

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Sharon Benedict, Roxbury

File No. 2013-089

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Gregory Cava, of the Town of Roxbury, County of Litchfield, 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 Complainant here alleges that during the voting hours for a special election for a vacancy on the Region 12 Board of Education, she witnessed candidate Gregory Cava impermissibly present within the Town Hall polling place, in violation of General Statutes § 9-236 (c). She further alleges that other witnesses saw Mr. Cava electioneering within the 75' zone prescribed in General Statutes § 9-236 (a).
2. At issue in this matter was a special election set by the Roxbury Board of Selectmen and held on June 4, 2013 between noon and 8pm for a single vacancy on the Region 12 Board of Education. Respondent Cava and one other individual were candidates for the position. Mr. Cava won the special election by a margin of 227 to 177 (404 total voting, 394 in person).
3. The diary of moderator Judith Doran (also the Democratic registrar of voters) reflects that around 2pm she witnessed Mr. Cava "standing outside the polling place" conversing with a voter and asked him to move outside of the 75' limits of the building. The diary reflects that the voter (who is unnamed) replied that they were talking about her grandchildren and not the special election, but that Mr. Cava immediately complied and moved "beyond the 75 foot limit." The diary also reflects that the son of Mr. Cava's opponent complained that Mr. Cava was within the 75' limit, but that when she looked, Mr. Cava was "well beyond the limit."
4. Toni Ann Mellace-Murray, who was listed as a witness by the Complainant, submitted statements in response to the instant investigation indicating that when she entered Town Hall to vote, she witnessed Mr. Cava "standing directly in front of the large doors of Roxbury Town Hall speaking with some people" and that Mr. Cava remained "in front of

the building,” speaking on his cellphone, when Ms. Mellace-Murray exited the building after voting.

5. Dawn Collette, who was also listed as a witness by the Complainant, submitted statements in response to the instant investigation indicating that she witnessed Mr. Cava at a picnic bench near the Town Hall parking lot, but could not place him any closer to the building.
6. The registrars of voters submitted statements in response to the instant investigation indicating that that they did not place signs demarcating the 75’ limit, but did inform the candidates that they should stay behind a “large memorial stone” which they estimated to be “a little farther away” than 75’ from the entrance to Town Hall. They indicated that they did not believe that they were required to post 75’ markers because of what they believed to be the nature of the event (adjourned town meeting versus special election).
7. Respondent Cava submitted statements in response to the instant investigation asserting, in pertinent part, that he did enter the room in which the voting was occurring, but only once to vote. He asserts that while he was there, he helped his daughter to get set up, but only remained for “a couple minutes.” He asserts that while he was there, he “did not engage or speak with any voters, distribute any literature or otherwise electioneer, and was not wearing any campaign button or other thing identifying me or referring in any way to my campaign.”
8. Respondent Cava further asserts that as he was leaving Town Hall after voting, he was approached by an individual entering Town Hall who wished to speak with him. He demurred and stated that he needed to speak with her later and continued to a point that he surmised was beyond 75’ from the entrance to Town Hall at which point he variously spoke with voters and conducted non-election-related business on his cellphone and laptop.
9. Finally, Respondent Cava asserts that because the registrars had failed to post signs demarcating the 75’ limit, it was unclear to him where he was allowed to stand during the hours of voting and that he made best efforts to comply.
10. 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.

(b) (1) The selectmen shall provide suitable markers to indicate the seventy-five-foot distance from such entrance. Such markers shall consist of a board resting on an iron rod, which board shall be not less than twelve inches square and painted a bright color and shall bear the figures and letters "75 feet" and the following words: "On the day of any primary, referendum or election no person shall solicit in behalf of or in opposition to another or himself or peddle or offer any ballot, advertising matter or circular to another person or 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."

(2) Notwithstanding the provisions of subdivision (1) of this subsection, the selectmen may provide the markers required by the provisions of this subsection in effect prior to October 1, 1983, except that in the case of a referendum which is not held in conjunction with an election or a primary, the selectmen shall provide the markers required by subdivision (1) of this subsection.

