

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Roger Autuori & Matthew Waggner, Fairfield

File No. 2011-061

FINDINGS AND CONCLUSIONS

The Complainants, Roger Autuori and Matthew Waggner, respectively the Republican and Democratic Registrars of Voters in the Town of Fairfield, brought this Complaint pursuant to Connecticut General Statutes § 9-7b and alleged that Respondents Francis McArthur and Lori McArthur falsely registered at a particular address in Fairfield and cast ballots using that false address in violation of General Statutes §§ 9-7b (a) (2) (C), 9-20, 9-42 & 9-172.

After an investigation of the Complaint, the Commission makes the following findings and conclusions:

1. On or about May 17, 2008 the Respondents registered to vote in Fairfield and submitted in their sworn registration statement that 2490 Black Rock Turnpike, #235 was their bona fide residence.
2. Respondent Lori McArthur cast ballots in the November 4, 2008 and November 2, 2010 General Elections using the above Fairfield registration.
3. Respondent Francis McArthur cast ballots in the November 4, 2008, November 3, 2009 and November 2, 2010 General Elections using the above Fairfield registration.
4. Complainants allege the following: that in December 2009, they discovered that 2490 Black Rock Turnpike was not a residential address, but a business address for a private mail facility, "The UPS Store;" that after learning of this, the Complainants sent the Respondents "Confirmation of Voting Residence" (ED-642) forms requesting that the Respondents amend their registrations to declare their true residence address and not the address of the private mail facility; that the Respondents returned the "Confirmation of Voting Residence" (ED-642) forms, but did not change the address; that on or about January 4, 2010, the Complainants moved the Respondents to the inactive list; that on November 2, 2010, the Respondents both presented themselves at the Osborn Hill School polling place in Fairfield; that on that day the Respondents did fill out an "Application for Restoration of Elector to Official Check List" (ED-613) form pursuant to General Statutes § 9-42; did swear on penalty of false statement that 2490 Black Rock Turnpike, #235 was their bona fide residence; were restored to the active list; and did vote.
5. An elector is eligible to vote in a particular town only if such voter is a bona fide resident of such town. General Statutes § 9-12, provides in pertinent part:

(a) Each citizen of the United States who has attained the age of eighteen years, and who is a bona fide resident of the town to which the citizen applies for admission as an elector shall, on approval by the registrars of voters or town clerk of the town of residence of such citizen, as

prescribed by law, be an elector, except as provided in subsection (b) of this section. . . . (Emphasis added.)

6. When registering to vote, an elector must declare under penalty of perjury, his bona fide residence on a form prescribed by the Secretary of the State. General Statutes § 9-20, provides 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. (Emphasis added.)

7. General Statutes § 9-172, provides in pertinent part:

At any regular or special state election any person may vote who was registered on the last-completed revised registry list of the town in which he offers to vote, and he shall vote in the district in which he was so registered; provided those persons may vote whose names are restored to the list under the provisions of section 9-42 or whose names are added on the last weekday before a regular election under the provisions of section 9-17. Each person so registered shall be permitted to vote if he is a bona fide resident of the town and political subdivision holding the election and has not lost his right by conviction of a disfranchising crime. Any person offering so to vote and being challenged as to his identity or residence shall, before he votes, prove his identity with the person on whose name he offers to vote or his bona fide residence in the town and political subdivision holding the election, as the case may be, by the testimony, under oath, of at least one other elector or by

such other evidence as is acceptable to the moderator.
(Emphasis added.)

8. If a registered voter's name appears on the inactive list, such voter may be restored to active status and cast a ballot if such voter affirms that s/he is a bona fide resident of the address to which such voter seeks restoration. General Statutes § 9-42 reads, in pertinent part:

(c) The registrars of voters shall cause the inactive registry list compiled under section 9-35 to be completed and printed and deposited in the town clerk's office and shall provide a sufficient number of copies for use in the polling place on election day. If on election day the name of an elector appears on such inactive registry list, including the name of an elector who has not responded to a confirmation of voting residence notice under subsection (e) of section 9-35 and has not voted in two consecutive federal elections, such name shall be added to the active registry list *upon written affirmation signed by the elector, under penalties of false statement*, before an election official at the polling place, that *such elector is still a bona fide resident of such town*, and upon the consent of both registrars or assistant registrars, as the case may be, in the polls.

