

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In re: Referral by Greenwich Registrars of Voters

File No. 2013-007

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Craig Bibb, of the Town of Kent, County of Litchfield, 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 officials here presented records from the registrars of voters offices for the towns of Kent and Greenwich showing that the Respondent was registered to vote in both towns starting in 2009 and voted in both towns in the November 2009 and 2011 municipal general elections.
2. During all times relevant to the instant matter, the Respondent was the owner in fee of residential properties in the towns of Kent and Greenwich. Public property records in Kent and Greenwich indicate that Respondent Bibb bought the properties in these towns in 1994 and 1999, respectively. He continues to own both properties, on which each has a habitable residential dwelling. The Kent property spans into New Preston (part of the Town of Washington) and gets its mail through New Preston, but the dwelling unit is located in Kent.¹
3. From on or about October 29, 1996 until on or about September 7, 2007, the Respondent was a registered voter at the home he owns on Lake Waramaug Road in Kent.
4. On or about September 7, 2007, the Respondent submitted a Voter Registration Application ("VRA") to the Greenwich registrars of voters to register to vote at the home that he owns on Cedar Hill Road in Greenwich.
5. Although the Respondent failed to declare his prior registered address in Kent, the Greenwich registrars made a determination of his prior registration in Kent and sent the Kent registrars of voters a notice of cancellation to the Kent registrars under General Statutes § 9-21, at which point his Kent registration was canceled.

¹ Per General Statutes § 9-12, the location of a person's dwelling unit determines that person's town for purposes of registration and voting.

6. The Respondent voted in the November 2007 municipal general election, the February 2008 presidential preference primary and the November 2008 state general election using his registration in the Town of Greenwich.
7. On or about October 22, 2009, the Respondent submitted a VRA at the Kent address, declaring his active registered address in Greenwich.
8. Despite the Respondent's declaration of a prior registered address, the Kent registrar of voters office failed to send the Greenwich registrars of voters a notice of cancellation under General Statutes § 9-21 and created a new registration for the Respondent in Kent, thus leaving him with active registrations in both towns.
9. During the November 2009 municipal general election, the Respondent voted in person in both Kent and Greenwich.
10. The Respondent did not vote in either town in 2010.
11. During the November 2011 municipal general election, the Respondent again voted in person in both Kent and Greenwich.
12. During the August 2012 state primary and the November 2012 state general election, the Respondent only submitted a ballot from the Town of Kent, in person.
13. Respondent here does not deny the facts alleged in this Referral. Rather, he admits that he registered and voted in both towns. However, he asserts that it was his understanding that if a person is a property owner in a town, such person is permitted to vote in the municipal elections where the ballot items, including candidates and referendum choices, would be only local, with no overlapping candidates or referendum questions. He asserts that he understood that he would not be permitted to vote in the same race twice, in a federal election for Senator or President, for instance, but was under the distinct understanding that voting in the municipal elections in each town in the same year was permissible.
14. In support of his assertion, the Respondent cites and provides articles that he had read and relied on concerning enfranchisement of taxpayers who owned vacation or second homes both in the Wall Street Journal and the Associated Press in 2001 and 2000, respectively. The Wall Street Journal article generally described Connecticut as one of the few states that allow nonresident taxpayers to vote in local elections without going into any depth as to any caveats to such voting rights. He also cites General Statutes § 7-6, which allows nonresident taxpayers with assessed property not less than \$1,000 to vote in town meetings.

15. The Respondent asserts that he had a genuine understanding that he was allowed to vote in both towns' municipal elections, and that such understanding was confirmed for him when he re-registered in Kent in 2009, openly declared his registered Greenwich address on the VRA, and the Kent Registrar of Voters kept him registered in both towns.

16. Turning to the legal questions in this matter, in Connecticut, a person may only be registered to vote in one town at a time. When an individual submits a voter registration application ("VRA") such individual is required to provide certain information in the application, including but not limited to whether such person is an elector in another town and/or jurisdiction.

17. General Statutes § 9-20 prescribes the information that an applicant is required to provide when applying for admission, and read, as follow, in pertinent part:

(a) Each person who applies for admission as an elector in person to an admitting official shall, upon a form prescribed by the Secretary of the State and signed by the applicant, state under penalties of perjury, his name, bona fide residence by street and number, date of birth, whether he is a United States citizen, whether his privileges as an elector are forfeited by reason of conviction of crime, *and whether he has previously been admitted as an elector in any town in this or any other state*. Each such applicant shall present his birth certificate, drivers' license or Social Security card to the admitting official for inspection at the time of application. Notwithstanding the provisions of any special act or charter to the contrary, the application form shall also, in a manner prescribed by the Secretary of the State, provide for application for enrollment in any political party, including, on any such form printed on or after January 1, 2006, a list of the names of the major parties, as defined in section 9-372, as options for the applicant. The form shall indicate that such enrollment is not mandatory.

