

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by Gary Fuller, Stratford

File No. 2013-163

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Robert Bradley, of the Town of Stratford, County of Fairfield, 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:

ALLEGATIONS

1. The Complainant filed complaints both here and with the Commission on Human Rights and Opportunities ("CHRO"). He alleges briefly in both cases that he came to his polling place to vote at the November 5, 2013 municipal election and realized that he forgot this wallet. The Complainant alleges that the Respondent, the moderator at the Johnson House polling place, insisted that the Complainant provide identification and that he failed to offer the Complainant an alternative means of voting, such as by using an affidavit under subdivision (2) of subsection (a) of General Statutes § 9-261.
2. He also alleges that the Respondent "yelled at [him] for no reason." He further alleges that he was eventually allowed to vote and left the polling place. He alleges that after speaking with the Stratford Registrar of Voters Office and confirming his understanding of the voter identification options under General Statutes § 9-261, he returned to the polling place and attempted to discuss the law with the Respondent, at which point he alleges that the Respondent again yelled at him and that he left the polling place "due to the harassment."

LAW

3. General Statutes § 9-261 prescribes the voter identification requirements and procedures for casting a ballot and reads, in pertinent part:
 - (a) In each primary, election or referendum, when an elector has entered the polling place, the elector shall announce the elector's street address,

if any, and the elector's name to the official checkers in a tone sufficiently loud and clear as to enable all the election officials present to hear the same. Each elector who registered to vote by mail for the first time on or after January 1, 2003, and has a "mark" next to the elector's name on the official registry list, as required by section 9-23r, shall present to the official checkers, before the elector votes, either a current and valid photo identification that shows the elector's name and address or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the elector. *Each other elector shall (1) present to the official checkers the elector's Social Security card or any other preprinted form of identification which shows the elector's name and either the elector's address, signature or photograph, or (2) on a form prescribed by the Secretary of the State, write the elector's residential address and date of birth, print the elector's name and sign a statement under penalty of false statement that the elector is the elector whose name appears on the official checklist. Such form shall clearly state the penalty of false statement. A separate such form shall be used for each elector. If the elector presents a preprinted form of identification under subdivision (1) of this subsection, the official checkers shall check the name of such elector on the official checklist. If the elector completes the form under subdivision (2) of this subsection, the registrar of voters or the assistant registrar of voters, as the case may be, shall examine the information on such form and either instruct the official checkers to check the name of such elector on the official checklist or notify the elector that the form is incomplete or inaccurate.*

...

(e) If not challenged by anyone lawfully present in the polling place, the elector shall be permitted to pass to the separated area to receive the ballot. The elector shall give any receipt the elector has received to a ballot clerk who shall give the elector a ballot to vote only in the primary of the party specified by the receipt. The elector shall be permitted into the voting booth, and shall then register his or her vote in secret. Having voted, the elector shall immediately exit the voting booth and deposit the ballot in the voting tabulator and leave the room. No elector shall remain within the voting booth longer than the time necessary to complete the ballot, and, if the elector refuses to leave such booth after completing the ballot, the elector shall at once be removed by the election officials upon order of the moderator. . . . (Emphasis added.)

4. General Statutes § 9-236b, the so-called “Voter’s Bill of Rights” reads, in pertinent part:

(a) The Secretary of the State shall provide each municipality with sufficient quantities of a poster size copy, at least eighteen by twenty-four inches, of a Voter’s Bill of Rights, which shall be posted conspicuously at each polling place. The text of the Voter’s Bill of Rights shall be:

“VOTER’S BILL OF RIGHTS

Every registered voter in this state has the right to:

...

(5) Vote free from coercion or intimidation by election officials or any other person.

...

If any of your rights have been violated, you have the right to file an official complaint with the State Elections Enforcement Commission at (toll-free telephone number) or the United States Department of Justice at (toll-free telephone number). In addition, before leaving the polling place you may notify the moderator of the violation.”

... (Emphasis added.)

INVESTIGATORY FINDINGS

5. As an initial matter, and discussed above, this matter was brought simultaneously with the complaint before the CHRO. The Respondent provided Counsel with the documents from that file. The CHRO’s conclusion based on the evidence in the file reads as follows:

The Commission has conducted a thorough review of the file and has dismissed the complaint for the following reason, the complaint is frivolous on its face because: No credibility decisions must be made. There are no material issues in dispute and no additional relevant comparative or other evidence is needed to resolve this case.

6. The CHRO continued and made the following factual findings:

The complainant alleged that on or about November 5, 2013 he was denied a public accommodation, as it related to the exercise of his right to vote and that such denial was due to his age, race, color and physical disability.

The record confirms and there is no dispute with the fact that on the date in question, the complainant did present himself at the Johnson House School, the designated polling place, so as to cast his ballot.

The evidence further confirms that when the complainant was initially screened at the "checker" post, (pursuant to statute, prior to moving to the actual Polling station an individual must produce sufficient identification so as to establish them as a legitimate voter), there was an issue regarding his possession of, or willingness to produce identification, as required by CGS 9-261. All potential voters are required to go through this exercise. The Moderator, Mr. Bradley, being made aware of an issue and as required by his position, intervened.

