

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by MaryAnn Rivera, East Haven

File No. 2018-021

FINDINGS AND CONCLUSIONS

The Complainant alleged that Respondents Dominic Cretella, Linda Hennessey, and Steven Tracey influenced or attempted to influence by force, threat, and/or corrupt means, her speech while she was attempting to campaign for the Democratic candidate for mayor outside the Overbrook School polling place in East Haven during the November 7, 2017 municipal election.¹

Introduction

1. Respondents Dominic Cretella, Linda Hennessey, and Steven Tracey were candidates for the East Haven Town Council during the November 7, 2017 municipal election. Mr. Tracey and Ms. Hennessey were nominees on the Republican Party line and Mr. Cretella was a nominee on the Democratic Party line.
2. At all times relevant to the instant Complaint, the Respondents were all poll standing outside of the Overbrook School polling place in East Haven.
3. The Complainant here alleges that sometime around noon on Election Day she arrived at the Overbrook School polling place to poll stand and advocate for Salvatore Maltese, the Democratic Party nominee for mayor.
4. She alleges, in pertinent part, that:
 - a. Upon her arrival Respondents Tracey and Hennessey approached the Complainant and told her to leave;
 - b. That Respondents Tracey and Hennessey “began yelling at me and calling me names;”

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.

- c. That Mr. Tracey said “you people don’t belong here and should move out of town. You are a troublemaker, no one likes you and you don’t fit in and can’t get along with anyone. Stop pulling the race card;”
- d. That Ms. Hennessey “took her phone put it into my face dialed the police and said ‘they’re coming to arrest you and drag you away;”
- e. That Respondents Tracey and Hennessey told her “we don’t want your people here;”
- f. That upon the Complainant telling the Respondents that she was there to support Mr. Maltese, Mr. Tracey “came at me and took out a bull horn and blew it in the back of my head;”
- g. That Mr. Tracey “began stopping cars pointing at me telling them out loud that I am a troublemaker Latin that has a lawsuit against the town;”
- h. That Mr. Tracey told the Complainant that he would “take care of her later;”
- i. That Respondent Cretella was “calling me dirty names about Latin people and said everywhere you people go there is trouble;”
- j. That “after a while I had to leave I was afraid of what they would do to me . . . because they said they would carry me out if I did not leave.”

Law

- 5. General Statutes § 9-364a provides:

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.

Investigaton

Response

- 6. In their joint response, Respondents Tracey and Hennessey generally deny any implication by the Complainant that they intentionally influenced or attempted to influence by force, threat, bribery or corrupt means, the speech of the Complainant.

7. Further, Respondents Tracey and Hennessey specifically denied that any of the pertinent allegations made by the Complainant actually happened as asserted by the Complainant.
8. They responded in detail, through Counsel, in pertinent part:
 - a. "On Election Day, both [Mr. Tracey] and [Ms. Hennessey] arrived at the polls prior to their opening at 6:00AM and remained at the polls for the entirety of the day up until approximately 7:45PM in order to talk to voters and campaign for themselves and the Republican ticket."
 - b. "At approximately noon, Mrs. Mary Ann Rivera arrived at the District 4 polling location, walked over to where Mr. Tracey and Ms. Hennessey were standing (under the tent both Democratic and Republican candidates were sharing), and used a bull horn to start shouting 'Vote for Sal Maltese. Get rid of the hatred in this town.'"
 - c. They assert that the following approximate exchange took place:
 - i. "Mrs. Hennessey asked what Mrs. Rivera was doing and pointed out that all of the candidates were "getting along."
"Mrs. Rivera stated something to the effect that 'You're all against our people. What are you going to do? Call the police? You have a phone in your hand.'"
"Mrs. Hennessey responded, I don't want to. We're all getting along here."
 - d. "In light of Mrs. Rivera's conduct, Mrs. Hennessey considered calling the police to help diffuse the situation. However, she never did. Immediately following the above exchange, Letizia Lettieri [Morales], a Democrat running for Town Council in District 4, approached Mrs. Rivera to speak to her, led her away from the area in which [Mr. Tracey] and Linda Hennessey were standing, and spoke to Mrs. Rivera. A few moments later, Ms. Lettieri [Morales] approached [Mr. Tracey] and [Ms. Hennessey] and informed them that Mrs. Rivera would be leaving. Shortly thereafter, Ms. Lettieri [Morales] walked Mrs. Rivera to her vehicle and she proceeded to leave"
 - e. "With the exception of the approximately twenty minutes that Mrs. Rivera was present at the District 4 polling location on Election Day, all of the candidates conducted themselves respectfully. Candidates from both tickets shared the same tent, chairs, food, water, blankets, and other items necessary to weather a cold day at the polls. Although Mrs. Rivera was disruptive, rude, and antagonistic, [Mr. Tracey] and [Ms. Hennessey] did nothing corrupt, forceful, or otherwise unlawful to antagonize or threaten Mrs. Rivera or otherwise compromise her rights to speak at the polls or influence voters on Election Day. Quite to the contrary, Mrs. Rivera was both disruptive and rude at the polls on Election Day, which eventually prompted Ms. Lettieri (a candidate on the Democratic ticket) to intervene to diffuse the situation. Although Mrs. Rivera attempts to paint [Mr. Tracey] and [Ms. Hennessey]

