DOCKET NO.: CV-20 6097627S	:	SUPERIOR COURT
ROBERT T. KEELEY, JR., ET AL	:	J. D. OF FAIRFIELD
V.	:	AT BRIDGEPORT
PATRICIA HOWARD, DEMOCRATIC REGISTRAR OF VOTERS IN BRIDGEPORT	:	JULY 2020

MEMORANDUM OF DECISION

The operative second amended complaint in this action was filed on June 22, 2020, by the plaintiffs, Robert T. Keeley, Jr. and Wanda Simmons, against the defendants, Patricia A. Howard, the democratic registrar of voters for Bridgeport Connecticut, and Secretary of State Denise Merrill. On June 22, 2020, the court granted to plaintiffs' motion to add the Secretary of State as a party defendant in order for the state to receive the opportunity to be heard on the plaintiffs' claim regarding the constitutionality of General Statutes § 9-406. After a conference with the parties, the court ordered briefing; first as to the plaintiffs' non-constitutional claims, and then as to the plaintiffs' constitutional claims. This briefing was completed on July 3, 2020. Because of the exigent nature of the plaintiffs' complaint and request for relief, the court issues a summary disposition of the plaintiffs' claims based on the parties' stipulations and the briefs submitted.[1] The plaintiffs allege the following in the second amended complaint.

Keeley attempted to file for candidacy by nominating petition in the democratic party primary for the office of State Representative in the 127th House District, and Simmons attempted the same for the office of State Representative in the 128th House District. The

[1] The plaintiffs sought evidence on their claim that defendant Howard advised them that they would be able to run for office despite not living within the House Districts in which they desired to run for office, but otherwise, agreed that their claims could be addressed based on briefs submitted by the parties.

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plaintiffs do not live within the districts where they seek office, but according to the amended complaint, defendant Howard "advised the plaintiffs that they would be able to run for office despite not living within the House Districts in which they desire to run for office, and made petitions available to them." (Amended Complaint, ¶ 18.) However, after submitting the petitions with the requisite number of signatures for the scheduling of a primary, Howard returned the petitions to them informing them that they were not eligible to run because, under General Statutes § 9-406, they were required to reside in the districts at issue.[2]

In count one, the plaintiffs seek a declaratory judgement and injunctive relief restraining Howard from refusing to accept their filings for candidacy by nominating petition. In count two, the plaintiffs seek a writ of mandamus requiring Howard to comply with General Statutes § 9-

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[2] General Statutes §9-406 is entitled "Filing of primary petition candidacies for municipal offices and town committee members" and provides the following: "A candidacy for nomination by a political party to a municipal office or a candidacy for election as a member of a town committee may be filed by or on behalf of any person whose name appears upon the last-completed enrollment list of such party within the senatorial district within which a person is to be nominated in the case of the municipal office of state senator, or the assembly district within which a person is to be nominated in the case of the municipal office of state representative, or the municipality or political subdivision within which a person is to be nominated in the case of a town committee member or for any other municipal office. Any such candidacy shall be filed by filing with the registrar within the applicable time specified in section 9-405 a petition signed by (1) at least five per cent of the electors whose names appear upon the last-completed enrollment list of such party in such municipality or in such political subdivision, senatorial district or assembly district, or (2) such lesser number of such electors as such party by its rules prescribes, as the case may be. For the purpose of computing five per cent of the last-completed enrollment list, the registrar shall use the last printed enrollment list and the printed updated list, if any, of a political party certified and last completed by the registrars of voters prior to the date the first primary petition was issued, excluding therefrom the names of individuals who have ceased to be electors."

453b.[3] In count three, the plaintiffs seek equitable relief on the ground that § 9-406 unconstitutionally overrides § 9-453b. Finally, in count four, the plaintiffs invoke General Statutes § 9-329a to request an expedited ruling.

