

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In re: Referral of the Naugatuck Registrars of Voters
In re: Referral of the Bristol Registrars of Voters

File No. 2016-094
File No. 2016-098

FINDINGS AND CONCLUSIONS

The Naugatuck and Bristol registrars of voters brought this referral pursuant to Connecticut General Statutes § 9-7b, and alleged that during the November 2016 General Election Matthew Martin impermissibly cast a ballot at a polling place in Naugatuck and then again in Bristol by using the Election Day Registration process.

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

Law

1. General Statutes § 9-7b 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 .

..

2. General Statutes § 9-19j reads, in pertinent part:

(a) As used in this subsection and subsections (b) to (i), inclusive, of this section, "election day" means the day on which a regular election, as defined in section 9-1, is held.

(b) Notwithstanding the provisions of this chapter, a person who (1) is (A) not an elector, or (B) an elector registered in a municipality who wishes to change his or her registration to another municipality pursuant to the provisions of subdivision (2) of subsection (e) of this section, and (2) meets the eligibility requirements under subsection (a) of section 9-

12, may apply for admission as an elector on election day pursuant to the provisions of subsections (a) to (i), inclusive, of this section.

...

(d) Any person applying to register on election day under the provisions of subsections (a) to (i), inclusive, of this section shall make application in accordance with the provisions of section 9-20, provided (1) on election day, the applicant shall appear in person at the location designated by the registrars of voters for election day registration, (2) an applicant who is a student enrolled at an institution of higher education may submit a current photo identification card issued by said institution in lieu of the identification required by section 9-20, and (3) the applicant shall declare under oath that the applicant has not previously voted in the election. If the information that the applicant is required to provide under section 9-20 and subsections (a) to (i), inclusive, of this section does not include proof of the applicant's residential address, the applicant shall also submit identification that shows the applicant's bona fide residence address, including, but not limited to, a learner's permit issued under section 14-36 or a utility bill that has the applicant's name and current address and that has a due date that is not later than thirty days after the election or, in the case of a student enrolled at an institution of higher education, a registration or fee statement from such institution that has the applicant's name and current address.

(e) If the registrars of voters determine that an applicant satisfies the application requirements set forth in subsection (d) of this section, the registrars of voters shall check the state-wide centralized voter registration system before admitting such applicant as an elector.

(1) If the registrars of voters determine that the applicant is not already an elector, the registrars of voters shall admit the applicant as an elector and the privileges of an elector shall attach immediately.

(2) If the registrars of voters determine that such applicant is an elector in another municipality and such applicant states that he or she wants to change the municipality in which the applicant is an elector, notwithstanding the provisions of section 9-21, the registrars of voters of the municipality in which such elector now seeks to register shall immediately notify the registrars of voters in such other municipality that such elector is changing the municipality in which the applicant is an elector. The registrars of voters in such other municipality shall notify the election officials in such municipality to remove such elector from the official voter list of such municipality. Such election officials

shall cross through the elector's name on such official voter list and mark "off" next to such elector's name on such official voter list.

(A) If it is reported that such applicant already voted in such other municipality, the registrars of voters of such other municipality shall immediately notify the registrars of voters of the municipality in which such elector now seeks to register. In such event, such elector shall not receive an election day registration ballot from the registrars of voters of the municipality in which such elector now seeks to register. For any such elector, the election day registration process shall cease in the municipality in which such elector now seeks to register and such matter shall be reviewed by the registrars of voters in the municipality in which such elector now seeks to register. After completion of such review, if a resolution of the matter can not be made, such matter shall be reported to the State Elections Enforcement Commission which shall conduct an investigation of the matter.

(B) If there is no such report that such applicant already voted in the other municipality, the registrars of voters of the municipality in which the applicant seeks to register shall admit the applicant as an elector and the privileges of an elector shall attach immediately.

(f) If the applicant is admitted as an elector, the registrars of voters shall provide the elector with an election day registration ballot and election day registration envelope and shall make a record of such issuance. The elector shall complete an affirmation imprinted upon the back of the envelope for an election day registration ballot and shall declare under oath that the applicant has not previously voted in the election. . .

