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JUDICIAL DISTRICT OF
FAIRFIELD AT BRIDGEPORT
STATE OF CONNECTICUT

NO. CV11 602 14 87 S	:	SUPERIOR COURT
MARY-JANE FOSTER, ET AL	:	JUDICIAL DISTRICT OF
VS		FAIRFIELD AT BRIDGEPORT
SANTA I. AYALA	:	SEPTEMBER 2, 2011

MEMORANDUM OF DECISION

The case presently before the court arises out of the recent rejection of the plaintiffs' primary petitions by the Democratic Registrar of Voters for the City of Bridgeport. The plaintiffs are Mary-Jane Foster, listed on the petition as candidate for mayor, Marilyn Moore, listed as candidate for City Clerk, Roberto Ayala, listed as candidate for Town Clerk, Dwayne McBride and Andrew Fardy, both listed as Sheriff candidates[1], and Robert J. Walsh, George Pipkin, III, and Petrinea Cash-Deedon, all of whom were listed on the petition as board of education candidates.[2] The sole defendant is Santa I. Ayala, the Democratic Registrar of Voters for the City of Bridgeport

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[1]The Amended Complaint, filed on August 29, 2011 alleges, and the defendant admits, that a third candidate for Sheriff, Joel Gonzalez, who is not a party to this action, has since withdrawn his candidacy.

[2]The Amended Complaint alleges, and the defendant admits, that a fourth candidate for the board of education, non-party Charles Coviello, has since withdrawn his candidacy.

("the registrar"). The operative complaint is the Amended Complaint dated August 29, 2011. Comprised of three counts, it seeks a writ of mandamus requiring the registrar to accept the plaintiffs' primary petitions and place their names on the primary ballot, and requests an order enjoining the registrar from taking any action that would further impede the ability of the plaintiffs from running in the September 13, 2011 Democratic primary.[3] Essentially, the plaintiffs claim that the registrar misconstrued the Bridgeport City Charter and/or C.G.S. § 9-410(c) in rejecting their primary petition, and also claims that the registrar is legally estopped from rejecting the petitions, as, according to the plaintiffs' allegations, the registrar knowingly prepared the defective petition which included four board of education candidates, failed to disclose the defect to the plaintiffs, based her rejection on the defect in the petition that she herself prepared, and did not act upon the plaintiffs' primary petition in a timely manner.

The order to show cause was issued by this court, and it appears that the registrar was served, on Thursday, August 25, 2011. Evidence and argument took place on August 29, 2011, August 30, 2011 and August 31, 2011.[4] Based upon the evidence presented as well as the stipulations of the parties, the court makes the following findings.

On July 28, 2011, the plaintiffs Foster, Moore and Ayala, along with Charles Coviello[5], Jason Bartlett (the Foster campaign manager as of July 3, 2011), Attorney Michele Mount, and

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[3]At the August 30, 2011 hearing, the plaintiffs withdrew their request for a declaratory ruling.

[4]The complaint seeks relief pursuant to C.G.S. §§ 9-328 and 9-329a; both of these elections and primaries statutes require that the hearing be held "not more than five nor less that three days from the making of [the court's] order [of a hearing]." As such, the hearing commenced on Monday, August 29, 2011, the first allowable hearing date under the statute.

[5]As mentioned in footnote 2, Coviello was originally a Democratic candidate on the petition for the board of education.

Attorney John Kardemis, went to the registrar's office. Coviello, who had previously declared his candidacy for mayor of the city of Bridgeport, submitted to the registrar his withdrawal papers for the office of mayor. The registrar was then given a consent form listing the ten individuals, including Foster, who consented to the placing of their name on Foster's nominating petition; this consent form, which included Walsh, Pipkin, Cash-Deedon and Coviello as four board of education candidates, was date-stamped at 12:53 p.m. by the registrar.[6] At this time, the registrar was

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[6]Bartlett downloaded an instruction packet from the Secretary of State's Office entitled "Instruction Page for Primary Petition for Municipal Office(s) At-Large." It states at the very end, under "Offices", as follows:

> This primary petition is to be used in connection with the following municipal offices when applicable:
> A town, city or borough office for which only and all electors of such town, city or borough may vote.
> State Representative in an Assembly District composed of a single town.
> Judge of Probate in a Probate District composed of a single town.
> Registrars of Voters, except where elected from voting districts.
> Justice of the Peace.