DISCUSSION

I

The plaintiffs seek to file petitions to require the City of Bridgeport to hold primaries to determine whether they or the candidates endorsed by the Democratic Party should run as the party's candidates for the House of Representative seats in the 127th and 128th Districts. General Statutes § 9-405 states that primary petitions for candidacies of persons other than party-endorsed candidates, such as the plaintiffs, shall be filed with the registrar "as provided in section 9-406." General Statutes § 9-406 concerns the filing of primary petition candidacies for municipal offices and town committee members and states that "a candidacy for nomination by a political party to a municipal office . . . may be filed by or on behalf of any person whose name appears upon the last completed enrollment list of such party within . . . the assembly district within which a person is to be nominated in the case of the municipal office of state representative." (See footnote 2 of this decision.) There is no dispute that the plaintiffs' petitions

[3] General Statutes § 9-453b concerns the "issuance of nominating petition forms" for regular elections and provides the following in relevant part: "The Secretary of the State shall not issue any nominating petition forms for a candidate for an office to be filled at a regular election to be held in any year prior to the first business day of such year. . . . A candidacy for nomination by nominating petition to a district or municipal office may be filed on behalf of any person whose name appears on the last-completed registry list of the district or municipality represented by such office, as the case may be."

were not accepted by the defendant registrar of voters under § 9-406 because the plaintiffs' names did not appear on the last enrollment list of the democratic party for the district for which they sought to be nominated. Thus, the rejection of the plaintiffs' petitions was warranted under the plain language of this statute. Indeed, the language of § 9-406 is clear and unambiguous and the plaintiffs do not actually contend otherwise.

The plaintiffs argue that the registrar, for reasons that are not fully explained, was required to follow the provisions of General Statutes § 9-453b. This statute has nothing to do with primaries and says nothing about procedures to be followed by the registrar of voters. Section 9-453b provides directions to the Secretary of State about the issuance of nominating petition forms for candidates "for an office to be filled at a regular election." (See footnote 3 of this decision.) The plaintiffs are petitioning to participate in a Democratic Party primary and are not petitioning to participate in the general election, and therefore, § 9-453b is inapplicable.

II

In count three of the amended complaint, the plaintiffs allege that defendant Howard "advised the plaintiffs that they would be able to run for office despite not living within the House Districts in which they desired to run for office, and made petitions available to them." (Amended Complaint, Count 3, ¶ 18.) The plaintiffs further insist that if they had not received this advice and had been informed that they were ineligible to run because of their residencies, they would have relocated accordingly. Howard denies giving the plaintiffs any such advice.

Ordinarily, the court would hold an evidentiary hearing to allow evidence on the plaintiffs' disputed claim that they received this advice from Howard, but because of the

exigency of the plaintiffs' complaint and the weakness of their argument, the court has decided to dispose of the argument as a matter of law. Specifically, the plaintiffs contend that although the advice they purportedly received from Howard was contrary to the controlling provisions of § 9-406, they nevertheless are entitled to rely on this advice and receive the desired primary under the doctrine of municipal estoppel. The court rejects the plaintiffs' position. Assuming *arguendo* that the plaintiffs received this advice, the doctrine of municipal estoppel is inapplicable and fails to allow them to acquire a primary that is not authorized by Connecticut statute.

"[I]n order for a court to invoke municipal estoppel, the aggrieved party must establish that: (1) an authorized agent of the municipality had done or said something calculated or intended to induce the party to believe that certain facts existed and to act on that belief; (2) the party had exercised due diligence to ascertain the truth and not only lacked knowledge of the true state of things, but also had no convenient means of acquiring that knowledge; (3) the party had changed its position in reliance on those facts; and (4) the party would be subjected to a substantial loss if the municipality were permitted to negate the acts of its agents." (Citation omitted; internal quotation marks omitted.) *O'Connor* v. *Waterbury*, 286 Conn. 732, 757–58, 945 A.2d 936 (2008). Our Supreme Court instructs that the doctrine of municipal estoppel should be invoked only with great caution, and, therefore, a substantial burden of proof is imposed on the party seeking to do so. *Cortese* v. *Planning & Zoning Board of Appeals*, 274 Conn. 411, 418, 876 A.2d 540 (2005).

