

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Referral by the Watertown Registrar of Voters

File No. 2018-113

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Hyrije Massaro, of the Town of Watertown, 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:

Allegations

1. The Referral here alleged that on Election Day, November 6, 2018 the Respondent, a Watertown elector since 2013, submitted an amended Voter Registration Application (“VRA”) on which she stated that she was not a US Citizen, but a green card holder. The Referring Official referred the matter, as her records showed that the elector had voted in four prior referenda and two elections even though she was potentially a non-citizen who was legally unable to be an elector in Connecticut.
2. The Referring Official here alleged that the Respondent had been an elector in Watertown since she first submitted a VRA in August 2013.
3. The Respondent submitted an additional VRA to change her name in 2017. On both the 2013 and 2017 VRAs the “Are you a U.S. Citizen?” box is checked in the affirmative. While the Respondent’s signature is the same on each VRA, it appears that someone other than the Respondent filled out at least one of them, as the handwriting differed demonstrably between the two.
4. However, the Referring Official alleges that on Election Day, November 6, 2018 the Respondent submitted an amended VRA on which she stated in writing that she was not a US Citizen, but a green card holder.

5. The Referring Official alleged that her records showed that the Respondent had voted in four prior referenda and two elections (2014 and 2018). The Referring Official asserted that she immediately removed the Respondent and referred the instant matter.

Law

6. 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.)

7. Voting in a referendum, primary, or election in which a person is not qualified is a violation of General Statutes § 9-7b (a)(2)(C), which reads:

(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,

Commission Investigation

8. The investigation here was straightforward, as the Respondent admitted during the investigation that she recognized after she was contacted by the Referring Watertown official that she was mistaken about her eligibility to vote..

Registration History

9. The investigation confirmed that Mrs. Massaro submitted VRAs on or about August 2, 2013 and June 27, 2017 in which the “Are you a U.S. citizen” box is checked and on which Mrs. Massaro attested to the truth of the document, including citizenship status.¹ As stated above, while the Respondent’s signature is the same on each VRA, it appears that someone other than the Respondent filled out at least one of them, as the handwriting differed demonstrably between the two.

Voting History

10. Since the first VRA on or about August 2, 2013, the voter records kept by Watertown indicate that Ms. Massaro cast a ballot during the following:

11/06/2018	State General Election
06/27/2017	Referendum
11/04/2014	State General Election
08/05/2014	Referendum
06/24/2014	Referendum
05/13/2014	Referendum

Response

11. The Respondent was prompt and cooperative in response to the instant investigation. The Respondent did not deny that she registered to vote and voted during all the dates in question under the mistaken understanding that she was eligible.

¹ Moreover, the Commission has held that even if a voter fails to check the citizenship and/or age boxes, such voter is considered to have made a sworn statement that s/he meets the requirements as to age, citizenship, and bona fide residence, as the signature portion of the VRA includes an affirmation regarding these criteria. See *In the Matter of a Referral by Greenwich Republican Registrar of Voters*, File No. 2018-085; *In the Matter of a Complaint by Lawanda Frederick, New Haven*, File No. 2018-075; and *In the Matter of a Complaint by Evanthia Sikora, Unionville*, File No. 2018-070 at ¶ 86 (“[T] the information in the check boxes is duplicative of some of the information in the affirmation. As such, if the voter fails to check either of the boxes, but signs the affirmation, that application cannot be rejected solely because the boxes were left empty. The voter has met his/her responsibilities”)

12. The Respondent asserted that she was told that as the spouse of a U.S. Citizen and as a taxpayer she could vote in Watertown. She asserted that she did not understand that voting as a property owner under General Statutes § 9-369d (which is limited to referenda) was different from full voting privileges.

13. The Respondent also asserted that she could not explain why the boxes for “U.S. Citizen” were checked in 2013 and 2017, but she asserted that would never have intentionally misled the registrars in order to vote illegally.

Commission’s Analysis and Conclusions

14. As an initial matter, the Commission notes that there is a provision for a non-electors property owner to cast a ballot in a referendum, should the municipality allow it in their Charter.

15. General Statutes § 9-369d allows non-resident voters to cast a ballot in a local referendum only if a municipality chooses to allow such voting and codifies it through their legislative body. 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 canvass 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.

16. The Referring Official confirmed that Watertown *does* allow non-electors who own property in town to cast ballots in their municipal referenda.
17. It is a question of first impression for the Commission as to whether a non-citizen can vote using the § 9-369d procedure.
18. In order to vote using § 9-369d a person must still be a “voter” (which is more limited than an “elector”). General Statutes § 9-1 (u) defines a “voter” as “... a person qualified to vote at town and district meetings under the provisions of section 7-6.” General Statutes § 7-6 requires that voters be: a) U.S. Citizens; b) 18 years or more; and c) have assessed property of \$1,000 or more.
19. As such, the Commission concludes that non-citizens may not vote in referenda, even if § 9-369d allows non-electors to do so.
20. Turning to the primary question here, the matter is straightforward concerning citizenship and liability. While the Respondent appears to have genuinely misunderstood her eligibility, by her own admission and supported by the investigation, she was not eligible to register and/or cast ballots in any primary, election, or referendum.