The section entitled "Request for Petition Forms" includes the following language:

> [t]he Registrar of Voters . . . must fill in on each Petition Signatures Page the name and addresses of each candidate to be named therein, the office sought by each candidate, the name of the political party holding the primary, and the date of the primary, and must also fill in the blanks on this Instruction Page.

The section entitled "General Information" sets forth the following language:

> A candidacy may be filed by or on behalf of any person (except a party-endorsed candidate) whose name appears on the last-completed enrollment list of the party within the municipality by filing with the Registrar of the party the required petition. A petition may propose as many candidates for different offices as there are candidates to be nominated by the party at-large, but no more.

The instructions do not specifically refer to board of education "seats" or "positions", but rather refer to municipal "offices". The plaintiffs attempt to distinguish between "office" and "position" or "seat". The definitions statutes that apply here are General Statutes §§ 9-1 and 9-372. Section 9-372 (7) provides: "'Municipal office' means an elective office for which only the electors of a single town, city, borough, or political subdivision, as defined in subdivision (10) of this section,

aware of the state involvement with the Board of Education,[7] and she was also aware that no major parties had nominated any Board of Education candidates.[8] Exercising caution, the registrar voiced her concerns that the consent form included board of education candidates and initially appeared reluctant to accept the consent forms with the board of education candidates on it.[9] She stated that

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may vote, including the office of justice of the peace . . . ." Case law suggests that a Board of Education candidate would be a candidate for municipal office. "As a general rule, a member of a municipal board or commission holds public office. 63 A Am.Jur. 2d, Public Officers and Employees 21 (1984); see *Keegan v. Thompson*, 103 Conn. 418, 420, 130 A. 707 (1925)." *Murach v. Planning & Zoning Commission*, 196 Conn. 192, 196 n. 10, 491 A.2d 1058 (1985) (holding that a salaried member of the fire department of the city of New London held a "salaried municipal office" within the meaning of General Statutes § 8-4a). "As a starting point for our analysis, we equate the phrase 'municipal office' with 'public office.'" Id. 196. "We have said that '[t]he essential characteristics of a 'public office' are (1) an authority conferred by law, (2) a fixed tenure of office, and (3) the power to exercise some portion of the sovereign functions of government.' . . . 'An individual so invested is a public officer.'" (Citations omitted.) Id. 198. Further, *Lobsenz v. Davidoff*, 182 Conn. 111, 438 A.2d 21 (1980), and *Bortner v. Woodbridge*, 250 Conn. 241, 736 A.2d 104 (1999), both involve complaints brought pursuant to General Statutes § 9-328 regarding elections of board of education candidates; the present matter was brought pursuant to § 9-328 and General Statutes § 9-329a. C.f., See also *Ogden v. Raymond*, 22 Conn. 379; *Hassett v. Carroll*, 85 Conn. 23, 81 A. 1013." *Keegan v. Thompson*, 103 Conn. 418, 420, 130 A. 707 (1925). ("There is no doubt that members of a town school committee are public officers.)" As such, the plaintiffs' attempt to distinguish between a municipal office and seat on a Board of Education fails.

[7]On July 5, 2011, the elected board of education had passed certain resolutions which essentially requested that the State Board of Education authorize the Commissioner of Education to reconstitute the Board of Education and appoint new members to the reconstituted board. On July 6, 2011, the State Board of Education authorized the Commissioner of Education to reconstitute the Bridgeport Board of Education. On July 14, 2011, the acting Commissioner of Education sent a letter to the President of the Bridgeport Board of Education and all its members, giving notice of his intention to reconstitute the board.

[8]The evidence in this case clearly established that there was never any other Board of Education candidates besides the Foster slate, no other challengers, and furthermore, the Foster Campaign was not endorsing any other candidates.

