

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In re: Referral of the Trumbull Registrars of Voters

File No. 2014-065

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Roberto Nicolia and Jill Nicolia, of the Town of Trumbull, County of Fairfield, 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. Trumbull Registrars of Voters Lauren Anderson and William Holden referred this matter after reviewing the town maps and discovering that the Respondents, registered voters in the Town of Trumbull whose property is split between two towns, live in a dwelling unit that appeared to be entirely within the Town of Monroe.
2. An elector is eligible to register and 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. For purposes of this section a person shall be deemed to have attained the age of eighteen years on the day of the person's eighteenth birthday *and a person shall be deemed to be a bona fide resident of the town to which the citizen applies for admission as an elector if such person's dwelling unit is located within the geographic boundaries of such town.* No mentally incompetent person shall be admitted as an elector. . . .(Emphasis added.)
3. Public Act 07-194 of the 2007 Public Acts added the language "and a person shall be deemed to be a bona fide resident of the town to which the citizen applies for admission as an elector if such person's dwelling unit is located within the geographic boundaries of such town."

4. The above language was added subsequent to the Commission's final determination in *In the Matter of an Appeal of Gerald J. Porricelli and Marianne Porricelli against the Board for Admission of Electors and Registrars of the Town of Greenwich*, File No. 2007-154.
5. In *Porricelli*, the appellants, electors in Greenwich, owned a single-family home located on property within both the Town of Greenwich and the City of Stamford. However, the entire house in which they resided was located within the City of Stamford and only a portion of the driveway, including street frontage, was located in Greenwich. The electors had a Greenwich postal address and considered themselves residents of Greenwich for all purposes, including voting.
6. Looking to the common law in the area of domicile for tax purposes, the Commission determined in *Porricelli* that the location of an individual's dwelling unit determines where that person is permitted to claim bona fide residence. This common law standard was then codified in the aforementioned amendment to General Statutes § 9-12 (a) in Sec. 41 of Public Act 07-194 of the 2007 Public Acts.
7. The above standard was applied recently in *In re: Referral by Westport Registrars of Voters*, File Nos. 2013-119, in which the postal address and a portion of the property was located within the Town of Westport, but the actual dwelling unit, a single-family home, was entirely located within the geographic boundaries of the City of Norwalk. The Commission determined in that case that because the dwelling unit was located entirely in Norwalk, the Respondent was indeed a bona fide resident of Norwalk and not the town through which they received their postal mail.
8. In *In re: Referral by Westport Registrars of Voters*, File No. 2013-100, a small portion of the dwelling unit was located within the Town of Westport, while the vast majority was located within the City of Norwalk. In that case, the Commission determined that if a dwelling unit is split between towns, an elector living in such dwelling unit has a *geographic* claim to bona fide residence in *both* towns, so long as such elector meets the other criteria, including but not limited to age, citizenship, and legitimate, significant, and continuing attachments to the town claimed as such elector's place of voting.
9. Turning to the facts of this case, Respondents have been registered voters in Trumbull at a home with a residential mailing address on Bear Paw Road in Trumbull since April 2010 after purchasing the property in 2009. The Respondents live on a cul-de-sac at the end of Bear Paw Rd.
10. Based on a review of the GIS and assessor's data available in each town, the property is 1.04 acres in total, 0.11 in Trumbull and 0.93 in Monroe. The dwelling unit is set in to the

back of the property, well away from the Trumbull line in the Monroe portion of the property. A small portion of the end of the driveway is in Trumbull, approximately 5-10%.

