

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In re: Referral of Middletown Registrar of Voters Janice Gionfriddo

File No. 2014-160

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Jamie Mills, 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 Section 4-177 (c) of the General Statutes of Connecticut. In accordance herewith, the parties agree that:¹

1. The instant Agreement concerns a Referral in which it is alleged that the Respondent entered the Middletown Election Day Registration (“EDR”) location at Middletown City Hall on Election Day November 4, 2014 wearing a jacket with “Malloy Wyman,” the names of candidates Dannel Malloy and Nancy Wyman, embroidered on the chest. She alleges that this was a violation of the 75’ provision against electioneering in or around an EDR location.
2. General Statutes § 9-19j enumerates the procedures for registering and voting on Election Day. Subsection (j) addresses electioneering in the 75’ zone surrounding the polling place and reads:

(j) No person shall solicit in behalf of or in opposition to the candidacy of another or himself or herself or in behalf of or in opposition to any question being submitted at the election, 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 the registrars’ of voters designated location for election day registration balloting or in any corridor, passageway or other approach leading from any such outside entrance to such registrars’ of voters designated location or in any room opening upon any such corridor, passageway or approach.

¹ This Agreement Containing Consent Order addresses those portions of the Complainant’s statement of complaint which the Commission could reasonably construe as alleging facts amounting to a specific violation of those laws within the Commission’s jurisdiction. Any statements within the Complaint not addressed herein either did not specifically allege a violation or alleged facts which if proven true would not have amounted to a violation within the Commission’s jurisdiction.

(b) No person shall misrepresent the eligibility requirements for voting by absentee ballot prescribed in subsection (a) of this section, to any elector or prospective absentee ballot applicant.

3. General Statutes § 9-19j (j) is a word-for-word reproduction of the first section of General Statutes § 9-236 (a), which reads, in full:

(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. (Emphasis added.)

4. The Referring Official alleged specifically that on Election Day November 4, 2014 there were a significant number of individuals who were taking advantage of Election Day Registration, which was being implemented for the first time in a state election (the 2013 municipal election was the inaugural year). The Referring Official asserted that due to a large amount of new Election Day registrations by Wesleyan University students, there was a large line.
5. She asserted that approximately 20 minutes before 8pm, the Respondent, Ms. Mills entered the EDR area to inquire as to the long line and ask whether the individuals still in line

would be able to register and vote after 8pm. After consulting with the Secretary of the State, the Referring Official informed the Respondent that legal staff from the Secretary of the State had informed her that no one whose registration wasn't processed by 8pm would be able to vote that day.

6. The Referring Official alleged that the Respondent requested to be able to hand out registration forms to those individuals in line so that they could fill out their forms while in line.
7. Her main allegation is that the Respondent was wearing a jacket with "Malloy Wyman" embroidered on it and that she asked the Respondent to remove it and that she did not.
8. The Referring Official did not submit any other evidence in support of her allegation, including but not limited to photographs or the identity of corroborating witnesses to the fact that either the jacket was worn inside the EDR location or that the Referring Official asked the Respondent to remove it.
9. The investigation of this matter was straightforward. The Respondent did not deny the general allegation that she entered the EDR location and asked to help expedite the process, in order to help enfranchise the remaining individuals in line before 8pm. In response to the instant Referral and Commission investigation, she apologized for the oversight, but she also denied that she was ever asked by the Referring Official to remove the jacket. She also asserted that the lettering was approximately $\frac{3}{4}$ " high and not easy to read.
10. Turning to the question there, the Commission notes that this is the first time that the Commission has applied the 75' electioneering provision in General Statutes § 9-19j (j).
11. As an initial matter, the Commission has generally supported the idea that campaign paraphernalia cannot be worn in the polling place and that doing so would constitute a violation of the prohibition on electioneering General Statutes § 9-236 (a). See *In the Matter of Complaints by Robert H. Berman and Joseph D. Wactowski, Bloomfield*, File Nos. 2012-164 & 2012-193, ¶ 11; *In the Matter of a Complaint by Huguet Pameijer, Simsbury*, File No. 1987-149.
12. However, the Commission has not processed a case involving an allegation regarding wearing campaign paraphernalia in the polling place in many years. After a search of past matters, the last case involving campaign paraphernalia was from 20 years ago in *In the Matter of a Complaint by Norma Carrion, Hartford*, File No. 1996-193. In *Carrion*, the respondent was wearing a hat with the candidate's name on it. In a short decision, the Commission found this to be a violation of § 9-236 (a), but no civil penalty was issued. In *In the Matter of a Complaint by M. Gonzales and N. Rivera, Hartford*, File No. 1990-175,

the Commission found no violation when the Respondent was wearing a campaign t-shirt within the 75' zone, but took it off when asked before entering the room with the voting machines.

13. As a practical matter, the Commission notes that the registrars and moderators are very aware of the ban on campaign paraphernalia in the polling place and are generally very good about policing it. Generally voters are asked to take off the offending item or to cover it up. It is unusual for a matter to have been filed against an individual for such a relatively minor transgression.
14. However here, the Referring Official has filed a complaint and the Commission has duly investigated. The Respondent admits that she was wearing the jacket. Consistent with the Commission's prior jurisprudence concerning General Statutes § 9-236, the Commission concludes that this resulted in a violation of General Statutes § 9-19j (j).

15. As enumerated in § 9-7b-48 of the Regulations of Connecticut State Agencies:

In its determination of the amount of the civil penalty to be imposed, the Commission shall consider, among other mitigating or aggravating circumstances:

- (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.

16. Here, the Commission concludes that the Respondent's transgression was relatively minor and that there are sufficient mitigating factors here such that a civil penalty is unwarranted.
17. First, this is the first time that the Commission has applied this new statute to any person, much less this particular Respondent, who has no history with the Commission.
18. Moreover, the Commission notes that unlike General Statutes § 9-236, § 9-19j (j) does not place affirmative responsibilities upon the registrars and moderators to notice individuals of the 75' zone and to police the polling area.

19. The remainder of General Statutes § 9-236, read as follows, in full:

(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.

(d) 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 guilty of a class C misdemeanor.

20. Finally here, while the Referring Official claimed to have warned the Respondent, there is insufficient evidence to establish this.
21. In consideration of the aforesaid, the Commission will waive a civil penalty in exchange for the Respondent's agreement to henceforth strictly comply with the prescriptions of General Statutes § 9-19j (j).
22. 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.
23. 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.

ORDER

IT IS HEREBY ORDERED that Respondent Robert Chipkin shall henceforth strictly comply with the requirements of General Statutes § 9-140.

The Respondent:

For the State of Connecticut:



Jamie Mills

BY: 

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

Dated: 10-2-2016

Dated: 10/5/16

Adopted this 12 day of OCT of 20 16 at Hartford, Connecticut



Anthony Castagno, Chairman
By Order of the Commission

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ENFORCEMENT COMMISSION