

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

Complaint of Scott Veley, Berlin

File No. 2011-011

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Phillip Apruzzese, of the Town of Torrington, 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 instant Agreement concerns a Complaint in which it is alleged that Respondent Phillip Apruzzese, as President of the Connecticut Education Association ("CEA"), sent a letter to members dated January 25, 2011 regarding the special elections to be held February 22, 2011, with which was included an unsolicited absentee ballot application. Complainant alleges that the Respondent failed to register this distribution of absentee ballot applications with the town clerks of the members' respective towns, in violation of General Statutes § 9-140 (k) (1) and failed to provide a list of names and addresses of the solicited members to the town clerks before the special election, in violation of § 9-140 (k) (2). Finally, Complainant alleges that the Respondent violated § 9-140 (l) by failing to include with the solicitations a written explanation of absentee ballot eligibility requirements and a written warning of the violations associated with improperly voting by absentee ballot.
2. General Statutes § 9-135 proscribes the eligibility requirements for voting by absentee ballot in Connecticut, and reads:

(a) Any elector eligible to vote at a primary or an election and any person eligible to vote at a referendum may vote by absentee ballot if he is unable to appear at his polling place during the hours of voting for any of the following reasons: (1) His active service with the armed forces of the United States; (2) his absence from the town of his voting residence during all of the hours of voting; (3) his illness; (4) his physical disability; (5) the tenets of his religion forbid secular activity on the day of the primary, election or referendum; or (6) the required performance of his duties as a primary, election or referendum official at a polling place other than his own during all of the hours of voting at such primary, election or referendum.

(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 § 9-140 proscribes the procedures concerning, *inter alia*, obtaining and/or distributing absentee ballot applications for third parties. The pertinent portions of the statute read, as follows:

(a) Application for an absentee ballot shall be made to the clerk of the municipality in which the applicant is eligible to vote or has applied for such eligibility. . . . *The municipal clerk shall maintain a log of all absentee ballot applications provided under this subsection, including the name and address of each person to whom applications are provided and the number of applications provided to each such person. Each absentee ballot application provided by the municipal clerk shall be consecutively numbered and be stamped or marked with the name of the municipality issuing the application.*

...
(k) (1) A person shall register with the town clerk before distributing five or more absentee ballot applications for an election, primary or referendum, not including applications distributed to such person's immediate family. Such requirement shall not apply to a person who is the designee of an applicant.

(2) Any person who distributes absentee ballot applications shall maintain a list of the names and addresses of prospective absentee ballot applicants who receive such applications, and shall file such list with the town clerk prior to the date of the primary, election or referendum for which the applications were so distributed. Any person who distributes absentee ballot applications and receives an executed application shall forthwith file the application with the town clerk.

(l) No candidate, party or political committee, or agent of such candidate or committee shall mail unsolicited applications for absentee ballots to any person, unless such mailing includes: (1) A written explanation of the eligibility requirements for voting by absentee ballot as prescribed in subsection (a) of section 9-135, and (2) a written warning that voting or attempting to vote by absentee ballot without meeting one or more of such eligibility requirements subjects the elector or applicant to potential civil and criminal penalties. As used in this subsection, "agent" means any person authorized to act on behalf of another person.

(m) The Secretary of the State shall conspicuously post on the Secretary of the State's web site, adjacent to the absentee ballot application form available for downloading, a notice that the application *may be downloaded by a person only for (1) the person's own use, (2) the use of a member of the person's immediate family, or (3) the use of a designee of the applicant.*

The notice shall also contain an advisory statement concerning the requirements of subsection (k) of this section. . . .

(n) The State Elections Enforcement Commission, in consultation with the Secretary of the State, shall prepare a summary of the requirements and prohibitions of the absentee voting laws, which shall be posted on said agencies' web sites. Candidates and political party chairpersons shall provide such summary to campaign and party employees and volunteers. (Emphasis added.)