[9]Indeed, at this time many people were confused and concerned with regard to the make-up of the Board of Education and the implications of a state take-over on the September primary and November election.

she would immediately email the Secretary of State's Office for a written legal opinion as to whether they would accept the consent forms and whether she should issue petitions for those seats, and she indicated that she would copy the Bridgeport City Attorney's Office on the email.[10] In response to Bartlett's request that he also be copied on the email, the registrar indicated that she would provide a copy if there was a written request, and the copy was provided. The registrar, in response to Moore's request that Staff Attorney Bromley at the Secretary of State's Office be contacted by phone, again indicated her desire to have the exchange in writing.

The registrar advised Bartlett that she would not sign off on a consent form that had board of education candidates on it if he wasn't going to run them. Also, Bartlett had prepared a separate consent form, not listing board of education candidates, that he did not want to give her at that time in the absence of a ruling. Bartlett did inform the registrar of the existence of that other consent form, indicating that he was prepared to submit that form if she gave him a ruling or something in writing stating that there would be no board of education candidates.

The registrar did in fact compose emails to Bromley on July 28, 2011, stating that she was unclear as to the interplay between the state education laws and election statutes. She knew of the state involvement with the Board of Education at that time. She asked for advice as to whether she should accept the consent forms with the board of education candidates and issue petitions for same. Thereafter, that same day, Mount was in contact with Peggy Reeves of the Secretary of State office, who told her that the Secretary of State would not issue an opinion. Mount relayed this

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[10]The registrar, in response to Bartlett's concern regarding the technical format and language of the consent form, assured Bartlett that, although she did not share that concern, she would nonetheless confer with the Secretary of State's office on that issue as well.

information, in person, to the registrar, who duly noted it in her file, and Mount inquired as to whether the registrar was going to issue the petitions.[11] The registrar emailed Bromley again, asking for a direct response from him or Reeves. Due to network issues, both of the registrar's emails to Bromley remained in her draft folder and were not transmitted until the following day.[12]

At approximately 4:00 p.m. on July 28, the registrar presented the Foster campaign with approximately 250 copies of the petition form, having completed Section "A", the portion she was required to prepare. While the petition prepared by the registrar did list the names, addresses, offices sought, and terms for the Foster candidates, and indicated a September 13, 2011 primary date applicable to all offices including the Board of Education candidates, only three board of education candidates were listed, for a total of nine candidates. Bartlett, noticing that Walsh, a fourth Board of Education candidate, had been omitted, immediately called the registrar on her cell phone to inquire if there was a problem with including Walsh on the petition. The registrar apologized and assured Bartlett that it was merely a clerical error made by a careless employee. [13]

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[11]The campaign wanted to get the petitions so that they had the weekend to begin amassing the needed signatures for the petitions.

[12]On July 28, 2011, at approximately 2:30 p.m., Bromley sent the registrar an email which she did not receive until July 29, 2011. In that email, Bromley indicated to the registrar that he never received her original message, but was responding to other inquiries they had received. His email stated that"[a]ccording to the State Board of Education, the Bridgeport Board of Education has been or will be dissolved. This dissolution falls under Title 10 and we are unable to provide you with any assistance under this statutory title. We suggest that you contact the State Board of Education with any questions you may have. If the Board of Education is dissolved, no endorsement or primary petitions would be issued as the State Board of Education would appoint members to such Board." (emphasis added) The registrar did not provide this information to the Foster campaign.

[13]There was no evidence to suggest that the registrar intentionally listed only three Board of Education candidates on the form because she believed at that time that three, rather than four, was the correct number, although the court finds that as an experienced registrar, she knew or should

The registrar, who had been in the car, promptly returned to the office. She also telephoned Bartlett back, asking him to return all the incorrect petitions. Bartlett retained one copy; the others were returned. The registrar replaced the first set of petitions with a new set containing all ten candidates, including the four Board of Education candidates. No discussion was had with respect to whether the Secretary of State had provided the registrar with advice. Thus, the reasonable, diligent inquiries of the Foster campaign to determine whether they should include Board of Education candidates went unanswered, but they were in fact ultimately provided with the petition form prepared by the registrar, listing, inter alia, the four Board of Education candidates for a September 13, 2011 primary, despite the registrar's knowledge of the State's involvement with the Board of Education and that should there be a State appointed board, the need for a September primary or November election for the Board of Education would be obviated.