(g) The elector shall forthwith mark the election day registration ballot in the presence of the registrars of voters in such a manner that the registrars of voters shall not know how the election day registration ballot is marked. The elector shall place the election day registration ballot in the election day registration ballot envelope provided, and deposit such envelope in a secured election day registration ballot depository receptacle. At the time designated by the registrars of voters and noticed to election officials, the registrars of voters shall transport such receptacle containing the election day registration ballots to the area, either district or central, where absentee ballots are counted and such election day registration ballots shall be counted by the election officials present at such location. A section of the head moderator's return shall show the number of election day registration ballots

received from electors. The registrars of voters shall seal a copy of the vote tally for election day registration ballots in a depository envelope with the election day registration ballots and store such election day registration depository envelope with the other election results materials. The election day registration depository envelope shall be preserved by the registrars of voters for the period of time required to preserve counted ballots for elections. . . . (Emphasis added.)

3. 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. 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. (Emphasis added.)

Allegations

4. Naugatuck Registrars of Voters Matthew Katra and Louise Sheedy and Bristol Registrars of Voters Sharon Krawiecki and Kevin McCauley filed separate referrals alleging that Respondent Matthew Martin, a registered voter in the town of Naugatuck, cast a ballot in Naugatuck at the November 8, 2016 General Election and then cast a second ballot on the same day using the Election Day Registration (“EDR”) process in the City of Bristol.
5. The Referring Officials do not question the Respondent's bona fide residence in the City of Bristol on the day in question, only that the Respondent cast two ballots in the same election.
6. Specifically, the Bristol Registrars of Voters assert that at approximately 11:15am on Election Day, the Respondent appeared at the Bristol EDR location and applied for admission as an elector.
7. The Bristol ROVs asserted and submitted evidence in support that the Respondent filled out the Voter Registration Application and identified that he was previously a registered voter in the Town of Naugatuck. They assert that the Election Official in charge of EDR, Mary Alford, was unable to quickly discern whether the Respondent had voted in Naugatuck

already, and as such, the Respondent was permitted to execute a ballot in Bristol without verification.¹

8. The Bristol ROVs further assert that subsequent to the Respondent's departure after casting his ballot in Bristol but before the EDR ballots had been counted, the Bristol ROVs received notice from the Naugatuck ROVs that the Respondent's name had been crossed off as having voted at the Oak Terrace polling place in Naugatuck.
9. After receiving notice from the Naugatuck ROVs that the Respondent was marked as having voted previously in the same election, the Bristol ROV's obtained the Respondent's EDR ballot envelope, removed the ballot and spoiled it and it was not counted.²

Respondent's Reply

10. The Respondent asserts that he had not lived in Naugatuck for approximately 1 year and 9 months from the date in question, was never in Naugatuck on Election Day and did not cast a ballot there, as alleged by the Referring Officials. He offered alibi witnesses to his presence in Bristol at the time he appeared at the Bristol EDR location. He asserts that the checkers at the Oak Terrace polling place likely erred in crossing him off, which caused the instant issue, including but not limited to his vote being spoiled and not counted.

Commission Investigation

11. As there was no dispute over whether: a) the Respondent had abandoned a claim to bona fide residence in Naugatuck; b) the Respondent cast a ballot in Bristol; or c) that the Respondent was a bona fide resident in Bristol when he did so, and as there were no affirmative witnesses to the Respondent's presence in the Town of Naugatuck, the Commission investigation focused largely on the question of whether the evidence supports the Respondent's defense that the elections officials in Naugatuck crossed his name off in error.
12. The primary piece of evidence here is the official voter list used by the official checkers at the Oak Terrace polling place. The Respondent's name is crossed off as having voted, as are the names of two individuals above him. The name directly below the Respondent's, Mark Garvey, is not crossed off.

¹ This is in line with the Secretary of the State's written interpretation of General Statutes § 9-19j. See Secretary of State memorandum "Implementation of Election Day Registration" dated October 4, 2016 and sent to all registrars of voters and town clerks.

² This action was also appropriately taken under the circumstances known to the Bristol ROVs at the time and per the Secretary of the State's written advice, above.