as the aggressors, it was Mrs. Rivera that disrupted the otherwise harmonious relations among all of the candidates at the polls on Election Day.”

9. Respondent Cretella, a Democrat who asserted that he supported the same candidates as the Complainant, generally denied both the overall allegation, as well as the specific facts alleged:
 - a. “EVERYTHING in her complaint is a lie. NOTHING happened as she stated at all. If anything she started trouble and Letizia [Lettieri Morales] and I told her negative comments about the Republicans are not going to get Sal [Democratic Mayoral Candidate Salvatore Maltese] elected.
10. Additionally, Respondent Cretella stated that “Everyone that was there knows what happened when Maryann showed up with the bullhorn.... No one wanted her there but no one called her names, threatened her, or tried to push her.”
11. Letizia Lettieri Morales, a Democratic Party candidate for Board of Education and a witness to the events, also submitted a statement asserting that the Complainants recitation of facts was a “complete fabrication.”
12. Commission investigators obtained a video taken from a surveillance camera mounted on the Overbrook School and facing the parking lot. Below is Legal Investigator Branfuhr’s report on relevant activity observed on the video:

At about 12:25hrs, a brown [pickup truck] pulls into the driveway of the school and parks on the right side of the driveway. Person exits [pickup truck] (presumed to be Rivera) and walks up to the Maturo supporters (a group of about 6 supporters). Conversations appear to occur, but no audio was provide[d] with video. The group does not appear to be circling Rivera, as stated in her complaint. Rivera is actually standing off to the side of this group. Rivera walks away from this group and appears to enter the school (presumably to vote, CVRS has her voting in person at Overbrook). She returns to parking lot at about 1230hrs. She appears to be standing with the same group after the video jumps ahead (about 60 secs). At 1235hrs, Rivera is seen standing near this Maturo group and walking among them and talking to her megaphone. At about 1:02hrs, a male (allegedly Steve Tracy) walks up behind Rivera, holds an object to his mouth and leans towards Rivera. He appears to say something to Rivera and walks away. Rivera then turns to this group and

appears to be talking on her megaphone. At 1:08hrs, Rivera walks to truck and leaves.