21. Considering the aforesaid, the Commission concludes that Respondent Hyrije Massaro violated General Statutes § 9-7b (a) (2) (C) for impermissibly casting ballots in Watertown during the 6 events listed above.
22. General Statutes § 9-7b (a) (2) (C) provides that the Commission may assess a civil penalty of 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.
23. 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. Casting a ballot when you are not eligible is a serious matter. And the evidence maintained during the investigation here establishes that the Respondent cast ballots in Watertown on six occasions without being eligible to do so, despite being married to a U.S. Citizen and paying taxes on property there. That said, there is no evidence that there were any primaries, elections, or referenda during that period for which the Respondent's vote could have been the deciding ballot.²
25. Moreover, the Commission also does not believe that the evidence supports a finding that the Respondent acted in bad faith. The Respondent has no prior history in this area and she operated openly—all votes were in person and only in Watertown.
26. However, any claim of legal ignorance is not an excuse. Indeed, while the Commission could accept some confusion over the laws concerning voting in local referenda,³ Mrs. Massaro also voted in two different gubernatorial elections, four years apart.

² By contrast, see *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's single vote caused a tie in a general assembly primary in the district in which she should not have been voting

³ Confusion is common in this area. See, e.g., *In the Matter of a Referral by the Greenwich Registrars of Voters*, File No. 2013-007 (Henceforth order for Greenwich voter who also cast a ballot in Kent at his country home during municipal election under a mistaken understanding that § 9-369d could also permit him to vote in municipal general elections) and *In the Matter of a Complaint by Thomas R. Dunn, Darien*, File No. 2010-036 (No further action against

27. The Commission expects that for someone who has spent as much time in the United States as the Respondent and who married a United States Citizen, Mrs. Massaro should have been aware that it was improper for a non-citizen to cast a ballot in a General Election.
28. However, it should be noted that citizenship cases are rare before the Commission. In the one case involving a noncitizen voting in the past 15 years, the Commission did levy a civil penalty. *In the Matter of a Complaint by Rae Tramontano and Sharon Ferrucci, New Haven*, File No. 2007-375 concerned a voter who became a citizen in September 2007, but it was later discovered that she had completed a VRA in 2003 before she had become a citizen. The Commission settled the matter by Consent Agreement and levied a \$500 civil penalty against the Respondent.
29. While citizenship cases are rare, the Commission's recent cases in the area of bona fide residence are analogous, as citizenship, bona fide residence, and reaching the age of 18 are the three primary criteria for becoming an elector under § 9-12.
30. In the area of bona fide residence, the Commission has treated first-time offenders with a lighter touch where the evidence suggested that the voter had a reasonable misunderstanding as to whether they were permitted to vote at a prior voting address. *See, e.g., In the Matter of a Complaint by Peter Massaro, West Haven*, File No. 2018-025 (respondent voted in at least six primaries and elections from address that she owned but at which she no longer lived; henceforth order with no civil penalty); *In the Matter of a Referral by the Greenwich Registrars of Voters*, File No. 2018-004 (violation but henceforth order where voter changed addresses within the same town and did not realize that she was in a new voting district and needed to change her registration); *In the Matter of a Complaint by Bernice C. Bartlett, East Hampton* File No. 2017-059 (violation but henceforth order where voter registered using EDR and cast ballot using address on his license, at which he no longer lived); *In the Matter of a Referral by the Greenwich Registrars of Voters*, File No. 2017-030 (violation but henceforth order where voter cast two ballots over a seven year period from address at which she did not live but which remained on her driver's license).
31. However, the Commission has issued civil penalties, even for first-time offenders, when it believed that there should have been a reasonable expectation upon the voter that what they were doing was not permitted by law.

non-resident property owner who thought that he needed to register as an elector in order to exercise his rights under § 9-369d and the town charter).

32. *In the Matter of a Referral by Tina Gardner and Carole Young-Kleinfeld, Wilton*, File No. 2012-175 involved a voter who continued to remain registered at an address that was previously his family home. Two of the votes were cast after he moved out, but while his parents still owned and resided in the home. A third vote was cast two years after his parents had sold it to someone unknown to him. The Wilton registrars were conscientious in keeping up their lists and moved him to inactive before the third vote, which required the voter to swear an oath that he was a bona fide resident at the address at the time he presented himself to vote. The Respondent in *Gardner* settled for a civil penalty of \$500 and a henceforth order.
33. In consideration of the aforesaid aggravating and mitigating circumstances in this matter, the Commission concludes, and the Respondent agrees, that a civil penalty of \$300 is appropriate here—\$100 for each General Election, and \$25 for each referendum in which the Respondent improperly voted. Mrs. Massaro should have reasonably known that it was impermissible to vote in U.S. elections as a non-citizen.
34. 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.

Agreement by the Respondent

35. The Respondent does not challenge the findings of the investigation. However, the Respondent does not admit any violations and is resolving this matter to avoid the cost and uncertainty of further litigation.
36. 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.
37. 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.

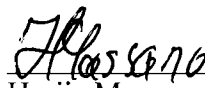
38. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

ORDER

IT IS HEREBY FURTHER ORDERED THAT the Respondent will henceforth strictly comply with General Statutes § 9-12; and


IT IS HEREBY FURTHER ORDERED THAT the Respondent shall pay a civil penalty in the amount of ~~four~~ ^{three} hundred dollars (\$300.00) to the Commission, in full and final resolution of this matter.

The Respondent:



Hyrije Massaro
Watertown, CT

For the State of Connecticut:


BY: 

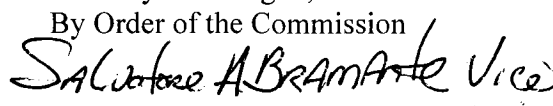
Michael J. Brandi, Esq.
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
20 Trinity St., Suite 101
Hartford, CT

Dated: 09/01/2020

Dated: 9/17/2020

Adopted this 23 day of September of 2020 at Hartford, Connecticut



~~Anthony J. Castagno, Chair~~
By Order of the Commission

Salvatore A. Bramante Vice
Chair