13. Through personal statements, the investigation confirmed that the two individuals above the Respondent cast ballots.
14. However, while the investigation was unable to obtain a statement from Mr. Garvey, whose name was not crossed off, the investigation revealed that the Naugatuck Registrars of Voters recorded him as having voted in the Connecticut Voter Registration System ("CVRS").³ There should not be a discrepancy here. The list and CVRS should match.
15. Once the investigation revealed the aforementioned discrepancy between the written voter list and CVRS regarding whether Mr. Garvey voted on the date in question, the scope of the inquiry was expanded into whether other discrepancies existed, especially those coming out of the Oak Terrace polling place.
16. The expanded inquiry revealed other errors at the Oak Terrace polling place. The moderator's diary recorded four incidents in which voters' names had been discovered to have been erroneously crossed off when the voters came in to cast their ballots. The final tally of names reported by the moderator to have been crossed off was 1538, which matched the machine tape tally of those voters who cast ballots. However, Commission investigators conducted a recount of the crossed off names for the Oak Terrace polling place and discovered that 1535 names had actually been crossed off. The investigation also revealed at least one incidence of a voter whose name had been crossed off, but who also had the notation "AB" indicating that the voter had cast an absentee ballot. It was the practice at the Oak Terrace polling place to merely include the "AB" notion and not cross off the voter. If this particular incident involved a voter who cast his ballot by absentee but later decided to vote in person, there is no recording of this in the moderator's diary.

Analysis and Conclusion

17. As an initial matter, the Commission notes that crossing a voter's name off the list is the correct method of recording that the voter has entered the polling place, provided sufficient proof of identity (either by pre-printed identification or by signing the affidavit), and has been given a ballot. It is not unreasonable to presume that if a voter's name is crossed off the list, that record reflects that all of the above has actually occurred.
18. However, the Commission also acknowledges that such a presumption is not un rebuttable. Here, the Respondent flatly denied casting a ballot in Naugatuck on the day in question and there is no indication that he had any residence interest in the town on that day. While it is often difficult to prove such a negative, the aforementioned evidence gleaned from the investigation suggests that his defense may have merit.

³ Mr. Garvey is recorded to have consistently voted in every presidential election since at least 2004.

19. The Commission starts from the understanding that the elections process is a human one. When a voter appears at the polling place, states her/his name and meets the identification requirements, such voter's name is crossed off a paper list by a human being. Human beings get tired and/or confused; human beings make mistakes.⁴
20. The 2016 General Election was a presidential year and the turnout numbers were larger than usual, even for a small district such as that serviced by the Oak Terrace polling place in Naugatuck. The circumstantial evidence in this case suggests that this polling place may not have been sufficiently prepared to handle the load.
21. The number of individuals erroneously crossed off appears to the Commission to be unusually high here. Additionally, the other errors, such as the discrepancies between the Commission's counts of cross-offs and those that were reported by the Oak Terrace moderator, the odd marking of the absentee voter, and the discrepancy between the CVRS record and the check-off list as concerned Mr. Garvey's record, suggest that this was a night prone to errors.
22. The Commission cannot conclude with certainty that the Respondent here did not vote both in Naugatuck and Bristol on the day in question. But it also cannot conclude that he did. In consideration of the clouded record kept by Naugatuck here and also in consideration of the fact that the Respondent's ballot was spoiled and two votes were not ultimately counted (indeed, none may have been counted if the Respondent was unnecessarily disenfranchised), the Commission will take no further action in this matter.
23. In light of what appears to have been an unusual number of errors by the Naugatuck elections officials, the Commission urges the Referring Officials from Naugatuck to conduct a thorough review of their hiring and training practices for elections officials, especially checkers, absentee ballot officials, and moderators, so that events such as this may be avoided in the future.

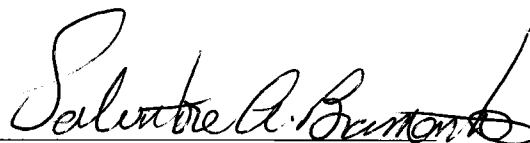
⁴ This language is not meant to establish that the fact of human error mitigates liability for mistakes by elections officials when such errors are provable violations, merely to acknowledge the possibility and/or likelihood of such mistakes, which has bearing on the question before the Commission here.

ORDER

The following Order is recommended on the basis of the aforementioned findings:

That no further action is taken.

Adopted this 20th day of December, 2017 at Hartford, Connecticut.


~~Anthony J. Castagno, Chairperson~~
By Order of the Commission
Salvatore A. BRAMANTE