

DEC 04 2017

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

ENFORCEMENT COMMISSION

In the Matter of a Complaint Daniel Garrett, Hamden

File No. 2015-174

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Anthony Esposito and Rose Mentone, of the Town of Hamden, 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:

Allegation

1. This matter involves allegations that the Respondents, the Hamden Registrars of Voters, failed to follow the terms of their agreement in *In the Matter of a Complaint by Daniel Garrett, Hamden*, File No. 2012-154A when, during the 2015 General Election, they: 1) mailed postcards to voters requesting identification at the polls and describing the acceptable forms; 2) Included in their website FAQs for registering to vote that interested persons should “Bring identification to show your identity and residence;” 3) posted a sign at the West Wood School polling place at the November 3, 2015 General Election stating “Identification required.”

Factual Background

Background and History of File No. 2012-154

2. The context of the instant Complaint is based on an agreement struck between the Commission and the Respondent Registrars in File No. 2012-154. The allegations in File No. 2012-154 concerned an informational postcard mailed by the Registrars ahead of the General Election informing voters of the date and time of the election, as well as other important information.
3. The controversial issue concerned the phrase “identification required at the polls” on the postcard, which is not a correct statement for all voters. Established voters may choose to fill out the affidavit under General Statutes § 9-261 and vote without showing any pre-printed form of identification.
4. After consulting with the Secretary of the State’s Office and the SEEC, the Registrars implemented certain changes including:

7) . . . modify all such notices in the future and replace the word "requested" for "required...to re-train their moderators and official town checkers about voter identification requirements including, but not limited to, General Statutes § 9-261; and ...ensure that each moderator has a supply of the affidavits needed under General Statutes § 9-261 when a voter does not provide an existing written identification.

5. The Commission declined to conclude that the Registrars had violated any statute insofar as the Commission:

8) . . .received no complaint or other evidence that any elector was, in fact, improperly refused the right to vote in Hamden based on an inappropriate application of the voter identification laws in the 2012 general election.”

9) Based on the above, the Commission finds no violation as alleged in this matter. Nevertheless, to provide a full resolution in this matter in the interest of preserving each elector's right to vote, the Registrars have agreed to enter into a consent order, pursuant to General Statutes § 9-7b (a) (6), formalizing the modifications they have already agreed to perform between their two offices.

(Garrett, File No. 2012-154A.)

Complaint

6. Here, the Complainant alleged that he observed three communications from the Hamden Registrars of Voters on or before Election Day in 2015 that he believes failed to comport with the terms of the Agreement in 2012-154.
7. The first item was the same type of postcard that was the subject of the Complaint in File No. 2012-154. Indeed, the postcards are identical but for a word change from “Identification is *required* at the polls,” from File No. 2012-154 to “Identification is *requested* at the polls” in this case. (Heretofore, Count One.)
8. The second item was a paragraph from the “How do I register to Vote?” sub-section of the “Registrar of Voters—FAQs” page on the Registrar of Voters’ website. The last sentence reads, “Bring identification to show your identity and residence.” (Heretofore, Count Two.)
9. The third item was a single Mylar sign that the Complainant alleged he saw placed at the West Wood School polling place on Election Day, which read “Vote Here / ID Required” (Heretofore, Count Three.)

Law

10. General Statutes § 9-261 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 checker or 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 checker or 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 checker or 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 form shall be used for each elector. If the elector presents a preprinted form of identification under subdivision (1) of this subsection, the official checker or checkers shall check the name of such elector on the official checklist, manually on paper or electronically. 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 checker or checkers to check the name of such elector on the official checklist, manually on paper or electronically, or notify the elector that the form is incomplete or inaccurate. (Emphasis added.)

Response from the Respondent Registrars

11. The Respondent Registrars responded promptly to the instant Complaint, as follows, in pertinent part:

Postcard

“The Hamden Registrars Office redesigned the card to read ‘I.D. requested,’ instead of ‘I.D. required’ and this change was reviewed and accepted by your commission. . . .”