...

(c) The application for admission as an elector shall include a statement that (1) specifies each eligibility requirement, (2) contains an attestation that the applicant meets each such requirement, and (3) requires the signature of the applicant under penalty of perjury. . . . If a person applies for admission as an elector in person to an admitting official, such admitting official shall, upon the request of the applicant, administer the elector's oath. (Emphasis added.)

18. General Statutes § 9-21 requires each applicant to declare if such applicant has been previously admitted in another town and/or jurisdiction at the time of application, requires

the registrars to submit notice of cancellation to the elections administrators of such jurisdiction and if such prior jurisdiction is another town, requires such town's registrar to remove such applicant from its registry list. It reads as follows, in pertinent part:

(a) If any applicant for admission as an elector in any town has previously been admitted as an elector in any other town in this state, or in any other state, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam or the Trust Territory of the Pacific Islands, *he shall, under penalties of perjury, so declare*, and shall also declare by what name and in what town and state, district or territory he was last admitted as an elector and the street address from which he last voted therein. *The admitting official shall within forty-eight hours thereafter transmit a notice of cancellation of such registration*, upon a form prescribed by the Secretary of the State to the registrars of such other town or, in the case of a town in another state, district or territory, to the appropriate registration official or officials in such other town. *Upon receipt of such notice of cancellation of registration, the registrars of the town from which such elector has removed shall forthwith erase the name of such elector from the registry list of the town, if the same has not been erased therefrom. . . .* (Emphasis added.)

19. It is a felony to vote more than once in the same election. General Statutes § 9-360 reads, in pertinent part:

Any person not legally qualified who fraudulently votes in any town meeting, primary, election or referendum in which the person is not qualified to vote, and any legally qualified person who, at such meeting, primary, election or referendum, fraudulently votes more than once at the same meeting, primary, election or referendum, shall be fined not less than three hundred dollars or more than five hundred dollars and shall be imprisoned not less than one year or more than two years and shall be disfranchised. . . .

20. Considering the aforesaid, it is also a civil violation to vote more than once in a primary, election or referendum. General Statutes § 9-7b (a) (2) (Rev. to Jan. 1, 2014) reads, in pertinent part:

(a) The State Elections Enforcement Commission shall have the following duties and powers:

...

(2) To levy a civil penalty not to exceed . . . (C) two thousand dollars per offense against any person the commission finds to have (i) improperly voted in any election, primary or referendum, and (ii) not been legally qualified to vote in such election, primary or referendum, .

...

21. The Respondent is correct insofar as there exists a limited exception to the above rule concerning an individual voting in municipalities in which such individual is not an elector. General Statutes § 9-369d allows municipalities to permit voting on local referendum questions by individuals who are not electors in such municipality. Section 9-369d reads:

(a) Whenever by law a question may be submitted to voters who are not electors of a municipality, the municipality may submit the question to a vote by electors and voters held in conjunction with an election. Except as otherwise provided, the general statutes shall apply to such vote.

(b) (1) The procedures set forth in this subsection shall only apply if a municipality so chooses and only upon approval of such procedure by its legislative body or in any town in which the legislative body is a town meeting, by the board of selectmen.

(2) Voters who are not electors shall vote by separate voting tabulator or paper ballot, containing solely the question, at one separate location which may be a separate room in the location at which electors vote. Such separate location shall be treated as a separate voting district and polling place for such voters, except that the registrars of voters shall appoint a moderator who shall be the head moderator for the purpose of this question only, and such other officials as the registrars deem necessary. The moderator of such separate location shall add the results of the vote by electors on the question to the results of the vote by voters who are not electors, and shall file such results in the office of the municipal clerk. The moderator of such separate location shall be the moderator for the purposes of a recanvass of a close vote on such question under section 9-370a. The head moderator of the town shall indicate on the return of vote of such question filed with the Secretary of the State that such return does not include the return of vote of voters who are not electors.

(c) Voters who are not electors and who are entitled by law to vote by absentee ballot shall be entitled to vote by separate absentee ballot containing solely such question. Such absentee ballot shall be issued beginning on the thirty-first day before the election, or, if such day is a Saturday, Sunday or legal holiday, beginning on the next preceding day.