The court does not need to receive evidence on the plaintiffs' municipal estoppel claim or consider whether the plaintiffs can satisfy all the elements of this doctrine because, as a matter of

law, the plaintiffs cannot satisfy the second and fourth elements. As to the second element, the plaintiffs obviously cannot establish that they "had no convenient means of acquiring [the] knowledge" about the residency requirement because the requirement is clearly and unambiguously stated in § 9-406 itself.[4]

The plaintiffs also cannot establish that they would actually be subjected to substantial loss if Howard's purported statements are negated because a party cannot acquire through reliance or error what a statute explicitly disallows. Cf. *Reale* v. *Bysiewicz*, 298 Conn 808, 6 A.3d 1138 (2010) (fact that candidate's name was inadvertently published on statutorily required voter guide website did not entitle candidate to have his name on election ballot). Municipal estoppel must be invoked with caution and with a balancing of all the interests at issue. In the present matter, not only should the plaintiffs be charged with the need to follow the election laws necessary for a primary, but both the electorate and the endorsed candidates also have an interest to be exposed to a primary only when these election laws are fully followed.

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[4] Although the plaintiffs do not explicitly state that they were unaware of the provisions of General Statutes § 9-406, they do indicate in the amended complaint that they acquired "a sufficient number of qualified signatures on [their petitions] to qualify for the ballot by nominating petition." (Amended Complaint, ¶¶ 4, 5.) The number of signatures necessary to qualify for a primary ballot by petition is set out in § 9-406 itself, which suggests that the plaintiffs either familiarized themselves with or were capable of familiarizing themselves with the requirements of this statute. As an example, if the plaintiffs acquired *no* signatures on the petitions because they erroneously relied on advice from an election official that none were necessary, they would similarly be without authority to acquire a primary under § 9-406 just as they are without such authority under the facts they advance here.

III

Howard contends that the court is without authority to adjudicate the plaintiffs' constitutional claims because this authority is not provided by the elections statute, General Statutes § 9-329a, which authorizes expedited consideration of the plaintiffs' request for a primary. "The Supreme Court has held that constitutional claims are not within the ambit of General Statutes § § 9–324,7 9–328 and 9–329a. . . . When an election official has complied with existing law, but the plaintiff claims that the law is unconstitutional, the plaintiff may well be aggrieved by the law or regulation, but he or she is not aggrieved by the election official's rulings which are in conformity with the law. The Supreme Court reasoned in [*Sheyd* v. *Bezrucik*, 205 Conn. 495, 506, 535 A.2d 793 (1987)] that the legislature had excluded constitutional claims from the statutes governing election contests because it might reasonably have opted for speedy adjudication of disputes about technical violations of election laws on the theory that identification and rectification of such mistakes is ordinarily not a matter of great complexity. Constitutional adjudication, by contrast, requires study and reflection and may therefore, as a general matter, be deemed less appropriate for accelerated disposition." (Citations omitted; internal quotation marks omitted.) *Wrotnowski* v. *Bysiewicz*, 289 Conn 522, 527-28 958 A.2d 709 (2008).

In response, the plaintiffs insist that the court may reach their constitutional claims because they have pleaded, in the alternative, that the court has jurisdiction to reach their common law claims for equitable and injunctive relief. To the extent the plaintiffs are correct on this point, Howard appropriately countenances against a rushed review of constitutional

considerations. In any event, the court's review of the plaintiffs' constitutional claims indicates that they are without merit and require little discussion.

First, contrary to the plaintiffs' position, General Statutes § 9-406 does not conflict with, nor is preempted by, either article third, § 4 or article six, § 10 of the state constitution.[5] To the contrary, article sixth, § 4 explicitly provides that "[l]aws shall be made to support the privilege of free suffrage, prescribing the manner of regulating and conducting meetings of the electors . . . ." Our Supreme Court has held that "[e]lection laws are the province of the General Assembly." *Lacava* v. *Carfi*, 140 Conn. 517, 519, 101 A.2d 795 (1953). Indeed, "[t]he legislature has broad powers in prescribing how candidates shall be nominated and elected. In exercising those powers it must, of necessity, establish qualifications and classifications and place a limitation upon the number of candidates for political office and their manner of selection." *Mills* v. *Gaynor*, 136 Conn. 632, 638-39, 73 A.2d 823 (1950). Accordingly, § 9-406 constitutes a permissible exercise of the General Assembly's authority under article sixth, § 4.

Turning to the plaintiffs' equal protection argument,[6] a distinction exists "between bona fide residence requirements, which seek to differentiate between residents and nonresidents, and

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[5]Article third, § 4 provides in relevant part: "The house of representatives shall consist of not less than one hundred twenty-five and not more than two hundred twenty-five members, each of whom shall have attained the age of eighteen years and be an elector residing in the assembly district from which he is elected." Article sixth, § 10 provides: "Every elector who has attained the age of eighteen years shall be eligible to any office in the state, but no person who has not attained the age of eighteen shall be eligible therefor, except in cases provided for in this constitution."