Website FAQ

“The answer to the question ‘How do I register to vote?’ is meant for people new to Hamden. How else would we know if they live in Hamden, unless we saw some I.D. with their name and address? So, we ask them to bring I.D. into our office when they register.”

“ID Required” Sign at West Wood School Polling Place

These signs stating ‘I.D. required’ were destroyed after the ruling [in] #2012-154A. Unfortunately, at a few of our districts the signs are kept at the schools by the custodians and posted on property for primaries and elections. Consequently, our Moderator did not see that this illegal sign requiring identification was put up by the custodian. Therefore, we will make sure that this sign is permanently removed and destroyed before the next primary or election is held there. All of our moderators and assistant registrars are aware of the ‘no I.D. required’ law and have ample copies of the affidavits they need for who refuse to show identification.

12. Nancy Barr, the moderator of the West Woods School polling place on the day in question, responded, in pertinent part, as follows:

In my diary I indicated that the signs outside were posted at 4:30 a.m. by the school custodian at West Woods School. I regret that I did not personally go outside to review posted signs. I agree that in the future I will go outside myself to observe that the proper signs are posted. I have enclosed a copy of a photo showing Registrar of Voters Tony Esposito personally destroying the singular sign, mentioned in the complaint, that was posted at West Woods School that day, which he retrieved from the custodian from the school.

13. Included in the materials forwarded by Ms. Barr was a full color picture of Mr. Esposito cutting up the “ID Required Sign.”

Commission Investigation

14. The investigation here was thorough but straightforward, as the Respondents did not generally factually deny the main allegations.
15. The Commission examined the training principles applied by the Respondents in this election to be sure that the voter identification rules were included. The statements by the Respondents and the materials provided confirmed that each of the elections officials were trained and included in that training was the voter check-in procedure.
16. Moreover, the investigation confirmed that at each of the polling places, the Voter ID rules sign, as promulgated by the Secretary of the State and required by General Statutes § 9-236b (f), were posted in all polling places, including, but not limited to, the West Woods School polling place.
17. Additionally, the investigation did not show, nor it is alleged, that an “ID Required” sign was posted in any other polling place in Hamden on the day in question or in any subsequent election or primary, despite the Respondents statement that others may have been mistakenly posted.
18. Finally, the investigation did not uncover any evidence that any voter was turned away by a misapplication of the voter ID rules at the West Woods School polling place or in any other polling place in town.

Commission Findings

COUNT ONE: Postcard

19. The change to the postcard, including the word “requested” instead of “required,” not only conforms exactly to the Agreement in File No. 2012-154, it is an accurate statement of law. General Statues § 9-261 does not bar requesting identification. The Commission should dismiss Count One.

COUNT TWO: Website FAQ

20. This Count fails as well. First, this allegation appears to fall outside the parameters of the Agreement in File No. 2012-154 (that matter considered voting ID requirements; this allegation concerns registration ID requirements).

21. Moreover, it is an accurate statement of law. General Statutes § 9-20 requires that in order to register to vote in person, a new elector must present identification establishing the person's residence and identity.

22. General Statutes § 9-20 reads, in pertinent part

(a) Each person who applies for admission as an elector in person to an admitting official shall . . . present his birth certificate, drivers' license or Social Security card to the admitting official for inspection at the time of application. . . .

(b) . . . Upon the request of any elector, or if the applicant does not present a birth certificate, drivers' license or Social Security card as required by subsection (a) of this section, at the time an application is made in person to an admitting official or prior to the approval of such an application, any admitting official shall require the applicant to prove his identity, place of birth, age and bona fide residence by the testimony under oath of at least one elector or by the presentation of proof satisfactory to such admitting official. . . .

23. General Statutes §§ 9-23g & 9-23h require that persons registering by mail include such proof either with their registration or at the polling place the first time they go to vote in a federal election. (See also, § 9-261). There is no affidavit option for registering to vote. The Commission should dismiss Count Two.

