

**STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION**

In the Matter of a Referral by the Greenwich Registrars of Voters

File No. 2021-058

AGREEMENT CONTAINING CONSENT ORDER

This Agreement, by and between Edward Maloney, of the Town of Greenwich, 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:

Allegations

1. The Referring Officials are the Greenwich Registrars of Voters. The allegations here derived from a notice to the Greenwich Registrars of Voters generated by the ERIC system that Greenwich elector Edward Maloney was also a registered elector in Florida.
2. The Greenwich registrars referred this matter to the SEEC, as the ERIC data also indicated that Mr. Maloney cast a ballot in both Florida and Connecticut in the November 3, 2020 General Election.

Law

3. 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,

4. 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.)

5. Voting more than once in the same election is also a federal offense. 52 USC § 10307 reads, in pertinent part:

(e) Voting more than once

(1) Whoever votes more than once in an election referred to in paragraph (2) shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(2) The prohibition of this subsection applies with respect to any general, special, or primary election held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the United States Senate, Member of the United States House of Representatives, Delegate from the District of Columbia, Guam, or the Virgin Islands, or Resident Commissioner of the Commonwealth of Puerto Rico.

(3) As used in this subsection, the term "votes more than once" does not include the casting of an additional ballot if all prior ballots of that voter were invalidated, nor does it include the voting in two jurisdictions under section 10502 of this title, to the extent two ballots are not cast for an election to the same candidacy or office.

6. Voting more than once in the same election is a violation of Florida law. Florida Statutes § 104.18 reads:

Except as provided in s. 101.6952, whoever willfully votes more than one ballot at any election commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Investigation

7. The investigation here confirmed through the records of the Greenwich Registrars of Voters that Mr. Maloney has been a registered elector in Greenwich since at least 1984.
8. The records in the Connecticut Voter Registration System (“CVRS”) show that on three occasions during that time, he moved addresses within town. However, the only voter registration application (“VRA”) ever filed by Mr. Maloney through November 3, 2020 was the original VRA in 1984 (the address changes to the registrations were made automatically through the National Change of Address System).
9. According to CVRS, Mr. Maloney has been an active voter in Connecticut, casting ballots in 13 State and Municipal General Elections since 2002. Each ballot is recorded to have been cast in person, except for the 2012 General Election, in which he was recorded as having voted via absentee ballot.
10. A copy of a voter registration card obtained from the Supervisor of Elections for Indian River County in Florida indicate that Mr. Maloney first registered to vote at an address in the county on or about November 27, 2006. On the Florida VRA, Mr. Maloney clearly identified the Connecticut registration.
11. Importantly, there is no evidence in the records of either Indian River County or Greenwich that Indian River County ever informed Greenwich, as it was required to do by federal law,¹ that Mr. Maloney had registered in another jurisdiction so that Greenwich could then remove Mr. Maloney.
12. Digital records indicate that Mr. Maloney has remained registered at the same Florida address since 2006 and has voted in multiple elections at that address. According to the digital records sent by the Indian River County Supervisor of Elections, Mr. Maloney cast ballots from his address in Indian River County in the November General Elections in 2008,

¹ See 52 U.S. Code § 20507

2010, 2012, 2014, 2016, 2018, and 2020 and the Presidential Preference Primaries in 2008 and 2016.

13. The digital records of the two states reflect overlapping votes in 6 state/federal General Elections, as follows:

Election	Connecticut	Florida
11/3/20	In Person	Absentee
11/6/18	In Person	In Person
11/8/16	In Person	Absentee
11/4/14	In Person	Early Voting
11/6/12	Absentee	In Person
11/2/10	In Person	Absentee

Respondent's Reply

14. Mr. Maloney was prompt with his responses and cooperative with the instant investigation. He confirmed that he had cast ballots in both jurisdictions but asserted that he did not understand this to be a violation of law, as he would only vote in the state races on the ballots in Connecticut and the federal races on the ballots in Florida. He asserted that participation in his community and the democratic process was important to him and that he would never willfully violate the law.

Analysis

General Statutes § 9-360

15. Here, the Commission concludes that Mr. Maloney's actions do not rise to the level of "fraudulent."
16. In his nearly 38 years of being a registered voter, he has only submitted a voter registration card on two occasions: once in Connecticut in 1984 and again in Florida in 2006.
17. No evidence was discovered that he was not otherwise eligible to register in either jurisdiction; no evidence was found that he made any false representation in registering in either jurisdiction.