[6] Our Supreme Court "has interpreted the state constitution's equal protection clause to have alike meaning and [to] impose similar constitutional limitations as the federal equal protection

residence requirements, such as durational, fixed date, and fixed point residence requirements . . . ." *Attorney General of New York* v. *Soto-Lopez*, 476 U.S. 898, 903 n.3, 106 S. Ct. 2317, 90 L. Ed. 2d 899 (1986). Whereas the latter are subject to strict scrutiny; *Dunn* v. *Blumstein*, 405 U.S. 330, 342, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972); bona fide residency requirements, such as § 9-406, are subject to rational basis review. *Massad* v. *New London*, 43 Conn. Supp. 297, 305, 652 A.2d 531 (1993), aff'd, 36 Conn. App. 584, 652 A.2d 529 (1995); see *Holt* v. *Civic Club of Tuscaloosa*, 439 U.S. 60, 68-69, 99 S. Ct. 383, 58 L. Ed. 2d 292 (1978) ("the 'one man, one vote' principle [does not extend] to individuals residing beyond the geographic confines of the governmental entity concerned, be it the State or its political subdivisions").

"If the statute does not touch upon either a fundamental right or a suspect class, its classification need only be rationally related to some legitimate government purpose in order to withstand an equal protection challenge." (Internal quotation marks omitted.) *Contractor's Supply of Waterbury, LLC* v. *Commissioner of Environmental Protection*, 283 Conn. 86, 93, 925 A.2d 1071 (2007). "Under rational basis review . . . [a court is] required to defer to the legislative choice, absent a showing that the legislature acted arbitrarily or irrationally." (Internal quotation marks omitted.) *Friedman* v. *Bloomberg L.P.*, 884 F.3d 83, 92 (2d Cir. 2017).

There can be no doubt that the provision of § 9-406 providing for a residency requirement is reasonably based and satisfies a rational basis analysis. As part of a broader

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clause." (Internal quotation marks omitted.) *Martorelli* v. *Department of Transportation*, 316 Conn. 538, 554, 114 A.3d 912 (2015).

campaign finance reform endeavor in response to *Citizens United* v. *Federal Election Commission*, 558 U.S. 310, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010), § 9-406 was amended to include the residency requirement that is currently being challenge by the plaintiffs. See 56 S. Proc., Pt. 15, 2013 Sess., p. 4724, remarks of Senator Musto ("[T]he basic premise of this bill is that we need to know who's spending money in our state on elections and we need to be able to counter that spending on elections by outside groups. . . . [I]ndividuals can come into Connecticut - and we've seen this happen at every level of government - and try to push a particular agenda that may be coming from another state or another area in a local election . . . ."). Curtailing the influence of outside spending in state elections constitutes a legitimate government undertaking by the General Assembly, and the plaintiffs fail to establish that § 9-406 is not rationally related to that undertaking.

Finally, with regards to the plaintiffs' argument that § 9-406 is unconstitutionally vague, "[a] statute is not void for vagueness unless it clearly and unequivocally is unconstitutional, making every presumption in favor of its validity." (Internal quotation marks omitted.) *Graff* v. *Zoning Board of Appeals*, 277 Conn. 645, 672, 894 A.2d 285 (2006). Moreover, "in a vagueness challenge, such as this, civil statutes can be less specific than criminal statutes and still pass constitutional muster. . . . To prove that a statute is unconstitutionally vague, the challenging party must establish that an ordinary person is not able to know what conduct is permitted and prohibited under the statute. . . . The fact that the meaning of the language is fairly debatable is not enough to satisfy the burden of proof." (Citations omitted; internal quotation marks omitted.) *Bottone* v. *Westport*, 209 Conn. 652, 657-58, 553 A.2d 576 (1989).

CONCLUSION

Therefore, for these reasons, the court finds that the plaintiffs are not entitled to any of the relief they seek and that judgment should enter in the defendants' favor as a matter of law.

So ordered this 8TH day of July 2020.

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STEVENS, J.
Presiding Judge, Civil