COUNT THREE: "ID Required" Sign at West Wood School Polling Place

24. Factually, this allegation is straightforward. The Complainant alleges that this sign was set up at the West Wood School polling place and the Respondents do not deny this. Even if the Commission accepts the Registrars' statement that the sign was placed by custodial staff and not specifically at their direction, liability inures to them pursuant to their responsibilities over the setup of polling places.

25. However, this allegation faces the same legal conundrum that the postcard faced in File No. 2012-154. There is no statute under the Commission's jurisdiction that explicitly makes it impermissible to misstate the voter ID rules on a sign outside the polling place, just as there is no statute under the Commission's jurisdiction that explicitly makes it impermissible to misstate the voter ID rules in a postcard to voters.

26. However, and the reason this matter was docketed in the first place, the Commission believes that there is a potential violation for doing so located within subsection (a), subdivision (5) of General Statutes § 9-236b, the “Voters Bill of Rights,” which reads:

(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;

...

27. The Commission has interpreted General Statutes § 9-236b (a) as granting voters the rights enumerated in the Voter's Bill of Rights. See, e.g., *In the Matter of a Complaint by Robert Burke, Manchester*, File No. 2009-136 (right to vote independently and in privacy at the polling place); *In the Matter of a Complaint by Claude Holcomb, Hartford*, File No. 2009-029 (right to vote independently and in privacy at the polling place) ; *In the Matter of a Complaint by Eileen Torrow, Milford*, File No. 2009-005 (right to vote independently and in privacy at the polling place) ; *In the Matter of a Complaint by Sandra Kush, West Hartford*, File No. 2008-068 (right to vote independently and in privacy at the polling place); *In the Matter of a Complaint by Norman S. Douglas, Milford*, File No. 2007-411 (right to vote in privacy at the polling place); *In the Matter of a Complaint by Cynthia Clark, et al., Middletown*, File No. 2003-267 (right to inspect a sample ballot) ; *In the Matter of a Complaint by Helen Lech, Berlin*, File No. 2007-421 (right to vote in privacy at the polling place); *In the Matter of a Complaint by Kathleen Prudden and Elizabeth Rhoades, Stratford* File No. 2007-405 (right to vote in privacy at the polling place).

28. This is the first application of this subdivision for the Commission. The question here is whether official communications from the Registrars of Voters stating “ID Required” could be reasonably interpreted as coercive and/or intimidating by voters.

29. Leaving aside the question of whether the sign here could be interpreted as being “intimidating,” the Commission believes that the actions here fall within the definition of “coercive.”

30. Absent a definition in the General Statutes, the commission looks to the dictionary definition of “coerce.” Merriam-Webster defines “coerce” as follows:

COERCE

coerced; coercing

Transitive verb

1 :to restrain or dominate by force

religion in the past has tried to coerce the irreligious —W. R. Inge

2 :to compel to an act or choice

was coerced into agreeing abusers who coerce their victims into silence

3 :to achieve by force or threat

coerce compliance

coerce obedience

— coercible play \kō-'ər-sə-bəl\ adjective

("Coerce." Merriam-Webster.com. Merriam-Webster, n.d. Web. 24 Oct. 2017.)

31. It is the second definition of “coerce” that is relevant here: that a voter would feel compelled to an act or choice. When the message is coming from the town’s chief elections officials and is located, as the sign here, in or around the polling place, it is reasonably foreseeable that voters would feel compelled to produce a form of pre-printed identification when none is exclusively required. Worse still, those voters who lack a form of pre-printed identification could reasonably be compelled to stay away from the polls.
32. Accordingly, considering the aforesaid, the Commission concludes that the Respondent Registrars violated General Statutes § 9-236b (5).
33. Connecticut General Statutes § 9-7b (a) (2) provides that the Commission may assess a civil penalty of two thousand dollars per offense against any person the commission finds to be in violation of any provision of chapter 145, part V of chapter 146, part I of chapter 147, chapter 148, section 7-9, section 9-12, subsection (a) of section 9-17, section 9-19b, 9-19e, 9-19g, 9-19h, 9-19i, 9-20, 9-21, 9-23a, 9-23g, 9-23h, 9-23j to 9-23o, inclusive, 9-23r, 9-26, 9-31a, 9-32, 9-35, 9-35b, 9-35c, 9-40a, 9-42, 9-43, 9-50a, 9-56, 9-59, 9-168d, 9-170, 9-171, 9-172, 9-232i to 9-232o, inclusive, 9-404a to 9-404c, inclusive, 9-409, 9-410, 9-412, 9-436, 9-436a, 9-453e to 9-453h, inclusive, 9-453k or 9-453o and two thousand dollars per offense against any town clerk, registrar of voters, an appointee or designee of a town clerk or registrar of voters, or any other election or primary official whom the commission finds to

