

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Ramon Espinosa, Hartford

File No. 2018-018

FINDINGS AND CONCLUSIONS

The Complainant alleged in two counts first that three separate incidents occurred ahead of the March 6, 2018 Hartford Democratic Party Primary at the Smith Towner at 80 Charter Oak Avenue in Hartford that he believed amounted to a violation of General Statutes § 9-364a and secondly that the Respondent Hartford Registrars of Voters failed to follow the provisions of supervised absentee balloting in General Statutes §§ 9-159q and 9-159r in scheduling and holding supervised absentee balloting.¹

COUNT ONE: Attempting to Influence Voting by Force or Threat

Law

1. General Statutes § 9-364a provides:

Any person who influences or attempts to influence by force or threat the vote, or by force, threat, bribery or corrupt means, the speech, of any person in a primary, caucus, referendum convention or election; or wilfully and fraudulently suppresses or destroys any vote or ballot properly given or cast or, in counting such votes or ballots, wilfully miscounts or misrepresents the number thereof; and any presiding or other officer of a primary, caucus or convention who wilfully announces the result of a ballot or vote of such primary, caucus or convention, untruly and wrongfully, shall be guilty of a class C felony.

¹ The following are the Commission's findings and conclusions based on 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.

Allegations

2. The Complainant makes three separate factual allegations of events that he asserts occurred at the Smith Tower in Hartford that could potentially amount to a violation of General Statutes § 9-364a.
3. First the Complainant alleges that during the course of collecting signatures to petition on as a challenge candidate, he was approached by Respondent Miquel A. Rivera-Nieves, a member of what would later be an opposing slate of candidates, who he alleges “rudely emphasized numerous times that one was not allowed to talk politics in the complex, even when residents would ask questions as to why we were collecting signatures in the building.”
4. Second the Complainant alleges that “After the signatures were collected, and in a separate incident, a member of the ‘Row C’ slate and teammate, Mr. Apollinar Rosario, communicated to me that two individuals acting on behalf of the "Row B" slate visited his elderly mother and made inquiries about forging signatures in an aggressive and intimidating manner.”
5. Finally, the Complainant alleges that “on election day, a voter who is domiciled in Smith Tower expressed to me that someone door-knocked his residence early that morning and was pressuring him to vote in a coercive manner.”

Investigation

6. Turning first to the second and third allegations, despite efforts by Commission staff to obtain statements and any other evidence establishing any direct or compelling circumstantial support for these allegations—which pursuant to the Complaint are alleged to have occurred to persons other than the Complainant and which were not witnessed by the Complainant—no support emerged or was found for these allegations. Accordingly they are dismissed.

Follow Up With Complainant

7. Turning then to the first allegation, the Complainant asserts that he was personally accosted by Respondent Rivera-Nieves. When asked to expand factually on his allegations, the Complainant was difficult to reach and slow in response. However, after many months, the Complainant expanded on his allegations, as follows, in pertinent part:

The first time an incident transpired was the day I began to collect signatures from voters for our petitions at Smith Towers. . . .When interacting with voters at Smith Towers, I was interrupted several times by Miguel Rivera, who lives in Smith Towers, in a rude manner. He told me that I was not to talk politics with voters as it is illegal. My conversation with voters was limited to providing explanations as to why we were collecting signatures and answering their questions. Mr. Victor Luna, who was also running for a town committee seat on the same slate as Rivera was also present during this first interaction. The second incident took place approximately two weeks later. . . .After work, I traveled to the building in order to provide [fellow slate candidate Sammy Vazquez] with help collecting signatures. During this time, Rivera approached me and yelled at me, demanding that I respect him. He was approximately 12 inches away from me. He would then walk away. On election day, I once again traveled to Smith Towers in order to provide voters transportation to the polls. When waiting in the lobby, I received a phone call from a voter requesting transportation and once again I was interrupted by Rivera who yelled that I was not allowed to speak politics in the building.