Analysis

13. Under General Statutes § 9-7b, for potential violations of § 9-364a the Commission has only investigative authority and the ability to refer matters to the Chief State's Attorney. The Commission does not possess any direct administrative jurisdiction such as the ability to notice hearings under the Uniform Administrative Procedures Act or impose penalties after such hearings.²
14. Statutes that contain criminal penalties should be strictly construed against the state.³ Accordingly, the Commission has strictly construed § 9-364a to determine whether any individual's "vote" or "speech" were influenced.⁴
15. In such matters, the Commission has applied the following dictionary definition of "threat" for purposes of § 9-364a: "1. any expression of an intention to inflict pain, injury, evil, or punishment. 2. An indication of impending danger or harm."⁵
16. The Commission has applied the following dictionary definition of "corrupt" for purpose of "corrupt means" under § 9-364a. "[I]mmoral and/or depraved" or "contrary to accepted moral principles."⁶
17. "In order to conclude that General Statutes § 9-364a was violated, the Commission must decide that, given the evidence, it is more likely than not that: 1) the Respondent voluntarily committed an act that influenced [any person's] speech and/or voluntarily committed an act that was intended to influence [any person's] speech regardless of whether [any person's] speech was actually influenced; and 2) that the Respondent did so by using force, threat, bribery or corrupt means."⁷

² See *In the Matter of a Complaint by Dianne M. Daniels, et al.*, Norwich File No. 2013-128 at page 2; *In the Matter of a Complaint by Joseph Cardillo, Cromwell*, File No. 2010-030 at page 4.

³ See *State v. Ross*, 230 Conn. 183, 200 (1994); *State v. Russell*, 218 Conn. 273, 278 (1991); *State v. Torres*, 206 Conn. 346, 355 (1988); *In the Matter of a Complaint by Dianne M. Daniels, et al.*, Norwich File No. 2013-128 at page 2; *In the Matter of a Complaint of Joseph Cardillo, Cromwell* File No. 2010-030 at page 5.

⁴ *Daniels* at page 2; *Cardillo* at page 5.

⁵ *American Heritage Dictionary, Second College Edition*, 1985. See *Daniels* at page 2; *Cardillo* at page 5. Citing *Picco v. Voluntown*, 295 Conn. 148 for the proposition that to ascertain the commonly approved usage of terms, the Commission can look to their dictionary definitions.

⁶ See *Daniels* at page 3; *Cardillo* at page 6.

⁷ See *Daniels* at page 3; *Cardillo* at page 5.

18. Turning to the question here, even considering the Complainant's allegations in the most favorable light, the only claim here would be that either Ms. Hennessey's alleged statement about calling the police or Mr. Tracey's alleged statement to "take care of [her] later" was a "threat" for purposes of § 9-364a. The statements alleged to have been said by Mr. Cretella, which are unsupported by the investigation, would not amount to a "threat" or other form of violation of § 9-364a.
19. As far as Mr. Tracey's statement is alleged, such allegation was completely unsupported by the facts discovered during the course of the instant investigation. The video of the alleged incident was inconclusive and multiple witnesses, from both political parties, made statements refuting this allegation.
20. Ms. Hennessey does not necessarily deny that she considered calling the police, but even assuming that she threatened to do so—which she does not specifically admit—this statement is reasonably within her free speech rights to make. Indeed, in *Daniels, supra*, the respondent was alleged to have threatened to take legal action against the Complainant through court, the Secretary of State's Office, and/or with the Commission. The Commission concluded in *Daniels* that such speech was consistent with the "policy in favor of free access to the judicial system [that] militates against the characterization as improper of threats to commence civil process, even if the claim on which the process is based eventually proves to be without foundation."⁸
21. Even more relevant here, in *In the Matter of a Complaint by Joseph & Marjorie Marion, Putnam*, File No. 1993-119, the Commission dismissed an allegation of a violation of § 9-364a concluding, *inter alia*, that the respondent's act of calling the police—which led to the complainant's arrest—and asking the complainant to move a campaign sign did not sufficiently establish a "threat" pursuant to § 9-364a.
22. Considering the aforesaid, this matter should be dismissed.

⁸ Daniels at page 3, citing *Williston on Contracts* Section 71:26.

ORDER

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

That the matter is dismissed.

Adopted this 20th day of February, 2019 at Hartford, Connecticut.



~~Anthony J. Castagno, Chairperson~~

By Order of the Commission

Salvatore Bramante - Vice Chair