

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Referral by Nancy Ahern, New Haven

File No. 2018-011A

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Clifton Graves, of the City of New Haven, 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:

1. The Referring Official, was the moderator for the 25th Ward polling place held in the Edgewood School in New Haven for the November 7, 2017 general election.
2. She asserted that Clifton Graves, candidate for Probate Judge entered the polling place room at which time she confronted him in the moment and told him to leave. She asserted that at first Respondent Graves would not agree that he could not be there, but that the Referring Official insisted that he depart and he eventually complied.
3. General Statutes § 9-236 enumerates the permissible activity inside and up to 75' outside the building housing a polling place and reads as follows:

(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.

...
(c) No person except those permitted or exempt under this section or section 9-236a and primary or election officials and party checkers appointed under section 9-235 shall be allowed within any polling place except for the purpose of casting his vote. Representatives of the news media shall be allowed to enter, remain within and leave any polling place or restricted area surrounding any polling place to observe the election, provided any such representative who in any way interferes with the orderly process of voting shall be evicted by the moderator. A number of students in grades four to twelve, inclusive, not to exceed four at any one time in any one polling place, may enter any polling place between twelve o'clock noon and three o'clock p.m. for the purpose of observing the activities taking place in the polling place, provided there is proper parental or teacher supervision present, and provided further, any such student who in any way interferes with the orderly process of voting shall be evicted by the moderator. An elector may be accompanied into any polling place by one or more children who are fifteen years of age or younger and supervised by the elector if the elector is the parent or legal guardian of such children. Any person who violates any provision of this section or, while the polls are open for voting, removes or injures any such distance marker, shall be fined not more than fifty dollars or imprisoned not more than three months, or both. (Emphasis added.)

Investigation

4. The investigation was able to confirm the allegations of the Referring Official from other polling officials present there that day, including detail recollections from machine tenders Bruce Larkin and Judith Caldwell.

5. Both individuals witnessed the Referring Official confront Respondent Graves and confirmed that he greeted people while in the area and resisted at first before finally relenting and leaving.
6. Additionally, the Referring Official kept a detailed moderator's diary, with entries detailing the access by the Respondent.
7. The moderator's diary entries line up substantially with the Referring Official's account, as well as the accounts of the corroborating witnesses.

Response

8. During the investigation, Respondent Graves admitted that he did enter the polling place, but averred that he did not realize that it was impermissible.
9. The Respondent asserted that he visited over 30 polling locations on the date in question and explained that his intent was to go to the polling places to thank poll workers and campaign workers.
10. The Respondent further asserted this is the first time he experienced any issue at a polling place and did not know it was improperly promised that it would not occur in the future.

Analysis

11. General Statutes § 9-236 (c), which covers the room in which the machines are located, is treated as a strict liability statute by the Commission.
12. Any incursion by an unauthorized individual is considered a violation of the provision, regardless of the character of the incursion.
13. General Statutes § 9-236 (a), which covers the interior areas outside the room in which the machines are located and all the way up to 75' from the outside entrance, is not as strict and does require an analysis of the character and intensity of the activity.
14. Subsection (a) is concerned mainly with whether the individual was loitering and/or electioneering.
15. However, subsection (c) requires no analysis of the character and intensity of the activity, even if such activity is innocent and/or unrelated to elections activity, such as utilizing a

bathroom located within the same room. *In the Matter of a Complaint by Jon Kisluk, Plainville*, File No. 2011-081 (moderator correctly restricted access to bathroom located within the polling place room housing the tabulators to only voters, election officials, and other specifically authorized individuals under § 9-236 (c)).¹.

16. Considering the aforesaid, liability is straightforward here. The Commission concludes that the violated General Statutes § 9-236 (c) by entering the Edgewood School polling place in New Haven during the November 2017 General Election without authorization

Resolution

17. General Statutes § 9-7b (a) (2) (A) 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 to 9-19k, inclusive, 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.

18. 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.

19. It is clear from the restrictions in § 9-236 (a) and 9-236 (c), as well as the moderator's authority to suppress disorder in § 9-230 that the sanctity of the polling place is a priority in Title 9. However, the Commission has generally been forgiving where a respondent is before it for a violation of 9-236 for the first time. Resolutions of § 9-236 (c) violations have generally resulted in henceforth orders for first-time offenders, although there have been some civil penalties for more egregious violations. See, e.g., *In the Matter of a*

¹ Utilizing a bathroom located within the subsection (a) restricted areas is not necessarily a violation. See, e.g., *In the Matter of a Complaint by Linda Szykowitz*, File No. 2016-093, ¶ 6 and *In the Matter of a Complaint by Patricia Farady, Bridgeport*, File No. 2014-029, ¶ 20.

Complaint by Linda Szykowitz, Middletown, File No. 2016-093 (candidate admitted entering polling place room to use bathroom; no prior history; henceforth order); In the Matter of a Complaint by Sharon Benedict, Roxbury, File No. 2013-089 (After casting his ballot, candidate remained in the polling place room to converse with his daughter, a polling place official; no prior history; henceforth order); In the Matter of a Complaint by Allen J. Friedrich, Glastonbury, File No. 2012-117 (Respondent, a sitting legislator, entered polling place multiple times during primary in which he was not on the ballot and spoke with voters and brought polling place workers coffee; no prior history; henceforth order); In the Matter of a Complaint by Victoria S. Harlow, Haddam, File No. 2006-167 (Respondent entered the polling place and remained there for 10 minutes to bring and distribute homemade fudge to polling place workers; henceforth). However, see e.g., In the Matter of a Complaint by Ira Johnson, New Haven, File No. 2007-350 (Candidate entered polling place 5 times for periods of 20-30 minutes throughout Election Day; \$200 civil penalty for candidate; \$100 for moderator who allowed candidate to remain)

20. The Respondent here has no prior history in this area and appears to have been genuinely ignorant of the restrictions on him. Respondent Graves even made statements against his interest in admitting that he may have made similar unauthorized incursions in other polling places.
21. There is no question that the Respondent was in the voting room. However, this incursion was limited in time, as the Referring Official was quick to act. Consistent with prior matters, the Commission does not believe that a civil penalty is warranted here, provided that the Respondent enter into a consent agreement in which he henceforth agrees to strictly abide by General Statutes § 9-236 in the future.
22. The Respondent admits 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 Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
23. 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.

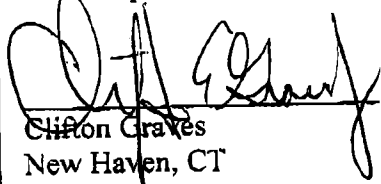
24. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn and may not be used as an admission by the Respondent in any subsequent hearing, if the same becomes necessary.

25. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

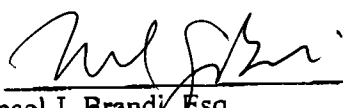
ORDER

That the Respondent will henceforth strictly comply with General Statutes § 9-236.

The Respondent:


Clifton Graves
New Haven, CT


For the State of Connecticut:

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

Dated: 1/17/20

Dated: 2/5/2020

Adopted this 5th day of February of 2020 at Hartford, Connecticut


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