Response

8. In Respondent Rivera-Nieves' reply to this Complaint, he generally denied the allegations. Through his counsel, he asserted, as follows, in pertinent part:

[Mr. Rivera-Nieves] unequivocally denies ever being "confrontational" or "rude" to Mr. Espinoza. This respondent does acknowledge that he informed Mr. Espinoza that the complainant was violating the rules of Smith Tower by going door to door soliciting endorsement signatures. Such solicitation is only permitted in the common areas. Additionally, assuming arguendo that my client was both rude and confrontational, neither allegation rises to a level of a violation of state election laws. Further, in that Mr. Espinoza was a public invitee and Mr. Rivera-Nieves was and is a resident of Smith Tower, any statement by my client regarding governmental elections would be protected by both federal and state constitutions especially in his own home. In sum, [Mr. Rivera-Nieves] denies these allegations and even if they were true are outside the jurisdiction of the Commission and constitute protected speech.

Analysis

9. Under General Statutes § 9-7b, the Commission has only investigative authority concerning § 9-364a, a criminal statute, which includes the ability to refer matters to the Chief State's Attorney. The Commission does not possess any direct administrative jurisdiction such as the ability to notice hearings under the Uniform Administrative Procedures Act or impose penalties after such hearings.²
10. Statutes that contain criminal penalties should be strictly construed against the state.³ Accordingly, the Commission has strictly construed § 9-364a to determine whether any individual's "vote" or "speech" were influenced.⁴
11. In such matters, the Commission has applied the following dictionary definition of "threat" for purposes of § 9-364a: "1. any expression of an intention to inflict pain, injury, evil, or punishment. 2. An indication of impending danger or harm."⁵
12. The Commission has applied the following dictionary definition of "corrupt" for purpose of "corrupt means" under § 9-364a. "[I]mmoral and/or depraved" or "contrary to accepted moral principles."⁶
13. "In order to conclude that General Statutes § 9-364a was violated, the Commission must decide that, given the evidence, it is more likely than not that: 1) the Respondent voluntarily committed an act that influenced [any person's] speech and/or voluntarily committed an act that was intended to influence [any person's] speech regardless of whether [any person's] speech was actually influenced; and 2) that the Respondent did so by using force, threat, bribery or corrupt means."⁷
14. Turning to the question here, even considering the Complainant's allegations in the most favorable light, the only claim here would be that Respondent Rivera-Nieves' alleged

² See *In the Matter of a Complaint by Dianne M. Daniels, et al.*, Norwich File No. 2013-128 at page 2; *In the Matter of a Complaint by Joseph Cardillo, Cromwell*, File No. 2010-030 at page 4.

³ See *State v. Ross*, 230 Conn. 183, 200 (1994); *State v. Russell*, 218 Conn. 273, 278 (1991); *State v. Torres*, 206 Conn. 346, 355 (1988); *In the Matter of a Complaint by Dianne M. Daniels, et al.*, Norwich File No. 2013-128 at page 2; *In the Matter of a Complaint of Joseph Cardillo, Cromwell* File No. 2010-030 at page 5.

⁴ *Daniels* at page 2; *Cardillo* at page 5.

⁵ *American Heritage Dictionary, Second College Edition*, 1985. See *Daniels* at page 2; *Cardillo* at page 5. Citing *Picco v. Voluntown*, 295 Conn. 148 for the proposition that to ascertain the commonly approved usage of terms, the Commission can look to their dictionary definitions.

⁶ See *Daniels* at page 3; *Cardillo* at page 6.

⁷ See *Daniels* at page 3; *Cardillo* at page 5.

statements about “respecting” him and telling the Complainant that he could not conduct his activities in the building was a “threat” for purposes of § 9-364a.

15. Respondent Rivera-Nieves does not necessarily deny most of the statements attributed to him, but even assuming he made all such statements, it does not appear to the Commission that either the Complainant’s “vote” or “speech” was influenced. Moreover, it does not appear to the Commission that such statements, absent additional factors, could be constituted as “threatening” or “corrupt,” as defined above.
16. Considering the aforesaid, COUNT ONE should be dismissed.

