

**STATE OF CONNECTICUT**  
**STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Complaint by John M. Tremaine, New Canaan

File No. 2015-097B

**AGREEMENT CONTAINING CONSENT ORDER**

This Agreement, by and between Lois Ely and John Heiser, of the Town of Essex, 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:<sup>1</sup>

1. At all times relevant to the instant Complaint, Lois Ely and John Heiser were the Essex Registrars of Voters and are the Respondents here.
2. The Complainant here alleged that he went to vote at a Republican caucus in the town of New Canaan in July 2015 only to discover that there was no record of his ever having been a registered elector in that town, despite having lived and voted in town for 27 years. He alleged that his issue was not reparable at the caucus and that he was unable to cast a vote there. He asserted that after he brought the incident to the attention of the New Canaan registrars, they told him that something happened with the registration record of his twin brother Burton Tremaine in Essex in 2009 that caused his registration to be removed six years later in 2015 in New Canaan. While the New Canaan registrars immediately restored his registration after he brought it to their attention, he sought an investigation into what happened to cause his registration to be removed in the first place.

3. General Statutes § 9-21 reads, 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*

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<sup>1</sup> This Agreement Containing Consent Order addresses 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.

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.)

4. General Statutes § 9-32 reads, in pertinent part, as follows:

(a) In each municipality the registrars, between January first and May first, annually, shall cause either (1) a complete house to house canvass to be made in person of each residence on each street, avenue or road within such municipality, (2) a complete canvass to be made by mail of each residence located on each street, avenue or road within such municipality, provided, upon agreement of both registrars, the National Change of Address System of the United States Postal Service may be used instead of such mailing, (3) a complete canvass to be made by telephone of each residence located on each street, avenue or road within such municipality, or (4) a complete canvass of each residence within such municipality by any combination of such methods, for the purpose of ascertaining the name of any elector formerly residing on such street, avenue or road who has removed therefrom; provided in the odd-numbered years, no canvass need be conducted by the registrars in a town which holds its regular municipal election on the first Monday of May in odd-numbered years. The Secretary of the State shall adopt regulations in accordance with the provisions of chapter 54 setting forth the procedure to be followed in conducting any such canvass by either mail or telephone.

(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.)

5. General Statutes § 9-35 reads, in pertinent part, as follows:

(a) The registrars, on the Tuesday of the fifth week before each regular election, shall be in session for the purpose of completing a correct list of all electors who will be entitled to vote at such election. Such registry list shall consist of an active registry list and an inactive registry list. Such session shall be held during such hours between nine o'clock a.m. and five o'clock p.m. as the registrars find necessary to complete the list. Notice of such session shall be given at least five days before the session by publication in a newspaper having a circulation in such municipality, if any, and by posting on the signpost therein, if any, or at some other exterior place near the office of the town clerk. Such publication shall not be required to be in the form of a legal advertisement.

(b) At such session and on any day except on the day of an election or primary, *the registrars shall remove from the list the name of each elector who has died, who has been disfranchised or who has confirmed in writing that the elector has moved out of the municipality*, except electors entitled to remain on such list under the provisions of this chapter. *An elector shall be deemed to have confirmed in writing that the elector has moved out of the municipality* if (1) the elector has

submitted a change of address form for purposes of a state motor vehicle operator's license, unless the elector states on the form that the change of address is not for voter registration purposes, (2) the elector has submitted a change of address form to a voter registration agency, as defined in section 9-23n, and such agency has provided such change of address to the registrars of voters, or (3) the registrars of voters have received a cancellation of previous registration from any other election official indicating that such elector has registered as an elector outside such municipality. . . . (Emphasis added.)

6. General Statutes § 9-42 reads, in pertinent part, as follows:

(a) If it appears at any time that the name of an elector who was formerly admitted or registered as an elector in a town and who is a bona fide resident of such town has been omitted from the active registry list compiled under section 9-35 by clerical error, the registrars of voters shall add such name to such list; provided no name shall be added to the active registry list on election day without the consent of both registrars of voters. . . . (Emphasis added.)

7. The investigation here revealed that after the incident described above, the New Canaan Registrars of Voters conducted an inquiry into how the Complainant came to be removed. They timely responded to the Commission investigation herein and turned over the results of their inquiry to the Commission. They discovered the following:

- John H. Tremaine originally registered in New Canaan on September 29, 1992.
- According to notations attached to his original voter registration card ("VRA card") (retained by the New Canaan registrars), on Jan 9, 2009, the New Canaan registrars received information either from the Essex Registrars or through Connecticut Voter Registration System ("CVRS"), that Mr. Tremaine's "record" was "taken" by Essex, and removed from New Canaan's "active" files.
- The supposed move was noted on John Tremaine's registration card in the New Canaan office, and the VRA card was put in New Canaan's "Off" file in 2009.
- At the same time, Mr. Tremaine's twin brother, Burton Tremaine (who has the same date of birth as the Complainant) apparently registered in Essex, CT.
- The New Canaan registrars have no record as to when, how, or why but the error appears to have been quickly found and John Tremaine was returned to the New Canaan active file on CVRS (by New Canaan, as Essex would not be able to unilaterally register him in another town) and subsequently appeared on all New

Canaan voter registry lists, and voted in several elections between 2009 and 2014 without incident.