The evidence established that on more than one occasion from January 2011 until July 5, 2011, local elected officials in Bridgeport consulted with the State Board of Education Chairman, the Acting Commissioner of the State Department of Education, or their representatives, about the possibility of the State Board of Education reconstituting the Bridgeport Board of Education. Beginning in early July, when the elected Board of Education passed the resolution to turn the board over to the State, the Bridgeport Board of Education was in a state of flux, and confusion as

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have known that three was the correct number. The evidence in the case establishes that until the petitions were rejected by the registrar well after the deadline, the only person who questioned whether the Foster slate had the correct number of Board of Education candidates was Coviello, who has extensive experience in politics. Coviello never specifically questioned whether there should be three as opposed to four candidates, but did voice his concerns to Bartlett as to whether Board of Education candidates could be placed, and if so, whether the numbers were correct. As discussed above, Coviello did sign the consent form to place his name, along with the other three Board of Education candidates, on the Foster slate.

to the status of the board abounded at all levels. Prior to being transferred to the Waterbury Complex Litigation docket, three lawsuits were filed at Bridgeport Superior Court, and one at Hartford Superior Court, all essentially involving the state take-over of the board and attempting to restore the elected board. In late July, in *Pereira v. State Board of Education*, UWY CV11 6010994, the plaintiffs Maria Pereira and Bobby Simmons, both members of the elected board, brought suit against 17 parties, including the State Board of Education, individuals on the newly constituted state board, and individual members of the elected board who had voted in favor of a state takeover. Also in late July, in *Farrar-James v. Bridgeport Board of Education*, UWY CV11 6011014, the plaintiffs Laurayne Farrar-James, Shavonne Davis, Sauda Baraka, and Barbara Pouchet, brought suit against 13 parties, including the Bridgeport Board of Education, the Connecticut Department of Education, and individual members of the newly constituted state board. On or about August 5, 2011, in *Walsh v. State Board of Education*, UWY CV11 6011099, Walsh, Coviello, Pipkin, and Cash-Deedon brought suit against 10 defendants, including the State Board of Education, the registrar, Bridgeport mayor Bill Finch, and members of the elected board who had voted in favor of the state takeover. On or about August 8, 2011, in *Walsh v. State Board of Education*, UWY CV11 6011098, the plaintiffs Robert Walsh, Charles Coviello, Charles Pipkin and Petrinea Cash-Deedon, all listed as Board of Education candidates on the petition at issue, brought suit against 20 parties, including the State Board of Education, the registrar, the mayor, individual members of the elected board who voted in favor of a state takeover, the Bridgeport City Clerk, Alma Maya, the Secretary of State, Denise Merrill, and individual members of the newly constituted State Board of Education. Additionally, both the Bridgeport Republican Town

Committee and the Bridgeport Democratic Town Committee intervened in the action. All told, it appears that no less than thirty-seven parties were involved in the four lawsuits.

Bartlett, when putting together the Foster slate and preparing the consent forms, did not know how many Board of Education seats would be available or even whether there would be an election for the Board of Education. He was concerned, as he needed candidates to fill the board if there was going to be an elected board. While the registrar issued the petition and never informed the Foster campaign that there was any problem with the Board of Education candidates, the campaign, having not received a ruling from the registrar, emailed the following letter to the registrar on August 5, 2011:

> We respectfully request that you inform us as to whether or not you will accept any properly signed petitions for our Board of Education Candidates and that you will accept and certify the petition to be placed on a ballot on which their names will appear, along with our entire slate of candidates? As time is of the essence we need your answer as soon as possible today. Thank you in advance for your cooperation.

