

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

Complaint of Robert H. Berman, Bloomfield
Complaint of Joseph D. Wactowski, Bloomfield

File No. 2012-164
File No. 2012-193

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between David Baram, of the Town of Bloomfield, County of Hartford, 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 Section 4-177 (c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:

1. The respondent here is David Baram, who was first elected to the 15th House District of the General Assembly in a special election in 2009 after the death of the incumbent officeholder. He was reelected in 2010 and again in 2012. After the most recent redistricting, the 15th House District consists largely of the entire town of Bloomfield plus a small portion of the Town of Windsor.
2. Since 2006, Mr. Baram has been the chairman of the Bloomfield Democratic Town Committee ("BDTC"). He served as treasurer of the BDTC from 2004 to 2006. From 1981 to 1983, he served as Deputy Mayor of Bloomfield. Mr. Baram was mayor from 1983 to 1989. In the election that is the subject of this complaint, Mr. Baram was the endorsed candidate for the Democratic and Working Family parties and won reelection by a margin of 10,229 to 1,910 (84% to 16%).
3. The Complainants here allege that they separately witnessed the Respondent loitering within the restricted area outside 2 of the 5 polling places in the town of Bloomfield on Election Day, November 6, 2012 in violation of General Statutes § 9-236 (a).
4. General Statutes § 9-236 reads, in pertinent part:

(a) On the day of any primary, referendum or election, no person shall solicit on behalf of or in opposition to the candidacy of another or himself or on behalf of or in opposition to any question being submitted at the election or referendum, or loiter or peddle or offer any advertising matter, ballot or circular to another person 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. Nothing contained in this section shall be construed to prohibit (1) 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 sales or activities shall not be held in the room in which the election booths are located, (2) the registrars of voters from directing the officials at a primary, referendum or election to distribute, within the restricted area, adhesive labels on which are imprinted the words "I Voted Today", or (3) the registrars of voters in a primary, election or referendum from jointly permitting nonpartisan activities to be conducted in a room other than the room in which the election booths are located. 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.

...

(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.* 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. A number of students in grades four to twelve, inclusive, not to exceed four at any one time in any one polling place, may enter any polling place between twelve o'clock noon and three o'clock p.m. for the purpose of observing the activities taking place in the polling place, provided there is proper parental or teacher supervision present, and provided further, any such student who in any way interferes with the orderly process of voting shall be evicted by the moderator. An elector may be accompanied into any polling place by one or more children who are fifteen years of age or younger and supervised by the elector if the elector is the parent or legal guardian of such children. Any person who violates any provision of this section or, while the polls are open for voting, removes or injures any such distance marker, shall be fined not more than fifty dollars or imprisoned not more than three months, or both. (Emphasis added.)

5. Mr. Berman was the Assistant Registrar in the Bloomfield District 3 polling place on Election Day. He alleges that he observed the Respondent "approach the room where the voting was taking place." He alleges that the Respondent did not enter the polling place, but called over one of the unofficial checkers for the Democratic party who walked out of the polling place and into the hall to speak with him. After the Respondent was finished speaking with the unofficial checker, the Complainant alleges that he spoke with the Respondent and the Respondent stated that his reason for being there was to pick up the voting numbers for that polling place and take them back to Democratic Town Committee headquarters. He did not tell the Respondent to leave nor did he complain to the moderator. He stated that while he was unclear exactly how long the Respondent remained outside in the hallway, he estimates that it was for approximately 5-10 minutes. He did not observe the Respondent engaging any voters while out in the hallway or wearing any paraphernalia promoting his or any other candidate and/or question on the ballot that day.
6. Mr. Wactowski states that he observed the Respondent at the District 4 polling place in a room adjacent to the voting room on Election Day. According to Mr. Wactowski, the adjacent room in which he observed the Respondent was being used as an entrance to the actual polling place; all voters had to pass through the room to get to the polling place. As with Mr. Berman's allegations, Mr. Wactowski does not allege that the Respondent entered the polling place or engaged with any voters heading into the polling place.
7. Considering the aforesaid, Commission concludes that Representative Baram violated General Statutes § 9-236 (a) by entering the restricted area and remaining therein. In past matters, the Commission has concluded that barring some legitimate non-election related reason for being within the restricted area (using a restroom, passing through the area to go to some other part of the building outside of the restricted zone) any candidate remaining within the restricted area is by his very presence soliciting on behalf of his candidacy and/or loitering, both of which are impermissible under the statute. See *Complaint of Ira Johnson, New Haven*, File No. 2007-350 (Respondent entered the same polling place five times to loiter, and was ordered to pay a civil penalty in the amount of \$200.00) and *Complaint of Victoria S. Harlow, Haddam*, File No. 2006-167 (Respondent entered a single polling place once, during an election in which he was not able to vote, and was reprimanded).
8. The Commission further concludes that by performing the duties of a runner, the Respondent also violated General Statutes § 9-235b, which reads:

At any election or primary, any person may serve as a runner solely to enter and leave a polling place and the restricted area surrounding the polling place for the purpose of taking outside the polling place and said area, information identifying electors who have cast ballots at

such election or primary. Each runner shall be subject to the control of the moderator. *No candidate in such election or primary may perform the functions of a runner pursuant to this section.* Nothing in this section shall limit the responsibilities of an unofficial checker. If a runner interferes with the orderly process of voting, causes a disturbance or makes unreasonable noise, he shall be evicted by the moderator. (Emphasis added.)