4. On or about January 7, 2011 Governor Malloy issued writs of election setting February 22, 2011 as the date on which special elections would be held to fill any vacancies in the General Assembly that existed at that time. See General Statutes § 9-215.
5. The investigation revealed that a letter, dated January 25, 2011, was sent via postal mail by the Respondent, as President of the Connecticut Education Association (“CEA”), to approximately 3,626 CEA members. The letter is addressed generally to “Dear Colleagues.” The substance of the letter is directed at encouraging the members to participate in the upcoming special elections. The letter includes with it an unmarked absentee ballot application. No other document was included with the letter. The text of the letter explains that the absentee ballot application is included because the special election falls during a school vacation. The text of the letter, while praiseful of the outgoing elected officials in general, does not advocate for one candidate over the other or even mention any candidate and/or party by name.
6. Respondent does not generally deny the Complainant’s allegations. The letter was written and distributed, under the Respondent’s signature, by an agent of the Respondent, Susan Heller Williams, Political Coordinator for the CEA. According to Ms. Williams, the letter was distributed to members within the districts in which a special election was being held, as the Respondent was concerned that many CEA members would be out of town on that day and might not vote. Ms. Williams printed an absentee ballot application from the website of the Secretary of the State’s Office and then photocopied it.
7. The page on the Secretary of the State’s website on which the link to the downloadable absentee ballot is located contains a warning, reasonably proximate to such link, which reads:

Application for Absentee Ballot: This application for absentee ballot may be downloaded by an individual for: (1) *the individual's own use*; (2) *the use of a member of the individual's immediate family*; or (3) *the use of a designee of the applicant*. Any person who will distribute five (5) or more absentee ballot applications to persons other than the individual's immediate family must register with and obtain forms from the Town Clerk of the municipality where such forms will be distributed before distributing such forms. For more detailed information please review the Absentee Ballot Fact Sheet and Absentee Ballot Application Process document. (Emphasis added.)

8. The words “Absentee Ballot Fact Sheet” on the Secretary’s website are also a hyperlink to a two-page summary of the requirements and prohibitions of the absentee voting laws prepared by the State Elections Enforcement Commission and the Secretary of the State per General Statutes § 9-140 (n). Such summary, if included with an unsolicited absentee ballot application, satisfies the requirements of General Statutes § 9-140 (l).
9. Respondent’s agent avers that after sending out the letter and the application with it, she realized that she might have made a mistake and contacted the Office of the Secretary of the State. The Secretary of the State’s Office confirms that contact was made by Ms. Williams sometime between January 25, 2011 and February 7, 2011.
10. Ms. Williams told staff at the Secretary of the State’s Office that she realized after the fact that she had failed to sign out absentee applications from the local town clerks in the relevant districts and wanted to make sure that no voter was disenfranchised because of her mistake. Staff told her that the Secretary of the State’s Office would contact the individual town clerks and make sure that they accepted the absentee ballot applications. She was advised to compile a complete list of each individual who received an absentee ballot application from the CEA mailing and to send it, return receipt, to each of the individual town clerks.
11. The investigation revealed that on or about February 7, 2011—10 days after the initial letter, but 15 days prior to the special election—Ms. Williams sent out complete lists of each individual who received an absentee ballot application from the CEA to the town clerks of Bridgeport, Farmington, Madison, West Hartford, New Britain, Essex, Haddam, Deep River, Chester, Guilford, East Haven, Middletown, Stamford, Darien, Middlefield, Meriden, and Cheshire for a total of 3,626 CEA members.
12. The Respondent does not claim, and no evidence shows, that either he or his agent spoke with the Office of the Secretary of the State about how to attempt to remedy the failure to distribute the absentee ballot applications with the warnings required in General Statutes § 9-140 (l).

COUNT ONE: Failure to Register Names of Recipients of Absentee Ballot Applications – General Statutes § 9-140 (k) (2)

13. The Commission finds that the Respondent, through his agent, filed the relevant list of names and addresses of individuals who received applications from the CEA prior to the date of the special election for which the applications were so distributed.
14. Accordingly, the Commission concludes that the Respondent did not violate General Statutes § 9-140 (k) (2). This allegation is dismissed.