COUNT TWO: Improper Administration of Supervised Absentee Balloting

Allegation

17. In Count Two, the Complainant alleges that supervised absentee balloting was scheduled by the Office of the Hartford Registrar of Voters to be conducted at MD Fox Manor on Washington Street on March 1, 2018 between the hours of 9:30am and 11:30am and implies that such ballot should have been conducted in a public area.
18. The Complainant further asserts that instead the Hartford Registrars of Voters appeared in the afternoon on March 1, 2018 and conducted the supervised absentee balloting by visiting the unit of each resident who had applied for a ballot.
19. General Statutes § 9-159q reads, in pertinent part:

(a) As used in this section:

(1) “Institution” means a veterans' health care facility, residential care home, health care facility for the handicapped, nursing home, rest home, mental health facility, alcohol or drug treatment facility, an infirmary operated by an educational institution for the care of its students, faculty and employees or an assisted living facility; and

(2) “Designee” means an elector of the same town and political party as the appointing registrar of voters which elector is not an employee of the institution at which supervised voting is conducted.

(b) Notwithstanding any provision of the general statutes to the contrary, if less than twenty of the patients in any institution in the

state are electors, absentee ballots voted by such electors shall, upon request of either registrar of voters in the town of such electors' voting residence or the administrator of such institution, be voted under the supervision of such registrars of voters or their designees in accordance with the provisions of this section. The registrars of voters of a town other than the town in which an institution is located may refuse a request by the administrator of such institution when, in their written opinion, the registrars agree that such request is unnecessary, in which case this section shall not apply. Such registrars shall inform the administrator and the town clerk of the electors' town of voting residence of their refusal.

(c) Except as provided in subsection (e) of this section, such request shall be made in writing and filed with the town clerk and registrars of voters of the town of such electors' voting residence, not more than forty-five days prior to an election or thirty-four days prior to a primary and not later than the seventh day prior to an election or primary. The request shall specify the name and location of the institution and the date and time when the registrars of voters or their designees shall supervise the casting of absentee ballots at the institution. The request shall also specify one or more alternate dates and times when supervised voting may occur. No request shall specify a date or an alternate date for supervised voting which is later than the last business day before the election or primary.

(d) The town clerk shall not mail or otherwise deliver an absentee ballot to an applicant who is a patient in any institution if a request for supervision of absentee balloting at that institution has been filed with the clerk during the period set forth in subsection (c) of this section. The clerk shall instead deliver such ballot or ballots to the registrars of voters or their designees who will supervise the voting of such ballots in accordance with this section.

(e) Except in the case of a written refusal as provided in subsection (b) of this section, upon receipt of a request for supervision of absentee balloting during the period set forth in subsection (c) of this section, the registrar or registrars of voters who received the request shall inform the registrar or administrator who made the request and the town clerk as to the date and time when such supervision shall occur, which shall be the date and time contained

in the request or the alternate date and time contained in the request. If the registrar or registrars fail to select either date, the supervision shall take place on the date and time contained in the request. If a request for supervision of absentee balloting at an institution is filed during the period set forth in subsection (c) of this section and the town clerk receives an application for an absentee ballot from a patient in the institution after the date when supervised balloting occurred, either registrar of voters may request, in writing, to the appropriate town clerk and registrars of voters that the supervision of the voting of absentee ballots at such institution in accordance with this section be repeated, and in such case the registrars or their designees shall supervise absentee balloting at such institution on the date and at the time specified in the subsequent request, which shall be not later than the last business day before the election or primary.

(f) On the date when the supervision of absentee balloting at any institution is to occur, the town clerk shall deliver to the registrars or their designees the absentee ballots and envelopes for all applicants who are electors of such clerk's town and patients at such institution. The ballot and envelopes shall be prepared for delivery to the applicant as provided in sections 9-137 to 9-140a, inclusive. The registrars or their designees shall furnish the town clerk a written receipt for such ballots.