(d) The name of no elector shall be added to the active registry list under the provisions of this section, unless his name or some name intended for his name was on the active registry list for at least one of the four years previous or on one of the preliminary active registry lists for the year in which the registrars are in session.
(Emphasis added.)

9. Any person who votes in any election when not qualified to do so, faces both civil and criminal liability. General Statutes § 9-7b, provides 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,

...

10. General Statutes § 9-358, provides in pertinent part:

Any person who, upon oath or affirmation, legally administered, wilfully and corruptly testifies or affirms,

before any registrar of voters, any moderator of any election, primary or referendum, any board for admission of electors or the State Elections Enforcement Commission, falsely, to any material fact concerning the identity, age, residence or other qualifications of any person whose right to be registered or admitted as an elector or to vote at any election, primary or referendum is being passed upon and decided, shall be guilty of a class D felony and shall be disfranchised.

11. General Statutes § 9-360, provides 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. Any person who votes or attempts to vote at any election, primary, referendum or town meeting by assuming the name of another legally qualified person shall be guilty of a class D felony and shall be disfranchised.

12. In order to establish liability in the present case, the Respondents must not have been qualified to register and/or vote at the above address in Fairfield at the time that they submitted their voter registration forms and/or at the times that they cast ballots using that registered address. As noted above, General Statutes § 9-12 sets forth elector qualifications. In the present case, no one contests that the Respondents were citizens of the United States and had attained the age of eighteen years at the time they registered to vote, restored their registrations and/or voted. Moreover, no allegation has been made, and no evidence has been found, that the Respondents voted, or tried to vote, in any other place on the dates in question. As such, the question to answer here is only whether the Respondents were “bona fide residents” at the address in Fairfield at the time.

13. According to the Commission, an individual’s bona fide residence is the place where that individual maintains a true, fixed, and principal home to which he or she, whenever transiently relocated, has a genuine intent to return. *See, e.g., Complaint of Gary Amato, North Haven*, File No. 2009-158 (2010); *Complaint of Cicero Booker, Waterbury*, File No. 2007-157. In other words, “bona fide residence” is generally synonymous with domicile. *Id.*; *cf. Hackett v. The City of New Haven*, 103 Conn. 157 (1925). The Commission has concluded, however, that “[t]he traditional rigid notion of ‘domicile’ has . . . given way somewhat but only to the extent that it has become an impractical standard for the purposes of determining voting residence (i.e., with respect to college students, the homeless, and individuals with multiple dwellings).” (Emphasis added.) *Complaint of James Cropsey, Tilton, New Hampshire*, File No. 2008-047 (Emphasis added.). *See also Wit v. Berman*, 306 F.3d 1256, 1262 (2d Cir.

2002) (stating that under certain circumstances the domicile rule for voting residency can give rise to administrative difficulties which has led to a pragmatic application of that rule in New York); *Sims v. Vernon*, Superior Court, Fairfield County, No. 168024 (Dec. 22, 1977) (concluding that an absentee ballot of an individual should be counted as that individual was a bona fide resident of the town in which the ballot was cast.); *Farley v. Louzitis*, Superior Court, New London County, No. 41032 (Oct. 4, 1972) (considering issue of voter residency with respect to college students and stating that “a student, and a nonstudent as well, who satisfies the . . . residence requirement, may vote where he resides, without regard to the duration of his anticipated stay or the existence of another residence elsewhere. It is for him alone to say whether his voting interests at the residence he selects exceed his voting interests elsewhere.”) (Emphasis added.)