- Based on their review of the New Canaan VRA card files when this Complaint was filed, they found that the old card had been marked and filed with the “Off” cards and had not been returned to the active file.
  - The New Canaan registrars determined that the error occurred in their office in 2015 during their annual canvass of voters. All voter files that had been “off” for 4 years or more were then deleted from CVRS (SOTS keeps archive records of all voters, so a continuing record exists there).
  - They indicated that what appeared to have happened was that in the course of their review of the VRA cards in the paper “off” file, they found Mr. Tremaine’s VRA card, which indicated on its face that it had been in in the “Off” file for 5 years. Upon discovering the card during the canvass, they wrongly assumed that the CVRS record matched up and they deleted the CVRS record without closely examining it.
8. The Commission investigation included a review of the archived CVRS records and confirmed that Mr. Tremaine had a long record of being registered and voting from his New Canaan address as far back as at least 1996. CVRS indicates that on January 12, 2009, Mr. Tremaine’s address was changed to the address in Essex. On February 24, 2009, the address was changed back to New Canaan. The archive did not contain information as to who made either of these changes. However, the archive did confirm that Mr. Tremaine’s digital record was deleted on March 27, 2015 by Mr. Cody, the New Canaan registrar.
9. The investigation revealed that the CVRS system is set up such that while Essex could have unilaterally taken John Tremaine from New Canaan and moved him to Essex, they would not have been able to accomplish moving him back. Only New Canaan could have added him back to their rolls.
10. Despite their quick repair of their understandable error, the liability of the Essex ROVs here is clear insofar as they mistakenly removed Mr. Tremaine from the New Canaan registry list after mixing him up with his twin brother Burton Tremaine. As such, the Commission conclude that the Essex ROVs violated General Statutes §§ 9-32 & 9-35.
11. In consideration of the aforesaid, the Commission concludes that the Respondents violated General Statutes §§ 9-32 & 9-35 by removing a voter from the registry list without sufficient authority to do so.

12. As enumerated in § 9-7b-48 of the Regulations of Connecticut State Agencies:

In its determination of the amount of the civil penalty to be imposed, the Commission shall consider, among other mitigating or aggravating circumstances:

- (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.

13. As an initial matter, the Respondents here cannot be factually held responsible for what happened after they removed Mr. Tremaine and then had him returned, as the evidence showed that they did their due diligence and informed New Canaan of the error and had it fixed before either John or Burton Tremaine next voted.

14. The facts of this particular case aside, removal of a voter is serious. The laws are written to make it very difficult to remove a voter. From the Constitution to the statutes and regulations, the regulatory scheme surrounding elections favors enfranchisement and makes elections officials go through many checks and balances before a voter fully loses his/her franchise.

15. However, the statutes also acknowledge that human clerical error is inevitable. General Statutes § 9-42 allows registrars to quickly return those voters who have been removed by clerical error up to and including Election Day.<sup>2</sup>

16. Nonetheless, the facts of the case against the Essex registrars do mitigate significantly. They did not realize at the time that they were removing an existing voter. The Tremaine brothers had the same birthday. Once they realized the error, they made sure to correct it, correctly register Burton, and have New Canaan return John Tremaine back to his proper registration status.

17. The Essex ROVs have no previous history in this area and there is no evidence of bad faith.

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<sup>2</sup> (a) If it appears at any time that the name of an elector who was formerly admitted or registered as an elector in a town and who is a bona fide resident of such town has been omitted from the active registry list compiled under section 9-35 by clerical error, the registrars of voters shall add such name to such list; provided no name shall be added to the active registry list on election day without the consent of both registrars of voters. . . .

18. In consideration of the aforesaid, the Commission will agree to settle the matter in exchange for the Respondents' agreement to henceforth strictly comply with the prescriptions of General Statutes § 9-32 & 9-35.

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.

ORDER

IT IS HEREBY ORDERED that the Respondents ~~George Cody and Kathleen Redmond~~ <sup>John V. HEISER Lois A. Ely</sup> shall henceforth strictly comply with the requirements of General Statutes §§ 9-32 & 9-35.

**The Respondents:**

**For the State of Connecticut:**

Lois A. Ely  
Lois Ely

Dated: 3/21/17

John V. Heiser  
John Heiser

Dated: 3/21/17

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

Dated: 3/23/17

Adopted this 19<sup>th</sup> day of April of 2017 at Hartford, Connecticut

[Signature]  
Anthony Castagno, Chairman  
By Order of the Commission  
8 Salvatore A. Bramante Vice



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