18. Indeed, when he submitted his registration in Florida, he openly declared his Connecticut registration. The Commission could reasonably conclude, as it has in past matters, that Florida's failure to send notice Connecticut was a factor in determining the Respondent's state of mind.

General Statutes § 9-7b (a) (2) (C)

19. Section 9-7b (a) (2) (C) gives the Commission the authority to level a civil penalty if it finds that an elector:

- (i) improperly voted in any election, primary or referendum, and
- (ii) not been legally qualified to vote in such election, primary or referendum,

Legal Qualification to Vote

20. As an initial matter, the Commission concludes that but for the error of the Florida election officials, Mr. Maloney's votes in two states should never have occurred because he never should have been a registered elector in Connecticut after 2006.

21. Pursuant to the National Voter Registration Act of 1993, 52 USC Ch. 205, Florida was required to inform Connecticut about Mr. Maloney's new registration in 2006. Connecticut, pursuant to General Statutes § 9-21, was required to remove Mr. Maloney from the Connecticut voter rolls upon receiving notice of his Florida registration so that he wouldn't be able to vote in two states at the same time.

22. However, while the error by the Florida elections officials allowed Mr. Maloney to remain on the rolls, it did not change the fact that he was not "legally qualified" to vote in Connecticut after 2006.

23. For the reasons set forth above, the Commission concludes that Mr. Maloney was not legally qualified to vote in the 2010, 2012, 2014, 2016, 2018, and 2020 General Elections in Connecticut.

Improper Voting

24. Pursuant to the aforesaid, the Commission concludes that Mr. Maloney was not legally qualified to vote and therefore the votes he cast were "improper."

25. And, while the error of the Florida elections officials is a mitigating circumstance in the Commission's consideration of penalties here, it did not make Mr. Maloney's votes "proper."
26. Accordingly, the Commission concludes that Mr. Maloney improperly voted in the 2010, 2012, 2014, 2016, 2018, and 2020 General Elections.

Resolution

27. General Statutes § 9-7b (a) (2) (A) 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. 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.

The Gravity of the Act or Omission

28. The Commission's past determinations of the gravity of casting more than one ballot in the same election has been strongly fact dependent.
29. *In the Matter of a Referral by the Greenwich Registrars of Voters*, File No. 2013-007 involved an elector who voted twice in the municipal general elections of two different towns in which he owned and occupied residential homes. The Commission determined that errors by the elections officials led to the registrations being approved in both towns and added to the elector's mistaken belief that he could vote in both towns per the property owner voting provisions in General Statutes § 9-369d. The Commission found the above facts to be mitigating and settled for a henceforth order with no civil penalty.
30. *In In the Matter of a Referral by the Greenwich Registrars of Voters*, File No. 2017-039, the ERIC system reported that the respondent was registered in both Greenwich and Cumberland County, Pennsylvania and had cast an absentee ballot in Greenwich and in person in Pennsylvania. The respondent, a student in Pennsylvania, applied for and

received an absentee ballot from Greenwich, but changed her mind and decided that she would register and vote in Pennsylvania. As such, the elector did what she believed to be the right thing and she returned the ballot blank. However, as she returned it in the inner and outer envelopes, it was recorded as an attempt to vote. Fortunately, due to the respondent's failure to sign the inner envelope, the ballot was never counted and remained in the envelope. The Commission dismissed the allegations against that the elector and determined that:

based upon Respondent's testimony and the inspection of Respondent's absentee ballot under authority of a subpoena, which corroborated her claim that she returned the absentee ballot "blank" or unmarked to Greenwich, the Respondent lacked the sufficient intent to vote twice at the November 8, 2016 in violation of General Statutes § 9-360 and therefore the claim remains unsubstantiated.

Greenwich at ¶ 8.

31. The Commission in *Greenwich* cited its decision in *In the Matter of a Complaint by Peter J. Gostin, New Britain*, File No. 2013-041. The elector in *Gostin* voted in person and also by Presidential Ballot in the November 6, 2012 General Election. On Election Day, the elector cast a Presidential Ballot and after doing so was informed by an election official that his name was on the active registry list and could vote in person. Based on this instruction, the voter proceeded down the polling place and cast a full ballot. The Commission concluded as follows:

6. The Commission finds Respondent's admission of uncertainty in connection with his efforts to vote along with the issuance of both a Presidential Ballot by town officials and the indication that Respondent remained on the voter registry, leads to an inference of mistaken belief rather than an intention to commit fraud by the Respondent with regards to executing more than one ballot on November 6, 2012.