14. The Commission has previously concluded that “[a]n individual does not, therefore, have to intend to remain at a residence for an indefinite period for that residence to qualify as that individual’s bona fide residence. *Complaint of James Cropsey, Tilton, New Hampshire*, File No. 2008-047. Rather, the individual only has to possess a present intention to remain at that residence. *Id*; see also *Maksym v. Board of Election Com'rs of City of Chicago*, Illinois Supreme Court, Docket No. 111773 (January 27, 2011), 2011 WL 242421 at *8 (“[O]nce residency is established, the test is no longer physical presence but rather abandonment. Indeed, once a person has established residence, he or she can be physically absent from that residence for months or even years without having abandoned it. . . .”)
15. After investigation, the Commission finds that 2490 Black Rock Turnpike is a commercial address at which the Respondents registered a mailbox, but at which the Respondents cannot and do not reside. Accordingly, the Commission concludes that at all times relevant to this Complaint, the Respondents were not bona fide residents at 2490 Black Rock Turnpike, #235.
16. Accordingly, the Commission concludes that both Respondents violated General Statutes § 9-20 by falsely registering to vote at 2490 Black Rock Turnpike.
17. The Commission further concludes that both Respondents violated General Statutes § 9-42 by falsely affirming that they were bona fide residents of Fairfield at the time they presented themselves to vote on November 2, 2010.
18. The Commission further concludes that Respondent Lori McArthur violated General Statutes §§ 9-7b (a) (2) (C) & 9-172 on November 4, 2008 and November 2, 2010 by improperly voting in those elections when not being legally qualified to do so.
19. The Commission further concludes that Respondent Francis McArthur violated General Statutes §§ 9-7b (a) (2) (C) & 9-172 on November 4, 2008, November 3, 2009 and November 2, 2010 by improperly voting in those elections when not being legally qualified to do so.
20. However, while the Commission finds that the Respondents acts were made in a deliberate attempt to hide their true address, additional facts are present that the Commission considers mitigating in this instance.

21. As an initial matter, the Commission notes that it was incumbent upon the Registrars of Voters in the Town of Fairfield in 2008 to recognize that the aforementioned address was a commercial address for which no registration could be possible. Had the Registrars done their due diligence in the matter, the Respondents' violations could have been prevented at the time that they submitted their registration applications.
22. The Commission also finds it highly significant, as stated above, that there has been no evidence found that the Respondents attempted to register and/or vote in any other jurisdiction during all times relevant to the instant matter.
23. The Commission also finds that according to the Town Clerk of the Town of Fairfield, no single race in the Town of Fairfield during the November 2008, 2009, or 2010 general elections was decided by a margin of less than 3 votes. As such, the Respondents' votes did not materially change the outcome of any election during the relevant period.
24. Finally, the Commission finds that the most compelling mitigating factor is the Respondents' assertion, in support of which they have presented sufficient evidence, that their intent in registering at the above address was not to impermissibly vote in a jurisdiction foreign to them, but rather to shield their true bona fide residence address from specific and known individuals about whom the Respondents had legitimate and ongoing concerns for their personal privacy and safety. They have presented sufficient evidence of the significant efforts that they have made to prevent such information from reaching the public domain, including but not limited to registering their drivers licenses and vehicles at this private mailbox address.
25. Considering the aforesaid, the Commission will not levy a civil penalty in this matter.
26. However, because the Commission has determined that the Respondents are not bona fide residents at the aforesaid address, they do not have a right to remain registered electors there. Accordingly, pursuant to General Statutes § 9-7b (a) (3) (E), the Commission will order the Complainants to forthwith remove the aforesaid registrations of the named Respondents in this matter.
27. The Commission encourages the Respondents here to take advantage of the "Address Confidentiality Program" administered by the Secretary of the State pursuant to General Statutes §§ 54-240a, *et seq.* This program allows qualifying individuals to legally use a substitute forwarding mailing address and to keep their true address hidden from public records such as voter registrations and marriage records. If approved under the program, the Respondents would be able to legally re-register to vote in the town of their residence and vote therein without having to record their true address on any publicly available document.

ORDER

The following Orders are recommended on the basis of the aforementioned findings:

- 1) That the Registrars of Voters of the Town of Fairfield forthwith remove the registration of Francis McArthur, 2490 Black Rock Turnpike, #235.
- 2) That the Registrars of Voters of the Town of Fairfield forthwith remove the registration of Lori McArthur, 2490 Black Rock Turnpike, #235.
- 3) That no further action in the matter be taken.

Adopted this 22nd day of June, 2011 at Hartford, Connecticut.



Stephen F. Cashman, Chairperson
By Order of the Commission