

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by Andrew Lockwood, New London

File No. 2015-190

FINDINGS AND CONCLUSIONS

The Complainant alleged that at the November 3, 2015 General Election held in the City of New London individuals violated General Statutes § 9-236 by electioneering within the 75 foot zone outside a polling place and that such individuals were attempting to distribute false and/or misleading materials in an effort to deprive electors of their vote in possible violation of General Statutes §§ 9-363 and/or 9-364a.¹

Background

1. On November 3, 2015 a municipal General Election was held in the City of New London.
2. At all times relevant to the instant Complaint, Respondent Martha Marx was a Democratic Party candidate for City Council.
3. During all hours of voting, the Harbor School was utilized as a polling place.

Allegations

4. The Complainant makes two distinct allegations. First, he alleges that a video submitted with the Complaint establishes that Respondent Martha Marx was escorting voters to the outside entrance of the Harbor School polling place and electioneering on behalf of Democratic candidates, including herself. He further asserts that he also personally witnessed other unidentified individuals doing the same, as well as entering the polling place wearing "Passaro for Mayor" t-shirts.

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.

5. The Complainant makes a second allegation that Ms. Marx and other unidentified individuals were handing out “official ballots” to voters with only the democratic line visible and were telling voters that they could only vote for the democrats and that such act constituted “violations of election law, suppressing the vote, intimidation, coercion, and misrepresentation.”

Law

6. 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. . . . (Emphasis added.)

7. General Statutes § 9-363 reads:

Any person who, with intent to defraud any elector of his or her vote or cause any elector to lose his or her vote or any part thereof, gives in any way, or prints, writes or circulates, or causes to be written, printed or circulated, any improper, false, misleading or incorrect instructions or advice or suggestions as to the manner of voting on any tabulator, the following of which or any part of which would cause any elector to lose his or her vote or any part thereof, or would cause any elector to fail in whole or in part to register or record the same on the tabulator for the candidates of his or her choice, shall be guilty of a class D felony.

8. General Statutes § 9-364a reads:

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.

Respondent's Answer

9. The one identified Respondent here, Ms. Marx, provided timely and detailed responses to the Complainant's allegations. In summary, the Respondent generally denies the allegations and asserts that while she doesn't deny electioneering outside of the 75' zone, she had no memory of electioneering within it.

Investigation

10. The Complainant left little from which the investigation could work. No additional respondents were specifically identified in the Complaint and after a thorough search, none were found during the course of the investigation.
11. No witnesses who could corroborate the allegations were provided by the Complainant and none were found during the course of the investigation.

12. The flyer discussed in the Complaint was not provided by the Complainant, nor was it discovered during the course of the investigation.
13. The video provided by the Complaint did not portray any electioneering within the restricted area, but merely a conversation between Respondent Marx and a voter *after* such voter had cast a ballot (whether such conversation occurred within the 75' zone is unclear).

Analysis and Conclusion

14. The investigation here found no corroborating evidence establishing that it was more likely than not that Respondent Marx, or any other individual, conducted prohibited activities in the 75' restricted area enumerated in General Statutes § 9-236 (a). This allegation is unsupported and should be dismissed.
15. Additionally, no evidence was provided or found regarding the flyer that the Complainant alleges was impermissible.
16. Moreover, flyers depicting a faux-ballot featuring only those candidates for which the proponent supports is a common campaign communication utilized around the polling places. Importantly, the Commission has repeatedly found that such flyers are not *per se* impermissible. *In the Matter of a Complaint by Edward Rosenblatt, Southington*, File No. 2015-178 (“Moreover, it is a common campaign practice to utilize modified mock ballots to encourage voters to elect candidates of a particular party. Generally, the Commission has held that such mock ballots do not constitute a violation of General Statutes § 9-363 so long it is clear to the reasonably prudent elector that such voter need not only vote for the highlighted candidates.”) See also, *In the Matter of a Complaint by Harry Lew, Southington*, File No. 2015-155; *In the Matter of a Complaint by Amy Harris, Wilton*, File No. 2009-144; *In the Matter of Complaints by Kathleen Prudden and Elizabeth A. Rhoades, Stafford Springs*, File No. 2007-405; and *In the Matter of a Complaint by Stephen Simoncini, Clinton*, File No. 2006-141.
17. There is nothing in the description provided by the Complainant or in any other evidence provided and/or found that would indicate that it was unclear to the reasonably prudent elector that such elector need not only vote for the highlighted candidates. As such, this allegation should be dismissed as well.
18. Considering the aforesaid, the Commission concludes that the evidence is insufficient to establish any violation here. Accordingly, this matter should be dismissed.

ORDER

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

Dismissed.

Adopted this 23rd day of March, 2018 at Hartford, Connecticut.

A handwritten signature in black ink, appearing to read "Anthony J. Castagno", written over a horizontal line.

Anthony J. Castagno, Chairperson
By Order of the Commission