

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

Complaint by Patricia A. Plourde, Middletown

File No. 2012-006

FINDINGS AND CONCLUSIONS

This Agreement, by and between Janice A. Gionfriddo and Sandra L. Faraci, of the City of Middletown, County of Middlesex, 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 Complainant brings this Complaint pursuant to Connecticut General Statutes § 9-7b, alleging that during the November 8, 2011 General Election in Middletown, she was negligently taken off the voter rolls by the Registrar of Voters' office.
2. On the day of the November 8, 2011 General Election, the Complainant had been a resident of Middletown and a registered voter at a bona fide single-family residential address since 2004.
3. On that day, the Complainant arrived at the District 10 polling place and was told by the moderator that the Registrars' Office told the moderator to cross the Complainant's name off the list due to notice that the Registrars' Office received that day of a change of address within town. The Complainant was further told that her address was changed to an apartment located within District 1.
4. After the Complainant insisted that she had not moved and showed identification to the moderator, the moderator called the Registrars' Office. After approximately 20 minutes the moderator told the Complainant that there had been an error; she was allowed to fill out a form reinstating her registration and she voted on that day.
5. The Respondents here are Janice A. Gionfriddo and Sandra L. Faraci, respectively the Republican and Democratic registrars of voters in Middletown. The Respondents assert that Nancy Conaway-Raczka, an assistant in the Respondents' office, received a telephone call from the moderator at the District 1 polling place who claimed that a Patricia A. Plourde had presented herself to vote and that the voter claimed that she needed to change her address. Ms. Conaway-Rascka searched the voter list using "Patricia A. Plourde" as the criteria and found the Complainant's registration, which listed the single-family address within District 10. She told the moderator to inform the voter at District 1 to fill out a

registration card including her old address and her new address and that after doing so she would be permitted to vote.

6. The Respondents further assert that after speaking with the District 1 moderator, Ms. Conaway-Rascka called the District 10 moderator and told her to cross "Patricia A. Plourde" off the list at District 10.
7. At no point in the day did Ms. Conaway-contact either Respondent Registrar to tell them of what occurred. It was only later in the day when she received a telephone call from the Complainant that she realized that something had gone wrong. After speaking with the Complainant, she looked into the matter more deeply and discovered that the Patricia A. Plourde in District 1 and the Complainant Patricia A. Plourde (in District 10) had different dates of birth and were two different individuals.
8. The Respondents assert that it was only when the moderator bags came in after the elections that they discovered that the registration statement filled out by the District 1 Patricia A. Plourde indicated a prior registration address located in New Britain. She then entered the District 1 Patricia A. Plourde as a new voter.
9. Finally, the Respondents assert that Ms. Conway-Rascka was acting not on her own, but under the authority of the Registrars' Office. On Election Day, both registrars and both assistants were taking calls directly and the Respondent Registrars trusted the assistants to see through most issues on their own without consulting them
10. The registration deadlines for new voters are enumerated in General Statutes § 9-17, which reads, in pertinent part:

(a) For the purposes of this section, "primary day" means the day that a primary for state, district and municipal offices is being held in accordance with section 9-423, and "election day" means the day of each regular election. (1) The registrars of voters of each town shall hold sessions to examine the qualifications of electors and admit those found qualified on the dates and at the times set forth in this section. Such sessions shall be held on the following days during the hours indicated, except as provided in subdivision (2) of this subsection:

| Day | Hours |
|--|---|
| Fourteenth day before primary day | any two hours between 5:00 p.m. and 9:00 p.m. |
| Saturday of third week before election day | 10:00 a.m. to 2:00 p.m. |
| Seventh day before election day | 9:00 a.m. to 8:00 p.m. |

The session of the registrars of voters on the seventh day before election day shall be the last regular session for the admission of electors prior to an election, as defined in subsection (y) of section 9-1. (2) No town having a population of less than twenty-five thousand persons shall be required to hold sessions for admission of electors on the fourteenth day before primary day.

(b) Notwithstanding the provisions of subsection (a) of this section, the registrars of voters shall hold a limited session on the last week day before each regular election from nine o'clock a.m. to five o'clock p.m. for the purpose of admitting only those persons whose qualifications as to age, citizenship or residence in the municipality were attained after the last session for the admission of electors prior to an election. The registrars shall enter the names of those electors admitted at such limited session on the proper list, with their residences by street and numbers.

11. General Statutes § 9-32, reads, in pertinent part:

...