COUNT TWO: Failure to Register with the Town Clerks – General Statutes § 9-140 (k) (1)

15. Considering the aforesaid, the Commission finds that the Respondent Phillip Apruzzese failed to register the CEA’s distribution of five or more absentee ballot applications with the town clerks of the respective municipalities.

16. Accordingly, the Commission concludes that the Respondent violated General Statutes § 9-140 (k) (1) 17 times, once for each town clerk with whom he failed to register.
17. However, the Commission considers it relevant that the Respondent made considerable efforts, to the extent possible, to ameliorate the effects of the mistake many weeks before the instant Complaint was filed and at least two weeks prior to the special elections. While the Respondent—President of a sophisticated labor organization—should have been more diligent in understanding the requirements of § 9-140 (k) (1) *prior* to sending out absentee ballot applications, there does not appear to have been any fraudulent intent in failing to obtain and register the absentee ballots with the town clerks. As such, the Commission will take no further action regarding *this* violation.

COUNT THREE: Failure to Distribute Absentee Ballot Applications with a Written Explanation and Warning – General Statutes § 9-140 (l)

18. Considering the aforesaid, the Commission concludes that the Respondent violated General Statutes § 9-140 (l) by distributing 3,626 unsolicited absentee ballot applications without including either the written explanation or warning required by the statute.
19. The investigation has not revealed any evidence here suggesting that the Respondent failed in bad faith to include the written explanation and warning. The time period between the calling of the special election and the date of the special election was relatively short, approximately six weeks; in the Respondent's haste to get the letters and absentee ballot applications to members who might be out of town, it is more likely that the CEA simply failed to consider its statutory obligations carefully enough. Moreover, neither the Respondent nor his agent, Ms. Williams, have a history of similar violations of General Statutes § 9-140 (l).
20. Finally, the history of General Statutes § 9-140 (l) is relatively short and no case to date has resulted in a civil penalty. The provision was added to § 9-140 in 2005 and only two cases have considered it since—both of which ended in liability, but neither of which resulted in a civil penalty. See *Complaint of Jonathan Best, Stratford*, File No. 2009-081 & *Complaint of Louis DeCilio, Stratford*, File No. 2005-300.
21. However, while the above facts mitigate, to a degree, the Commission's consideration of a civil penalty in this matter, they do not excuse the Respondent's failure here, especially considering, as stated above, the sophistication of a professional organization relative to other persons who might distribute absentee ballot applications. The Respondent's failure could have resulted, for instance, in widespread violations of General Statutes § 9-135 by those members who received the unsolicited absentee ballot applications without sufficient instruction and/or warning of the strict and limited eligibility criteria for voting by absentee ballot in Connecticut. Considering the relatively high number of unsolicited absentee ballot applications that were distributed by the Respondent—much higher than in either *Best* or *DeCilio*—he is very fortunate that no evidence was presented of any such violation by any of the members who received the absentee ballot applications.

22. The Respondent waives:

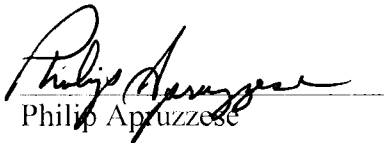
- a. Any further procedural steps;
- b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law, separately stated; and
- c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered into pursuant to 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

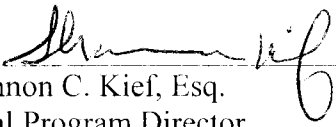
IT IS HEREBY ORDERED that Respondent Philip Apruzzese shall pay a civil penalty of Five Hundred Dollars (\$500) and that the Respondent will henceforth strictly comply with the requirements of General Statutes § 9-140.

The Respondents:


Philip Apruzzese

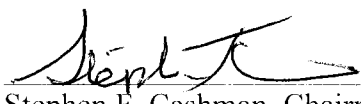
Dated: 7/25/11

For the State of Connecticut:

BY: 
Shannon C. Kief, Esq.
Legal Program Director
& Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: 8/1/11

Adopted this 3rd day of August of 20 11 at Hartford, Connecticut


Stephen F. Cashman, Chairman
By Order of the Commission