(3) The moderator and the moderator's assistants shall meet at least twenty minutes before the opening of a primary, referendum or an election in the voting district, and shall cause to be placed by a police

officer or constable, or such other primary or election official as they select, a suitable number of distance markers. Such moderator or any police officer or constable shall prohibit loitering and peddling of tickets within that distance.

(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.)

11. As an initial matter, the Commission finds after investigation that the evidence is insufficient to establish that Mr. Cava violated General Statutes § 9-236 (a) outside the polling place. 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 and *Complaint of Victoria S. Harlow, Haddam*, File No. 2006-167. However, such conclusions have attached where the candidate's presence within the 75' perimeter is more significant and where the evidence is more heavily supported.

12. Here, the evidence consists of a single eyewitness who states that she saw Respondent Cava “standing directly in front of the large doors of Roxbury Town Hall speaking with some people.” On its face, this statement would appear to place him within the 75’ perimeter, even in the absence of the marker signs. (Although the veracity of the statement is not necessarily unimpeachable as evidence of Mr. Cava’s location.) However, unlike with subsection (c) of General Statutes § 9-236, the Commission has never held that a candidate’s mere presence within the 75’ perimeter is a per se violation of subsection (a) of the statute. Moreover, the Commission has allowed that a candidate may pass through the area without necessarily violating this subsection. *See, e.g., in the Matter of a Complaint by Judith Rajala, East Windsor*, File No. 2012-096 (Respondent candidate, the incumbent First Selectman, walking into Town Hall down to her office did not violate § 9-236 (a)).
13. However, the Commission concludes that the evidence is sufficient to show that Respondent Cava violated General Statutes § 9-236 (c). Mr. Cava was permitted to enter the voting room to vote. However, upon doing so, he should have immediately exited. By then remaining therein for some other purpose, by his own admission, he violated General Statutes § 9-236 (c). While it is unclear whether he did so once or twice (or if one of the two occasions occurred before the polls opened), Mr. Cava admits that he did not exit immediately after voting, but remained to speak with and assist his daughter who was working at the polls on that day.
14. Connecticut General Statutes § 9-7b (a) (2) provides that the Commission may, *inter alia*, 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 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.
15. Entering or remaining in a polling place without statutory leave is a per se civil violation of General Statutes § 9-236 (c). *See, e.g., In the Matter of a Complaint by Carmen Cordero*,

Hartford, File No. 2011-141. Resolutions of § 9-236 (c) violations have generally ranged from henceforth orders to \$200 civil penalties. *See e.g., Complaint of Allen J. Friedrich, Glastonbury*, File No. 2012-117 (Respondent, a sitting legislator, entered polling place multiple times during primary in which he was not on the ballot and spoke with voters and brought polling place workers coffee; no prior history; henceforth order); *Complaint of Ira Johnson, New Haven*, File No. 2007-350 (Candidate entered polling place 5 times for periods of 20-30 minutes throughout Election Day; \$200 civil penalty for candidate; \$100 for moderator who allowed candidate to remain); *Complaint by Victoria S. Harlow, Haddam*, File No. 2006-167 (Respondent entered the polling place and remained there for 10 minutes to bring and distribute homemade fudge to polling place workers; henceforth).

16. The instant matter concerns facts amounting to a relatively minor civil violation of this provision of the statute. Respondent Cava was in the voting room for a legitimate purpose, but lingered after that purpose had been exhausted. However, his incursion was limited both in time and in particular purpose (speaking with his daughter).
17. In consideration of the aforesaid, and in exchange for this Agreement by the Respondent to henceforth comply with General Statutes § 9-236, the Commission will take no further action in this matter.
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 parties 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 Respondent Gregory Cava will henceforth strictly comply with the requirements of General Statutes § 9-236.

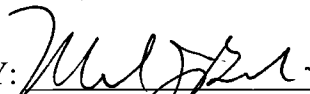
The Respondent:



Gregory Cava
Roxbury, CT

Dated: 7 March 2014

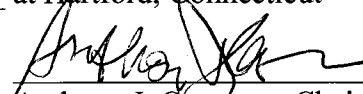
For the State of Connecticut:

BY: 

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

Dated: 3/11/14

Adopted this 19th day of march of 2014 at Hartford, Connecticut



Anthony J. Castagno, Chair
By Order of the Commission