(b) No elector's name shall be removed from the registry list, pursuant to section 9-35, unless (1) the elector confirms in writing that the elector has moved out of the municipality, or (2) the elector has been sent, by forwardable mail, a notice and a postage prepaid preaddressed return card in accordance with the National Voter Registration Act of 1993, P.L. 103-31, as amended from time to time, four years prior to removal from the registry list and such elector has failed to respond and has not restored the elector's name to the active registry list under section 9-42 or voted in an election or primary in the municipality

during the period beginning on the date of the notice and ending four years later. If a registrar or a registrar's designee conducts a telephone canvass, a telephone call by any such person shall constitute an attempt to contact the elector only if the elector's household has a published telephone number and the telephone is in operating order. If a registrar, or a registrar's designee, during a telephone canvass contacts a telecommunication device for the deaf in an elector's household, such call shall not constitute an attempt to contact the elector unless the registrar, or the registrar's designee, uses a similar device or uses a message relay center. No elector's name shall be removed from the active registry list pursuant to said section 9-35 as a result of information obtained during a telephone canvass, unless the registrar believes such information is reliable and sufficient to enable the registrar to determine if the elector is entitled to remain on the list under the provisions of this chapter. (Emphasis added.)

12. General Statutes § 9-35, reads, in pertinent part:

...
(e) In any case in which the registrars have obtained reliable information of an elector's change of address within the municipality, they shall enter the name of such elector on the registry list at the place where the elector then resides, provided, if such reliable information is the National Change of Address System of the United States Postal Service, the registrar shall change the registry list and send the elector a notice of the change by forwardable mail and a postage prepaid preaddressed return form by which the elector may verify or correct the address information. . . . *In each municipality, any elector, upon change of residence within the municipality, may cause the elector's registration to be transferred to the elector's new address by presenting to the registrars a signed request therefor, **stating the elector's present address, the date the elector moved to such address and the address at which the elector was last registered.** The registrars shall thereupon enter the elector's name on the list at the elector's new residence; **provided no transfer of registration shall be made on the registry list on election day without the consent of both registrars.** (Emphasis added.)*

13. Section 9-35-2 of the Regulation of Connecticut State Agencies reads, in pertinent part:

(a) An elector who changes his address within a municipality may, at any time, pursuant to Conn. Gen. Stats. § 9-35, request that his

registration be transferred to his new address by presenting a written request therefor to either registrar of voters, by letter or upon the form prescribed by the Secretary of the State, stating his present address, the date he moved to such present address, and the address at which he was last registered, provided that a request received on election day or primary day, as hereinafter provided, shall contain a written statement by the elector, under penalties of false statement, that such elector has not voted prior to the time of such request for transfer at said election or primary either by absentee ballot or in person at any other polling place. The request for transfer of registration must be signed by the elector and submitted either in person or by mail by either the elector or any person of the elector's choice. Upon receipt of a request for transfer of registration, such registrar shall forthwith transfer the elector's name on the registry list to the elector's new residence. *Requests for transfer of registration may be made on election or primary day at a polling place by submitting such request to the registrar(s) of voters (singly in a primary) or assistant registrar(s) of voters (singly in a primary) if a registrar is not present at the polling place. Upon receipt at a polling place of a request for transfer of registration by an assistant registrar(s) on election or primary day, such official(s) shall contact the registrar(s) of voters for the purpose of verifying that the elector's name appears on the registry list at his former address. Upon such verification such official(s) shall immediately enter the elector's name on the registry list at the elector's new residence, attach the completed request for transfer thereto, and the elector shall be permitted to vote. No elector shall be required to appear in person at the office of the registrars to request a transfer of registration on election or primary day. Before the close of the polls, the registrar(s) must contact the polling place officials at the polling place in the voting district where the elector was formerly registered to notify such polling place officials to remove the elector from the registry list. . . . (Emphasis added.)*

14. As an initial matter, the Commission finds that the evidence shows that there are two Patricia A. Plourdes in Middletown. The Complainant has been a registered voter in town since 2004. The other Patricia A. Plourde had been previously registered, also since 2004, in the towns of New Britain, West Hartford, and Southington. There is no evidence that the other Ms. Plourde was not a bona fide resident at the District 1 apartment in Middletown on the day of the November 2011 General Election.

15. However, at the time the other Ms. Plourde presented herself to the District 1 moderator, she was still a registered voter in *New Britain*, a fact that was clearly indicated on her written request to change her registration that was submitted at the polling place. There is no evidence that the other Ms. Plourde submitted a new registration in Middletown prior to the date of the election.
16. As such, the Commission concludes that the District 1 Patricia A. Plourde was not permitted to vote in Middletown on that day, even if she was a bona fide resident of the town, because she had failed to make the transfer before the deadlines set in General Statutes § 9-17.
17. When the other Ms. Plourde presented herself to the moderator at the District 1 polling place and indicated that she was registered at a prior address, the moderator should have referred the matter to the Assistant Registrar at that polling place. Instead, he called the office of the Registrar of Voters directly. When the call about the other Ms. Plourde came in to Ms. Conaway-Rascka, she should have first asked to speak with the Assistant Registrar at the polling place and then put that person in touch with both Registrars of Voters. She then should have asked the Assistant Registrar to have the voter *first* fill out the Request for Transfer Form (a new registration is acceptable). Once that form was completed, she should have delivered *that* information to the Registrars so that they could *both* verify her prior address against her new address and so that *both* could decide whether the other Ms. Plourde should be allowed to vote at the District 1 address.
18. Instead, Ms. Conaway-Rascka not only failed to speak with the Assistant Registrar at the District 1 polling place, she handled the entire transaction without speaking with the Registrars. Moreover, instead of using the information from the other Ms. Plourde's transfer request, she independently looked up "Patricia A. Plourde" herself based on only the name given to her by the moderator, found the Complainant's registration and *assumed* that this was the voter at the District 1 polling place.
19. Had Ms. Conaway-Rascka followed the procedures properly, not only would she have discovered that there were 2 Ms. Plourdes, she would have discovered that the other Ms. Plourde was a registered voter in New Britain, had not yet transferred her registration and *did not have a right to vote in Middletown on that day*.
20. Considering the aforesaid, the Commission concludes that the Respondents, through their employee via the doctrine of *respondeat superior*, violated General Statutes § 9-32 by improperly removing the Complainant from the rolls and violated General Statutes § 9-17 by registering the other Ms. Plourde and allowing her to vote in the 2011 General Election in Middletown.