11. The Trumbull assessor's card indicates "House in Monroe" and only taxes the property at an appraised value of \$21,600 as vacant land. The Monroe assessor's card indicates a value of \$480,000 for the property in Monroe, which includes a building valuation of \$318,600.
12. The Respondents do not deny that the entire dwelling unit is located well within the Town of Monroe. They indicate, and the Referring Officials confirm, that the prior owners of the property operated under an agreement with the Superintendent of Schools to allow their children to attend, despite the fact that the schools were not required to allow them to attend under the geographic test in General Statutes § 10-186 (a)¹. This agreement has been honored and extended to the Respondents based not only on their claim of hardship and disruption to their minor children, but also based on their assertion that they purchased the home with the understanding that they would be considered Trumbull residents for most purposes, including but not limited to schools and voting.
13. The Respondents have requested that the Commission grant them the same dispensation under the bona fide residency laws as they have been given under the school residency laws.
14. Turning first to the initial question in this matter, the investigatory review of the facts of this matter, including but not limited to a review of the GIS map data, the assessor's records in each town, as well as interviews with the parties, the Commission finds that while the dwelling unit on the Bear Paw property appears to the Commission within a few hundred feet of the border of the Town of Trumbull, its location is bounded entirely within the Town of Monroe and that no portion of such "dwelling unit" is located within the geographic boundaries of the Town of Trumbull.²
15. Considering the aforesaid, the Commission concludes pursuant to its authority under General Statutes § 9-7b (a) (3) (E) that the Respondents are not bona fide residents in the

¹ Section 10-186 (a) (2) reads, in pertinent part:

(a) For purposes of this section, . . . (2) a child residing in a dwelling located in more than one town in this state shall be considered a resident of each town in which the dwelling is located and may attend school in any one of such towns. For purposes of this subsection, "dwelling" means a single, two or three-family house or a condominium unit.

² See *In re: Referral by Westport Registrars of Voters*, File No. 2013-119 (GIS map data and assessor's records sufficient basis upon which Commission may make its bona fide residency decision; respondent may provide professional survey at respondent's own cost to rebut GIS and/or assessor's data.)

Town of Trumbull for purposes of admission as an elector as their residential dwelling unit is located entirely within the boundaries of another town.

16. As for the Respondents' request for the Commission to allow them to remain as electors in the Town of Trumbull, this is not within the Commission's authority to do so. The Commission has the authority under § 9-7b (a) (3) (E) to *determine* an individual's right to be or remain an elector. However, this authority does not extend to the ability to *grant* electoral rights, but rather leaves the Commission merely to make a determination of fact based on the criteria specifically enumerated at law. The criteria for determination specifically enumerated in General Statutes § 9-12 definitively limit electoral rights to citizens of legal age who are bona fide residents of the town.³
17. The Respondents here do not meet all three criteria. As such, the Commission cannot grant the Respondents' request no matter how sympathetic their facts may be.⁴
18. 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.
19. 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.
20. 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.
21. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

³ Moreover, where the legislature has permitted exceptions to these criteria, it has done so explicitly. See General Statutes § 9-369d, which grants each town the authority to extend electoral rights in purely local referenda questions.

⁴ See *In re: Referral by Westport Registrars of Voters*, File No. 2013-101, ¶ 13 ("The Commission empathizes with the Respondent's unusual situation, but such considerations are not relevant to the Commission's determination where, as here, the legislature has drawn a clear statutory line.")

ORDER

The Commission, pursuant to its authority under General Statutes § 9-7b (a) (3) (E), orders the Trumbull Registrars of Voters to forthwith remove from its rolls the registrations of Roberto Nicolia and Jill Nicolia, CVRS Voter ID#: 001162422 and 999989707.

The Respondents:


Roberto Nicolia
Trumbull, CT

Dated: 12/15/14


Jill Nicolia
Trumbull, CT

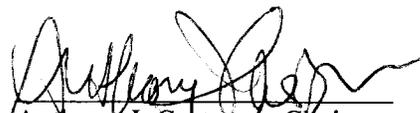
Dated: 12/11/14

For the State of Connecticut:

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

Dated: 12/16/14

Adopted this 13 day of JAN of 20 15 at Hartford, Connecticut


Anthony J. Castagno, Chair
By Order of the Commission