7. The Commission finds after investigation and review of pertinent documents from City of New Britain, as well as interviews of relevant municipal and election officials, insufficient evidence to establish that Respondent *with the intent to commit fraud* voted twice at the November 6, 2012 in violation of General Statutes § 9-360. (Emphasis in original.)

Id.

32. However, it should also be noted that in both *Gostin* and *Greenwich*, the facts and circumstances of those cases were found to show that the apparent double votes were made in good faith and with a reasonable belief that what these electors were doing was correct and legal.
33. This is in contrast with *In the Matter of a Referral by the Colchester Registrars of Voters*, File No. 2014-070 in which an elector voting in-person in a referendum was mistakenly handed two ballots and marked and voted both ballots. The Commission in *Colchester* concluded that they were justified in assessing a civil penalty under §§ 9-360 and 9-7b (a) (2) (C), as the elector's averred belief that what she did was permissible was not reasonable and that such elector either knew or should have known it was not. The Commission in *Colchester* declined to refer the matter criminally and settled for a civil penalty of \$500.

*Whether the Person Has Shown Good Faith in Attempting to
Comply with the Applicable Provisions of the General Statutes*

34. The Commission here concludes that the evidence discovered during the investigation did not reveal any specific facts that would support that Mr. Maloney acted in bad faith.
35. While Mr. Maloney was objectively incorrect in his asserted belief that he could vote in state/local elections in CT and federal elections in FL, there was nothing found during the investigation to show that such mistaken belief was not genuine.
36. Indeed, as discussed previously, in assessing the credibility of this assertion, the Commission gives credit to the Respondent for the failure of the Florida election officials to send notice to Connecticut.

The Previous History of Similar Acts or Omissions

37. The Respondent has no prior history before the Commission.

*The Amount Necessary to Insure Immediate and Continued
Compliance*

38. The Commission considers the facts of this matter to fall somewhere between the *Gostin* and *Greenwich* lines of cases, in which no civil penalty was issued, and the *Colchester* case,

in which a \$500 civil penalty was issued for a single improper vote that the Commission determined to have been cast in bad faith.

39. While Mr. Maloney appeared to be acting in good faith, he should have known that casting a ballot in two jurisdictions in the same election in which the races for federal offices were on both ballots, was improper.
40. Accordingly, in consideration of all aggravating and mitigating circumstances here, the Commission concludes that a total civil penalty of \$1,800, representing a civil penalty of \$300 for each of the 6 impermissible votes, is appropriate to resolve this matter.
41. 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.
42. 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.
43. 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.
44. Upon the Respondent's compliance with the Order hereinafter stated, the Commission shall not initiate any further proceedings pertaining to this matter.

RECEIVED

MAY 17 2022

STATE ELECTIONS
ENFORCEMENT COMMISSION

ORDER

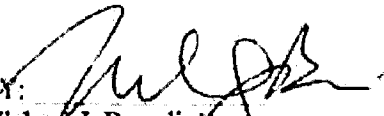
IT IS HEREBY FURTHER ORDERED THAT the Respondent will henceforth strictly comply with the requirement that he register and vote in only one jurisdiction in each primary and election; and

IT IS HEREBY FURTHER ORDERED THAT the Respondent shall pay a civil penalty in the amount of one thousand, eight hundred dollars (\$1,800.00) to the Commission, in full and final resolution of this matter.

The Respondents:


Edward Maloney
Greenwich, CT

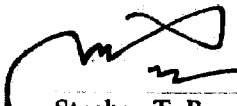
For the State of Connecticut:


BY: Michael J. Brandi, Esq.
Executive Director and General Counsel and
Authorized Representative of the
State Elections Enforcement Commission
55 Farmington Ave., 8th Floor
Hartford, CT

Dated: 5/10/22

Dated: 5/20/22

Adopted this 20th day of May of 2022 at Hartford, Connecticut


Stephen T. Penny, Chair
By Order of the Commission