(g) The registrars or their designees, as the case may be, shall jointly deliver the ballots to the respective applicants at the institution and shall jointly supervise the voting of such ballots. The ballots shall be returned to the registrars or their designees by the electors in the envelopes provided and in accordance with the provisions of sections 9-137, 9-139 and 9-140a. If any elector asks for assistance in voting his ballot, two registrars or their designees of different political parties or, for a primary, their designees of different candidates, shall render such assistance as they deem necessary and appropriate to enable such elector to vote his ballot. The registrars or their designees may reject a ballot when (1) the elector declines to vote a ballot, or (2) the registrars or their designees are unable to determine how the elector who has requested their assistance desires to vote the ballot. When the registrars or their designees reject a ballot, they shall mark the serially-numbered outer envelope

“rejected” and note the reasons for rejection. Nothing in this section shall limit the right of an elector to vote his ballot in secret.

(h) After all ballots have been voted or marked “rejected” in accordance with subsection (g) of this section, the registrars or their designees shall jointly deliver or mail them in the envelopes, which shall be sealed, to the appropriate town clerk, who shall retain them until delivered in accordance with section 9-140c.

(i) When an institution is located in a town having a primary, the registrar in that town of the party holding the primary shall appoint for each such institution, one designee of the party-endorsed candidates and one designee of the contestants from the lists, if any, submitted by the party-endorsed candidates and contestants. Such registrar shall notify all party-endorsed candidates and all contestants of their right to submit a list of potential designees under this section. Each party-endorsed candidate and each contestant may submit to such registrar in writing a list of names of potential designees, provided any such list shall be submitted not later than ten days before the primary. If no such lists are submitted within said period, such registrar shall appoint one designee of the party-endorsed candidates and one designee of the contestants. Each designee appointed pursuant to this section shall be sworn to the faithful performance of his duties, and the registrar shall file a certificate of each designation with his town clerk.

...

(l) Notwithstanding any provision of the general statutes, if a town clerk receives twenty or more absentee ballot applications from the same street address in a town, including, but not limited to, an apartment building or complex, absentee ballots voted by the electors submitting such applications may, at the discretion of the registrars of voters of such town, be voted under the supervision of such registrars of voters or their designees in accordance with the same procedures set forth in this section for supervised absentee voting at institutions.

20. General Statutes § 9-159r reads, in pertinent part:

(a) Notwithstanding any provision of the general statutes to the contrary, if twenty or more of the patients in any institution in the state are electors, absentee ballots voted by such electors shall be voted under the supervision of the registrars of voters or their designees of the town in which the institution is located, in accordance with the provisions of this section. As used in this section, the term "institution" shall be construed as defined in section 9-159q.

(b) Application for an absentee ballot for any such patient shall be made to the clerk of the town in which such patient is eligible to vote. The application procedure set forth in section 9-140 shall apply, except that the clerk shall deliver the absentee voting set for any such application to the clerk of the town in which the institution is located, who shall deliver all such voting sets he receives to the registrars of such town, on the date when the supervision of absentee balloting is to occur. The ballots and envelopes shall be prepared for delivery to the applicant as provided in sections 9-137 to 9-140a, inclusive. The registrars or their designees shall furnish the town clerk a written receipt for such ballots. The registrars of the town in which an institution is located and the administrator of the institution shall mutually agree on a date and time for such supervision of absentee balloting, which shall be not later than the last business day before the election or primary.

(c) The supervision of absentee balloting under this section shall be carried out in accordance with the provisions of subsections (g), (h), (i) and (k) of section 9-159q..

Investigation

21. Respondent Democratic Registrar of Voters Giselle Feliciano responded promptly and in full to the allegations here. The Respondent Registrar confirms that her office did tell the administrator of the M.D. Fox School that supervised absentee balloting would occur at that location between the hours of 9:30 and 11:30 on March 1, 2018.