The registrar's date stamp on the letter indicates that it was received on August 5, 2011 at 2:17 p.m. The registrar did not respond to the inquiry. Indeed , the registrar has admitted in her answer that the Deputy City Attorney for the City of Bridgeport told Foster's representative that she could not speak with the defendant "about matters relating to pending lawsuits" in which the registrar was also a defendant. As discussed above, the registrar was a defendant in both Walsh lawsuits, the first one having been filed on or about August 5, 2011. Both lawsuits involved the former elected board and the newly constituted State board and the relief requested by the plaintiffs included an order that their names be placed on the Democratic primary ballot as Board of Education candidates.

Also on August 5, 2011, the mayor sent a letter to the Office of the City Clerk, the Office of the Town Clerk, and the Clerk of the Board of Education, advising that the Board of Education had been reconstituted, naming six individuals who had been appointed to the State board by the Acting Commissioner of Education, and stating that "[t]he Acting Commissioner's appointments replace all current Bridgeport Board of Education members, who shall surrender their authority upon appointment of these six new members today." The registrar was aware of the Acting Commissioner's new appointments but was uncertain as to the number of Board of Education positions that would be up for election if the plaintiffs ultimately prevailed in their lawsuits. She also knew, however, based upon the advice of Attorney Bromley from the Secretary of State's Office that now that the local board was no longer in existence, "**no endorsement or primary petitions would be issued as the State Board of Education would appoint members to such Board**." Bartlett obtained a copy of the mayor's letter at approximately 5:00 p.m. that day, and based on that letter, reasonably believed there might be nine vacancies on the Board of Education if the plaintiffs in the Waterbury lawsuits prevailed.

The registrar began the important work of verifying the petitions as soon as the Foster campaign started handing in the first petition pages on August 5, 2011, and were still counting as the final petitions were submitted on August 10, 2011. The registrar, who has seven days from the August 10 deadline to count the 238 pages of petitions, testified, unconvincingly, that she could not recall when she determined that there was a violation of C.G.S. § 9-410(a), except to say that it was very late in the process of verifying signatures, some time after August 10, 2011 but before August 18, 2011, when she had sent a letter to the Town Clerk.

On August 8, 2011, Judge Agati, who handled the Waterbury cases, entered an order in all four cases, which provides in relevant part as follows:

> The registrar of voters of the City of Bridgeport accept any valid petitions submitted and forward the petitions to the Town Clerk who shall not proceed until further order of the court through August 16, 2011 and in keeping with any deadlines imposed by statute.

Similarly, on August 16, 2011, Judge Agati entered another order in the Waterbury cases, which stated in relevant part as follows:

> The registrar of voters of the city of Bridgeport shall continue through 8/19/11 to follow the court's 8/8/11 order to accept any valid petitions submitted and shall forward the petitions to the town clerk who shall not proceed until further order of the court and in keeping with any deadlines imposed by statute.[14][15]

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[14]As indicated in both the August 8, 2011 and August 16, 2011 orders, Judge Agati ordered the registrar to accept any valid petitions, forward the petitions to the Town Clerk who would not proceed further until order of the court through August 16, 2011, and the registrar and Town Clerk were to abide by statutory deadlines. As discussed below, the registrar did not abide by the statutory deadline as set forth in C.G.S. § 9-412, with respect to the certification of the petitions by the August 17, 2011 deadline.

[15]Ultimately, on August 26, 2011, the parties in the three remaining Waterbury lawsuits (one was withdrawn) entered into numerous stipulations of fact and pursuant to Practice Book § 73-1, Judge Agati reserved five issues and requested advice from the Connecticut Supreme Court. The registrar, as well as three of the plaintiffs in the present lawsuit, namely, Walsh, Pipkin, and Cash-Deedon, stipulated, inter alia, that had the board not been reconstituted by the Acting Commissioner of Education, there would have been four positions in the Board of Education available to be filled at the November election and that Chapter 15, Section 1 of the City Charter guarantees minority party representation on the nine person board, and that pursuant to statute and charter, the maximum member of Democratic Board of Education members would have been three. Here, Bartlett testified, and the court accepts his testimony, that Coviello dropped from the slate, and they agreed to stipulate to three Democratic seats available, in order to reach this agreement on the certified questions. In any event, if the Connecticut Supreme Court agrees to consider the reserved questions, and rules that the newly constituted Board of Education is unlawful or unconstitutional, the parties stipulated that there would be four seats on the Bridgeport Board of Education that would be subject to municipal elections in Bridgeport.