Despite the complainant's identification issue, a poll worker promptly vouched for the complainant's identity, which precluded his having to either produce his own identification, or execute a statement pursuant to 9-261, which asserted his eligibility to vote. Having been cleared, he was allowed by Mr. Bradley to continue on and exercise his right to vote.

When the complainant subsequently went to the Democratic registrar of voters to make a complaint about the process and requirements as enforced by Mr. Bradley, (the bipartisan appointed Moderator), he was provided with a copy of CGS 9-261, which set out the statutory requirements associated with the voting exercise he had just completed.

The evidence reviewed above and the file contents, confirm that the complainant was in fact provided with the opportunity to vote. Any delay in the exercise of that right was momentary, minimal and directly attributable to the complainant's stand on the provision of identification. While the complainant alleges he was denied a public accommodation, a claim which has been compromised by the facts, due to his age, race, color and physical disability, he has presented absolutely no evidence, or even alluded to any bases for a reasonable belief that these identifiers were involved in any aspect of the incident at issue. Based on the above and the file contents, this complaint is deemed to be frivolous in its entirety.

7. The Respondent here asserted in the CHRO matter and continues to assert here that when he was made aware of the identification issue with the Complainant, he became involved in the situation. He asserts that it was not unreasonable to ask for identification, as that is what is required of the checkers in General Statutes § 9-261. He states that the Complainant appeared unhappy to have been asked for identification in the first place. Moreover, he asserts that the Complainant stated at the polling place that he had identification on him, but did not wish to show it.
8. The investigation revealed that when confronted with this issue, the Respondent asked if any of the elections officials in the polling place knew the Complainant and election official Linda Fernandez-Johnson asserted that she knew him, asserted that she knew that he lived at a bona fide residence in town, and was able to identify the address of the bona fide residence. Based on that information, the Respondent allowed the Complainant to vote.
9. The parties here disagree as to whether the Respondent considered offering the Complainant the opportunity to vote via affidavit. Moreover, it is unclear from the investigation and the CHRO record, as to whether the Respondent considered this option.
10. The Complainant alleges that he was never offered the option. The Respondent's testimony in the CHRO hearing briefly mentioned it as one of the options, but the record is unclear as to whether it ever came up. Upon inquiry about this issue during the instant investigation, the Respondent submitted an additional statement indicating that he was aware of the opportunity to vote using the affidavit, but that since the election official vouched for the Complainant, he did not believe it to be necessary at that point.

CONCLUSIONS

11. As an initial matter, the Commission finds that the evidence does not support a finding of coercion and/or intimidation under General Statutes § 9-236b (5), the Voter's Bill of Rights.
12. However, the evidence does support a finding that the Respondent failed to properly follow the voting procedures under General Statutes § 9-261, though not for the reasons alleged by the Complainant.
13. The Respondent, upon being confronted with the Complainant's lack of identification, should have offered the Complainant the opportunity to fill out the affidavit enumerated in General Statutes § 9-261 (a) (2).
14. Instead, the Respondent allowed the Complainant to satisfy the identification requirements (and vote) by the personal assurance of an election official in the polling place.

15. Personal assurance or voucher is not an authorized means by which identification may be satisfied under General Statutes § 9-261.
16. As such, the Commission dismisses the allegation under General Statutes § 9-236b (5), but concludes that the Respondent violated General Statutes § 9-261 by allowing the Complainant to cast a ballot without either producing identification or swearing under oath as to his identity on the form prescribed by the Secretary of the State.¹
17. 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.
18. The Respondent should have been more careful to follow the requirements under General Statutes § 9-261, but ultimately the transgression is very minor under these facts.
19. The Respondent has no prior history of election administration violations before the Commission.
20. The Respondent appears to have been presented with a difficult situation and while he should have followed the proper procedures, there does not appear to be any evidence of bad faith.

AGREEMENT

21. Considering the aforementioned aggravating and mitigating circumstances in this matter, the Commission concludes and the parties agree that the appropriate remedy herein is, in lieu of a civil penalty, that the Respondent will enter into a consent agreement with the Commission in which he agrees to henceforth strictly comply with § 9-261 in the future

¹ The Commission also notes that although the Complainant doesn't necessarily allege a violation for removing him from the polling place when he returned after voting, the Respondent moderator was well within his authority. The Respondent was not permitted to be in the polling place at that point, as he had already voted and was not an elections official. See General Statutes §§ 9-236 (c) and 9-261.

22. 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.
23. 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.
24. 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.
25. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

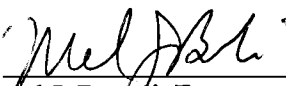
ORDER

IT IS ORDERED THAT that Respondent Robert Bradley will henceforth strictly comply with the requirements of General Statutes § 9-261.

The Respondents:


Robert Bradley
Stratford, CT


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: 3/9/15

Dated: 3/13/15

Adopted this 17th day of March of 2015 at Hartford, Connecticut


Anthony J. Castagno, Chair
By Order of the Commission