9. The Respondent, Mr. Baram, does not deny the allegations in the Complaint. He stated that upon receipt of the instant complaints, he immediately realized that he had made a mistake. He does not deny liability, but only asks that the Commission consider that his reasons for being within the restricted area outside the polling places related entirely to his role as Chair of the BDTC and not as candidate.
10. The Respondent asserts that at all times relevant to the instant matter his particular re-election was not in question; his mindset was that of a DTC Chair and not a candidate. The BDTC had multiple shifts of unofficial/party checkers in every polling place. Many of the unofficial/party checkers were elderly. He further asserts that his purpose for being at polling areas on that day was primarily to collect the voter information from the unofficial/party checkers and to take it back to headquarters so that volunteers could make "get-out-the-vote" calls to those who were not yet crossed off. He was also there to check on the health and fitness of the unofficial/party checkers and bring them provisions of food and water, if necessary.
11. He states that at the time he believed in good faith that he was complying with the law. He asserts that he was not wearing, showing and/or distributing any paraphernalia or literature associated with his campaign, that he did not approach any voter and/or solicit a vote and that he did not stay in the restricted area any longer than it took to collect the voter information and check up on the condition of the unofficial/party checkers, which in any event did not take longer than 2-3 minutes. He asserts that did not believe that the mere fact of his candidacy alone would trigger a violation of General Statutes § 9-236. However, he admits that he was unaware of the more specific restriction in General Statutes § 9-235b.
12. In conclusion, Connecticut General Statutes § 9-7b (a) (2) provides that the Commission may assess a civil penalty of two thousand dollars per offense against any person the commission finds to be in violation of any provision of chapter 145, part V of chapter 146, part I of chapter 147, chapter 148, section 7-9, section 9-12, subsection (a) of section 9-17, section 9-19b, 9-19e, 9-19g, 9-19h, 9-19i, 9-20, 9-21, 9-23a, 9-23g, 9-23h, 9-23j to 9-23o, inclusive, 9-23r, 9-26, 9-31a, 9-32, 9-35, 9-35b, 9-35c, 9-40a, 9-42, 9-43, 9-50a, 9-56, 9-59, 9-168d, 9-170, 9-171, 9-172, 9-232i to 9-232o, inclusive, 9-404a to 9-404c, inclusive, 9-409, 9-410, 9-412, 9-436, 9-436a, 9-453e to 9-453h, inclusive, 9-453k or 9-453o,.

Pursuant to Regulations of Connecticut State Agencies §9-7b-48, in determining the amount of a civil penalty, the Commission shall consider, among other mitigating and aggravating factors:

- (1) the gravity of the act or omission;
- (2) the amount necessary to insure immediate and continued compliance;
- (3) the previous history of similar acts or omissions; and
- (4) whether the person has shown good faith in attempting to comply with the applicable provisions of the General Statutes.

13. Here, the Respondent impermissibly acted as a runner for the Bloomfield Democratic Town Committee, a position that placed him within the 75' restricted area outside polling places on Election Day in 2012. There are statements by both Complainants placing him in 2 different polling place buildings in a restricted area in which voters would necessarily need to pass him on the way into the polling place.
14. However, unlike in the *Ira Johnson* and *Victoria S. Harlow* cases, *supra*, there is no allegation here that he actually entered any of the polling places. Further, there is insufficient evidence to show that he remained in the restricted area for a period of time beyond which was necessary to assess his unofficial/party checkers and get the latest voter numbers. There is also no allegation that he made any overt solicitations on behalf of his candidacy such as oral advocacy, distribution of literature, or wearing campaign paraphernalia. Finally, the results of the election support his claim that his personal candidacy was not in question.
15. Importantly, the Respondent here was swift in admitting that he made a mistake in acting as the runner for the BDTC on that day. He stated that while he believed that he had a good faith basis for being in the restricted area, he should have thought more carefully about his profile in town, his status as a candidate, and the restrictions that attach to even those candidates who are unopposed.
16. Finally, the Commission takes notice that the Respondent has no prior matters before the Commission.
17. 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. Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.

18. 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 Order entered into pursuant to this Agreement.

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

20. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

ORDER

IT IS ORDERED THAT that the Respondent will henceforth strictly comply with the requirements of General Statutes §§ 9-236 and 9-235b.

The Respondent:



David Baram
Bloomfield, CT

For the State of Connecticut:

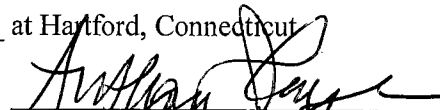
BY: 

Michael J. Brandi, Esq.
Executive Director & General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: 2-5-13

Dated: 2/13/13

Adopted this 20th day of February of 2013 at Hartford, Connecticut



Anthony J. Castagno, Chair
By Order of the Commission