9-366 provides, in relevant part:

Any person who ... [does] any act for the purpose of enabling another person or persons to see or know for what person or persons such elector votes, or attempts to induce any person to place himself in such position, or to do any other act for the purpose of enabling him to see or know for what candidates any elector other than himself votes on such machine, or himself attempts to get in such position

to do any act so that he will be enabled to see or know how any elector other than himself votes on such machine, or does any act which invades or interferes with the secrecy of the voting or causes the same to be invaded or interfered with, shall be imprisoned not more than five years.

21. In a previous enforcement matter, the Commission concluded that, under § 9-236 (c), a moderator may *evict* the news media only upon evidence that such representative has actually interfered with the orderly process of voting and the voter's right to a secret ballot is not interfered with. See *Complaint of S. Vigneri, Windham*, File No. 1995-217. The Commission has no record of finding a violation of 9-236 (c) upon election official's mere restriction of the movement of the member of the news media within the polling area.
22. Previous violations of § 9-236 have been found only after the news media had identified themselves as media to the registrars and when news media was wholly evicted, and not when access was merely limited. See *Complaint of S. Vigneri, Windham*, File No. 1995-217, and *Complaint of Thomas Appleby, New Fairfield*, File No. 2007-414.
23. For the reasons stated above regarding the town of Greenwich, the Commission concludes the evidence does not support a finding that a member of the news media was evicted from the polling place.
24. The Commission concludes that, as part of the moderator's duty to preserve an orderly process of voting, members of the news media's access was restricted to a portion of the polling area to preserve an exit for voters.
25. Accordingly, the Commission dismisses the component of the complaint regarding the Town of Greenwich.
26. For the reasons stated above regarding the City of Shelton, the Commission concludes that there is insufficient evidence to find that election officials were aware of the unidentified photographer's potential status as a member of the news media. The Commission concludes that the unidentified photographer entered the restricted portion of the polling area without previously identifying himself. As a result of this unauthorized entry, the unidentified photographer was expelled restricted area.
27. The Commission concludes the election officials of the City of Shelton were acting to uphold their duty to preserve an orderly process of voting, prevent unidentified individuals from the polling area and protect the right to cast a ballot in secret.

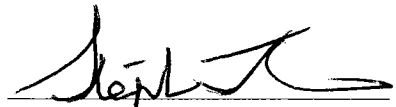
28. Accordingly, the Commission dismisses the component of the complaint regarding the City of Shelton.

ORDER

The following Order is recommended on the basis of the aforementioned findings:

That the matter be dismissed.

Adopted this 18th day of May, 2011 at Hartford, Connecticut

A handwritten signature in black ink, appearing to read 'Stephen F. Cashman', written over a horizontal line.

Stephen F. Cashman, Chairman
By Order of the Commission