22. The Respondent Registrar also does not dispute that the supervised absentee balloting designees did not arrive at exactly 9:30 am.
23. She asserts that the designees were scheduled to conduct supervised absentee balloting at 90 Retreat Avenue before the MD Fox location and were running behind due to unforeseen delays at the Retreat Avenue location.
24. She further asserts that she called and spoke with building administrator Lisandra Zeno to keep her apprised of their progress and that she spoke with the Complainant on the telephone that morning and told him the same thing as he told Ms. Zeno.
25. Finally, she asserts that her designees arrived at or around 10:30 am and all individuals at MD Fox who had submitted absentee ballot applications were accommodated either by supervising the execution of their ballots in the common area, or, in some instances in the voter's units in the building.

Analysis

26. Reviewing the aforementioned, the Commission notes as an initial matter that the while supervised absentee balloting is more regulated than standard absentee balloting—insofar as a designated supervising election official needs to be present during execution—nowhere in the statutes does it require that supervised absentee balloting follow the rules regarding a polling place (E.g., General Statutes §§ 9-236 and/or 9-261).
27. Indeed, the Connecticut Supreme Court affirmed very recently that while supervised absentee balloting must be “held on a date mutually agreed on by the institution’s administrator and the registrars of voters...Notably, however, there are no provisions that require town officials either to notify residents at an institution that supervised absentee balloting is to occur there or to approach these residents and to offer them absentee ballot applications in advance of that balloting.” *Keely v. Ayala*, 328 Conn 393, 425 (2018) (affirming that the registrars were not required to directly provide any notice to residents of institutions or provide absentee ballot applications on the date absentee balloting is to occur).
28. As such, as long as the administrator and the registrars agree on a date and time and such balloting occurs on that date and time, the statutes specify only that “The registrars or their designees, as the case may be, shall jointly deliver the ballots to the respective applicants at

the institution and shall jointly supervise the voting of such ballots.” General Statutes § 9-159q (g)⁸

29. Here, there is no dispute that the supervised absentee balloting occurred on March 1, 2018 and there is also no allegation that any voter who submitted an absentee ballot application on or prior to that date was unable to cast a supervised ballot on that date.
30. As such, the only issue in this case is whether the Respondents met the timing requirement in General Statutes § 9-159q (e). The Complainant asserts that the Respondent’s designees failed to meet with the requirements as they were not there at 9:30am. The Respondent asserts that the designees arrived within the window originally agreed upon with the administrator of MD Fox.
31. The Respondent also asserts alternately that the Registrar’s Office was in constant contact with the administrator and informed her that the designees were waylaid at a prior supervised absentee balloting location. While the Respondent does not argue specifically, implicit in this argument is that the time could have changed with the consent of the administrator of MD Fox.
32. However, neither the Complainant nor the Respondent here provided any evidence in support that the supervised absentee balloting did not at least begin within the window, or, alternately, that such window was adjusted by agreement with the administration of the MD Fox building. Moreover, there has been no evidence found during the conduct of this investigation to show that the Respondents did not otherwise meet their statutory duties or that any particular voter who submitted an absentee ballot application was unable to execute an absentee ballot on the date in question.
33. Considering the aforesaid, the evidence is insufficient to conclude that it is more likely that not that the Respondent failed to meet the responsibilities enumerated in General Statutes §§ 9-159q and 9-159r.
34. As such, COUNT TWO should be dismissed.

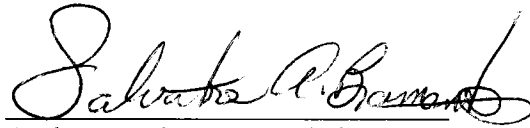
⁸ Or, in the case of a primary, designees of the party-endorsed and challenge candidates. General Statutes § 9-159q (i).

ORDER

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

That the matter is dismissed.

Adopted this 6th day of March, 2019 at Hartford, Connecticut.



~~Anthony J. Castagno, Chairperson~~
By Order of the Commission

Salvatore Bramante - Vice Chairperson