

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by David Godbout, East Lyme

File No. 2015-162

FINDINGS AND CONCLUSIONS

The Complainant alleged that at the November 3, 2015 General Election held in the town of East Lyme, Respondent Nancy J. Moran, who was the moderator at the East Lyme Community Center polling place, impermissibly prevented him from approaching voters within the 75 foot zone leading to the entrance of the polling place during the hours of voting.¹

BACKGROUND & ALLEGATIONS

1. On November 3, 2015 a municipal General Election was held in the town of East Lyme.
2. At all times relevant to the instant Complaint, Nancy J. Moran was the moderator at the East Lyme Community Center polling place.
3. The parties here do not generally dispute the pertinent facts in this case.
4. On Election Day, the Complainant attempted to approach voters outside of the 75 foot zone leading to the entrance of the polling place during the hours of voting in order to discuss matters concerning sitting Representative Edward Jutila, who was not a candidate on the ballot for that election.
5. The Respondent informed the Complainant and others gathered outside the sign marking the 75' distance that they must remain outside the 75' foot zone and could not loiter or peddle or offer any advertising matter, ballot or circular to another person in the area between the sign and the door leading to the polling place entrance.

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.

6. The Complainant protested to the Respondent that since he was not attempting to discuss matters related to the election at hand, he should be permitted to approach voters within the 75' zone.
7. This is the sum of the Complainant's allegations here—that since the content of his speech was unrelated to any candidacy or question on the ballot, he should have been able to pass into the 75' zone and remain there during the hours of voting.

LAW

8. General Statutes § 9-236 enumerates certain prohibitions on electioneering in and around a polling place, and 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) . . . (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. . . . (Emphasis added.)

Analysis and Conclusion

9. The prohibition on activities within the 75' zone addresses three different types of activity: 1) Solicitations for or against a candidacy or referendum question on the ballot; 2) Loitering; 3) peddling or offering any advertising matter, ballot or circular. Here, the 2nd provision is at issue.
10. The Complainant argues that since the content of his speech was neutral as concerned the election at hand, he should have been permitted to remain within the 75' zone.
11. However, the provision against loitering is not content-specific. Regardless of what activities the Complainant intended to conduct, the provision adhered.
12. These provisions have long been interpreted by the Commission as creating a zone from the 75' marker to the voting booth, in which the voter can travel, unmolested, to execute their ballot in private.
13. Generally, once a voter has cast a ballot, that person must forthwith leave the polling place and travel beyond the 75' zone. *See, e.g., In the Matter of a Complaint by Amy E. Jacques-Purdy, Haddam*, File No. 2015-029.
14. It is impermissible for a non-polling place official to remain within the 75' zone for an unreasonable period of time and such activity has resulted in findings of violations of the loitering provision in General Statutes § 9-236 (a). *See, e.g., In the Matter of a Complaint by Jeffrey P. Kerekes, New Haven*, File No. 2007-388 (voter remained outside polling place door for an unreasonable period of time without any otherwise permissible purpose); and *In the Matter of a Complaint by Ira Johnson, New Haven*, File No. 2007-350 (Respondent by the door to the polling place greeting and hugging voters for periods of 20-30 minutes at a time).
15. However, the Commission has also declined to find a violation where either a respondent did not remain in the zone for an unreasonable amount of time or such person's presence within the zone was for the purpose of carrying out an unrelated legitimate function

associated with the building housing the polling place. *See, e.g., In the Matter of a Complaint by Clare D'Appollonio, Windham*, File No. 2015-148 (evidence insufficient to conclude that Respondent remained in the 75' zone for an unreasonable amount of time when stopping to speak with a friend after voting); *In the Matter of a Complaint by Judith Rajala, East Windsor*, File No. 2012-096 (Respondent, who was the incumbent candidate for First Selectman, did not violate § 9-236 by remaining in her office to conduct town business during voting hours, even though such office was located within the 75' zone and some of the windows were within view of voters entering the building to cast their ballots).


16. Here, there is no dispute that the Complainant's intent was to remain within the 75' zone for a more than brief period or periods of time to conduct activity—in this case, directly approaching voters in order to lobby them on a political matter—that was not for the purpose of carrying out an unrelated legitimate function associated with the building housing the polling place.
17. With the above in mind, the Commission concludes that the Respondent moderator was correct in prohibiting the activity proposed by the Complainant, activity that could have certainly affected the orderly process of voting, which the moderator is sworn to protect. Indeed, she was required by the explicit terms of General Statutes § 9-236 (b) (3) to prohibit such activity.
18. Considering the aforesaid, this matter should be dismissed.

ORDER

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

Dismissed.

Adopted this 15th day of June, 2016 at Hartford, Connecticut.



Anthony J. Castagno, Chairperson
By Order of the Commission