(d) The warning of the election shall include the location where voters who are not electors may vote.

22. Considering the aforesaid, the Commission concludes that despite the Kent registrars' error in failing to notice Greenwich of the Respondent's Kent registration, the Respondent was nonetheless not legally qualified to vote in Greenwich once he had registered in Kent. As such, by voting in both Kent and Greenwich in the same election in both 2009 and 2011, the Respondent violated General Statutes § 9-7b (a) (2) (C) in both instances.
23. Connecticut General Statutes § 9-7b (a) (2) provides that the Commission may, inter alia, levy a civil penalty not to exceed (A) 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. 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.
24. There is no question that voting twice in the same election in which the same races and/or questions appear on the ballot is a grave offense for which the Commission would generally expect substantial penalties to be levied against any Respondent.
25. However here, while the Respondent voted twice on the same day, there is some question as to whether it was in the same "election" as that term is defined General Statutes § 9-1. That is, even if the Respondent possessed the requisite criminal intent to "double vote," it is unclear that two municipal elections—with separate candidates and/or referendum questions—constitute the same "election." That said, since we have a civil remedy here, we needn't answer this question. However, it does provide some context to what the Respondent did. He voted twice on the same day, but no candidate and/or question received more than one vote from him.
26. Moreover, the only reason that he was able to vote twice in the first place was because of an error by the Kent registrars of voters, which the Commission gives considerable weight in

considering an appropriate remedy against a voter, as it has in the past. See, e.g., *In the Matter of a Complaint by Thomas R. Dunn, Darien*, File No. 2010-036 (Commission waived civil penalty against respondent voter where impermissible vote would not have occurred but for the registrars' error). The Respondent here met his responsibility insofar as he identified his existing Greenwich registration on his Kent registration application. The registrars then made an error that allowed him to remain registered in both places, adding credence to his mistaken understanding of the law.

27. The Respondent also did not make efforts to hide what he was doing. He openly declared his Greenwich registration address; he drove and voted in person at each location; he only voted in both towns in municipal elections so that there would be no "double voting" as he understood that term to mean. While the Respondent was clearly mistaken in his understanding of the law, his actions, and the error by the registrars, do support a finding that such mistake was in good faith.
28. Additionally, no race or referendum question was decided as a result of the Respondent's vote in either Kent or Greenwich. This is in stark contrast with the facts in *In the Matter of a Complaint by Allen Palmer, Groton*, File No. 2007-227, in which the Commission assessed a \$4,000 civil penalty where the respondent failed to disclose her prior registered address, no errors by any elections officials occurred, and the respondent's single vote caused a tie in a general assembly primary in the district in which she should not have been voting.
29. Finally, the Respondent has no previous history with the Commission and has expressed regret for what occurred and upon receipt of the instant Complaint, immediately removed his Greenwich registration.
30. Had the Respondent voted twice in the same race and/or referendum, this would be a very different case. However, considering the aforesaid aggravating and mitigating circumstances, the Commission concludes that it is unnecessary under these specific facts to assess a civil penalty in order to insure the immediate and continued compliance of the Respondent. In exchange for this Agreement by the Respondent to henceforth comply with General Statutes §§ 9-7b, 9-20, 9-21, and 9-360, the Commission will take no further action in this matter.
31. The 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. The Respondent shall receive a copy hereof as provided in Section 9-7b-56 of the Regulations of Connecticut State Agencies.

32. 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.

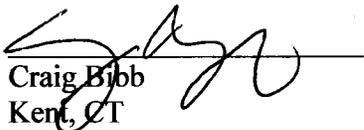
33. It is understood and agreed that this Agreement will be submitted to the Commission for consideration at its next meeting and, if the Commission does not accept it, it is withdrawn and may not be used as an admission by the parties in any subsequent hearing, if the same becomes necessary.

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

ORDER

IT IS ORDERED THAT that Respondent Craig Bibb will henceforth strictly comply with the requirements of General Statutes §§ 9-7b, 9-20, 9-21, and 9-360.

The Respondent:


Craig Bibb
Kent, CT

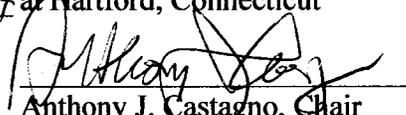
Dated: 2/27/14

For the State of Connecticut:

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

Dated: 3/3/14

Adopted this 19th day of March of 20 14 at Hartford, Connecticut


Anthony J. Castagno, Chair
By Order of the Commission

**RECEIVED
STATE ELECTIONS**

MAR 3 2014

ENFORCEMENT COMMISSION