On August 18, 2011, as mentioned above, the registrar wrote to Alma Maya, the Town Clerk, stating that it appeared that the Foster Board of Education slate violated C.G.S. § 9-410(a), by putting forward four, rather than three, Board of Education candidates. The body of the letter, in its entirety, is as follows:

> Pursuant to the direction of Judge Agati and in connection with the pending litigation in Superior Court, I am forwarding to you the petitions that were filed in my office by Mary Jane Foster slate along with her candidates for the Board of Education. Pursuant to the court's directives I have counted the signatures and petitions have been verified as the normal practice when petitions are filed for a primary. The court has directed that I forward the same to you and you are to take no action, as I understand the court directed. See enclosed order of the court.
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> I would suggest that you speak with your council (sic) as to what action you should take upon receipt of these signatures. It would appear Mary Jane Foster and the Sheriffs have sufficient signatures to run a primary for September 13, 2011. She supplied this office with approximately two hundred and forty eight pages of signatures. Of those 248 pages, we have verified the validity of 2274 signatures. As you know Mary Jane Foster needed 2,110 signatures to qualify as a Petition Primary Candidate.
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> Likewise, pursuant to the judge's directive, I have accepted and counted the signatures for the Board of Education candidates. They contain the same number of valid signatures as Mary Jane Foster's petition as they were all on the same petition. However, their petition put forward (4) candidates for the position of Board of Education. As you know, the party originally had (3) three Board of Education spots in which they could have endorsed. The petition candidate would likewise appear to have (3) petitioned candidates to garners (sic) signature and become the party's nominee for the November 2011 election.
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> In accordance the C.G.S. § 9-410(a) **"Only as many candidates may be proposed in any one primary petition for the same office or position as are to be nominated or chosen by the party for**

> **such office or position..."** It would seem that this slate of candidates for the Board of Education violated this Statute. I would suggest you seek advice from your council (sic) as to how you should proceed.
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> Furthermore, since it appears that to C.G.S. § 10-223e(h), the State Board of Education has authorized it's commissioner of Education to reconstitute the Board and has in fact now appointed members to the Board of Education. Pursuant to C.G.S. § 9-185(8), the Board of Education is at this time not elected.
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> Again, pursuant to the Courts directives, I am forwarding the petitions. I would suggest that you consult your attorney as how to proceed. It would appear to me that pursuant to C.G.S. § 9-410(a), the petitions as to the Board of Education candidates are not (sic), as they contain more (sic) than are permitted by Statute.

(Emphasis in original). In short, while the registrar recognized that there was no elected Board of Education and as such no Board of Education election in 2011, she determined that the petitions **as to the Board of Education candidates** violated the statute because the slate had four such candidates rather than three. Maya did seek the advice of counsel, as suggested in the letter, but took no other action in response to the letter. The registrar did not copy the Foster campaign or candidates on the letter.

On the weekend of Saturday, August 20, 2011, and Sunday, August 21, 2011, following an initial phone call by the registrar, Bartlett learned for the first time that the registrar had issues with the petition, although a loophole might exist. On August 21, 2011, the registrar drafted a letter to Maya and the Secretary of State, with copies to the eight remaining Foster candidates, explaining that she was required to reject all 248 petition pages, and therefore disqualify the entire Foster slate, as the petitions circulated contained four candidates for the Board of Education while the

Bridgeport City Charter allowed a maximum number of three, in violation of C.G.S. § 9-410(c).[16] In the meantime, however, the registrar , who was reluctant to disqualify the entire Foster slate, was researching the issue, and consulting with counsel in an attempt to obtain written advice from the Secretary of State.