21. In conclusion, Connecticut General Statutes § 9-7b (a) (2) provides that the Commission may assess a civil penalty of 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.
22. Here, the Registrars' office failed in its responsibilities under the voter registration statutes. As a result of Ms. Conaway-Rascka's errors, not only did the Complainant nearly lose her right to vote in the 2011 General Election, the other Ms. Plourde was permitted to consummate a "same-day" registration not permitted by law.
23. Respondent Faraci has been a registrar in Middletown since approximately 1998; Respondent Gionfriddo has been a registrar in Middletown since approximately 2000. Ms. Conway-Rascka has been an employee with the Middletown Registrar's Office for over 5 years. The Respondents are expected to know the rules regarding the transfer of voters within the municipality and should have trained their employees on the same, especially the requirement that both registrars approve the transfer.
24. However, the Commission also takes notice that neither respondent has any prior violations before the Commission. Moreover, there appears to be no evidence that there was any malicious intent under these facts. Both Respondents and Ms. Conway-Rascka have been forthcoming and responsive in the instant investigation. In the end, the error was discovered fairly quickly and the Complainant was permitted to vote after approximately 20 minutes.
25. As concerns the inadvertent "same day" registration, while this is something that was impermissible at the time, Public Act No. 12-56 of the 2012 Public Acts introduced Election Day Registration ("EDR") effective July 1, 2013, allowing voters to register and vote on the same day. The Commission has in the past acknowledged future legislative intent in older cases in which laws have subsequently changed in a Respondent's favor. *See, e.g., Complaints of Kenneth Heidkamp & Patrick DeAngelis*, File Nos. 2008-154 & 2008-162, ¶ 21 (Recognizing the prospective elimination of such requirement in Public Act No. 10-187 of the 2010 Public Acts, penalty waived for failure to file a campaign finance certification for a group spending under \$1,000 in a referendum.)

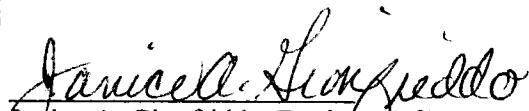
26. Considering both the aggravating and mitigating facts in this matter, the Commission concludes that the specific facts of this case warrant a civil penalty of \$100 for each Respondent.
27. However, the Commission agrees to waive the aforementioned civil penalty provided the Respondents agree to do the following:
 - a. Accept a formal reprimand from the Commission;
 - b. Agree to henceforth strictly comply with General Statutes §§ 9-17 & 9-32; and
 - c. Send a letter of apology, signed by both Respondents, to the Complainant for improperly removing her from the voting rolls.
28. The Respondents agree that if either of the Respondents fails to meet the above conditions for waiver, both Respondents shall be responsible for the aforementioned civil penalty.
29. Respondent admits all jurisdictional facts and agrees 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. Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.
30. 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.
31. 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.
32. Upon the Respondents' compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

ORDER

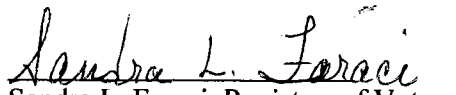
IT IS ORDERED THAT:

- a. Respondents are reprimanded for their violations of General Statutes §§ 9-17 and 9-32;
- b. Respondents will henceforth strictly comply with General Statutes §§ 9-17 & 9-32;
- c. Respondents will pay a civil penalty of \$100 each, unless both Respondents send a letter of apology, signed by both Respondents, to the Complainant for improperly removing her from the voting rolls.

The Respondents:

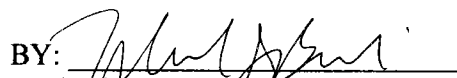

Janice A. Gionfriddo, Registrar of Voters
Middletown, CT

Dated: Nov. 30, 2012


Sandra L. Faraci, Registrar of Voters
Middletown, CT

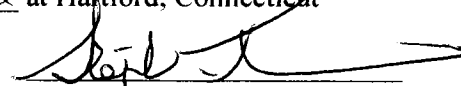
Dated: Nov. 30, 2012

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: 12/6/12

Adopted this 19 day of December of 2012 at Hartford, Connecticut


Stephen F. Cashman, Chair
By Order of the Commission