have failed to discharge a duty imposed by any provision of chapter 146 or 147,. 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.

34. There is no question that coercive and/or intimidating acts by elections officials that could lead to the disenfranchisement of voters are as serious an act as they come.
35. The Respondents have a clear previous history in this area, although this inures to their benefit, as described in more detail below.
36. With all of the above in mind, even though the Commission agrees that the above interpretation is viable, it is unclear that the facts here reach a level beyond a technical, unintentional violation of the statute. While the Commission investigation did not reach anyone on the custodial staff, the Respondents' explanation for why the sign was there (which was supported by the moderator's statement as well), is generally supported by the circumstantial evidence in this case.
37. First, there was no evidence found that "ID Required" signs were placed in the other polling places in Hamden, as asserted by the Respondents. Second, the Respondents appear to have otherwise adhered to the strict letter of the Agreement in File No. 2012-154 as concerns the other communication from the office, the postcard. Other than this one sign on the West Wood School property, the Respondents appear to have made concerned efforts to attempt to comply with the Voter ID rules, as well as their promises to the Commission in File No. 2012-154. Third, the overwhelming evidence supports a finding that the Registrars trained all of their elections officials on the Voter ID rules and were fully compliant in conspicuously affixing the Voter ID rules sign to the checkers' table, as required by General Statutes § 9-236b (f).¹

¹ General Statutes § 9-236b (f) reads:

(f) For use at each primary, election and referendum, the Secretary of the State shall prescribe and the registrars of voters shall provide for all polling places in the municipality a display of the provisions of section 9-261, describing requirements for identification. Such display shall be prominently posted where the official checkers are located in each polling location so that such display is visible to each elector whose name is being checked on the official checklist.

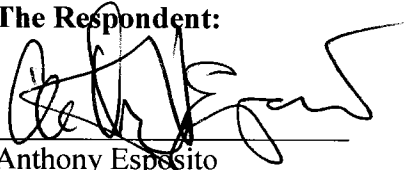
38. In consideration of the aforesaid aggravating and mitigating circumstances in this matter, the Commission concludes, and the Respondent Registrars agree, that in lieu of a civil penalty, an agreement and henceforth order will suffice in this matter to achieve future compliance.
39. The Respondents admit all jurisdictional facts and agree 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 Respondents shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
40. The Respondents waive:
- 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.
41. 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 Respondents in any subsequent hearing, if the same becomes necessary.
42. Upon the Respondents' compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

ORDER

IT IS ORDERED THAT:


- 1) Count One is Dismissed
- 2) Count Two is Dismissed
- 3) The Respondents will henceforth strictly comply with General Statutes §§ 9-261 and 9-236b (5);

The Respondent:



Anthony Esposito
Hamden, CT


For the State of Connecticut:

BY: 

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

Dated: 10-29-17

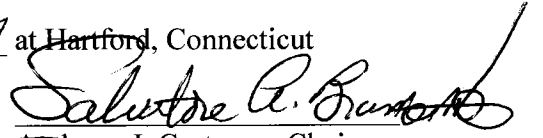
Dated: 12/5/17



Rose Mentore
Hamden, CT

Dated: 11/29/2017

Adopted this 20 day of December of 2017 at Hartford, Connecticut



Anthony J. Castagno, Chair
By Order of the Commission

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