

Court Upholds Conviction In Vote Fraud By Candidate

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From the start, there was nothing ordinary about the case of John Kennedy O'Hara.

He was, legal scholars said, the first New Yorker since Susan B. Anthony to be prosecuted for voting, and possibly the first ever prosecuted for lying about his voting address. The Brooklyn district attorney, Charles J. Hynes, took Mr. O'Hara's case to trial not once but three times, for offenses that are usually handled as civil cases or ignored entirely.

Today, a divided Court of Appeals, the state's highest court, upheld the 1997 convictions of Mr. O'Hara, a former lawyer, on seven felony counts, ending what the court acknowledged was one of the oddest criminal cases it had seen. Five judges ruled that Mr. O'Hara had simply lied about where he lived, but two others accepted his argument that he was held to a contradictory legal standard that ran counter to recent court rulings.

"I'm devastated," Mr. O'Hara, 40, said, adding that he planned to appeal to the federal courts. "The idea that we can throw people in jail for voting is truly frightening."

Mr. Hynes said, "The court has sent a clear and unequivocal message that one cannot defraud the voters of Kings County."

Mr. O'Hara was sentenced to 1,500 hours of community service, of which he still owes 1,000, and was fined \$20,000. He said he has been unable to pay the fine, which has accrued interest during four years of appeals. If he does not pay, he will be subject to resentencing, which could mean prison time.

Since the 1980's, Mr. O'Hara has lived on 61st Street, on the outskirts of Bay Ridge, Brooklyn. He ran several times, unsuccessfully, for various offices, but the 1992 redistricting moved him into different Assembly and City Council districts. So he changed his voter registration to a building on 47th Street, in Sunset Park, that was owned by his sometime girlfriend.

Mr. O'Hara acknowledged that the 61st Street apartment remained his primary residence, but insisted that he spent a considerable amount of time at the 47th Street address. The district attorney's office argued at trial that in fact, he had never lived in the 47th Street building, not even as a secondary residence. Mr. O'Hara was convicted in his first trial in State Supreme Court in Brooklyn, but the verdict was thrown out on appeal. The second trial ended in a hung jury and he was convicted again in the third trial.

According to Mr. O'Hara, he was prosecuted because his primary challenges to politicians, and a suit contesting the results of one such election, posed a threat to Brooklyn's Democratic bosses.

Kevin G. Davitt, a spokesman for Mr. Hynes, said, "It's a case of a criminal, nothing more than that."

The case turned on a provision in state law that defines a person's residence, for the purposes of registering to vote, as "a fixed, permanent and principal home."

Judge Albert M. Rosenblatt, in dissent, noted that in one case, the New York courts had allowed a candidate for office to keep his voter registration at an address where he had eaten and slept just once in seven years.