On the morning of Monday, August 22, 2011, Bartlett went to the registrar's office with a case study, returning several times throughout the day. On that day, the registrar received a letter from James F. Spallone, Deputy Secretary of the State, in response to an inquiry from the registrar's counsel, summarizing the law, based on the assumption that the City Charter allowed for only three Board of Education candidates. The letter made reference to C.G.S. §§ 9-410(a), 9-410(c), and 9-412[17], noted that the office of the secretary of state was not able to issue a binding opinion, and stated that "[u]nder our Statutes, the decision to accept or reject petitions for municipal primaries rests with the local registrar of voters." That same day, the registrar provided the Foster candidates with the disqualification letter she had prepared on August 21, 2011.

The registrar, who is in her ninth year as Democratic registrar, explained her position that while her duties were defined by statute, her job depended on the situation at hand. When referencing petition papers, she stated that she had the authority to reject papers that she knew were defective.

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[16]This letter differed from her August 18, 2011 letter to Maya, which seemed to suggest that only the petitions as to the Board of Education candidates were not valid. No mention was made in the August 18, 2011 letter of rejecting all petition pages, and that August 18, 2011 letter pointed out that there was no elected board.

[17]C.G.S. § 9-412 provides in pertinent part that "[t]he registrar shall reject any page of a petition ... which the registrar determines to have been circulated in violation of Sec. 9-410."

I. DUTIES OF THE REGISTRAR OF VOTERS

a. In General

While there is no authority that summarizes and clearly delineates all of the duties of a municipal registrar of voters, it is clear that the registrar of voters has a duty to comply with all mandates set out by the Connecticut statutes. With respect to a Bridgeport registrar, the charter of the city of Bridgeport defines the duties of the registrar of voters as follows: "The town clerk, registrar of voters and all other officers of the city shall perform the duties required of them by law with respect to elections in the voting districts." The Charter of the City of Bridgeport, Chapter 5, Sec. 2(d).

The case law in Connecticut which addresses the duties of registrar of voters describes specific duties relevant to each particular issue before the court, and there is no case law that provides a general description of a registrar's duties. See *Caruso* v. *Bridgeport*, 285 Conn. 618, 941 A.2d 266 (2008) (discussing possible duties of registrar surrounding the appointment of moderators and poll workers and notifying campaigns of their rights to submit designees for polling place officials); *In re Election of U.S. Representative for the Second Congressional District*, 231 Conn. 602, 653 A.2d 79 (1994) (discussing possible duties of registrar to supervise absentee ballot voting at senior centers); *Miller* v. *Schaffer*, 164 Conn. 8, 320 A.2d 1 (1972) (discussing duties of the registrar of voters, as well as other officials, when electoral districts are being composed); *Kiernan* v. *Borst*, 144 Conn. 1, 126 A.2d 569 (1956) (discussing the registrar's duty to restore a person to a political party roster when the person proves affiliation to the party); *Post* v. *Dillane*, 119 Conn. 655, 178 A. 595 (1935) (discussing the registrar's duty to compile lists of electors); *Comley* v. *Wilson*, 116 Conn. 36, 163 A. 465 (1932) (discussing the duty of the registrar to sign a

registry list that was used to check off voters during elections and file it with the town clerk); *Emhoff* v. *Stafford*, Superior Court, judicial district of Hartford, Docket No. CV 02 0817774 (March 28, 2005, *Lavine, J.*) (discussing the duties of the registrar under § 9-169 to provide a suitable voting place, in the context of a slip and fall case).

Kirkley-Bey v. *Vazquez*, Superior Court, judicial district of Hartford, Docket No. CV 10 6007952 (March 1, 2010, Peck, J.) is somewhat on point, stating that, with respect to the petition form, "[t]he registrar's duty is to check the name of the circulator against the rolls of registered voters in the municipality, in order to ensure that the circulator is a registered voter and member of that party for which they are circulating a petition and *ultimately certifying that the form has been filled in validly and completely before accepting the petition for filing*." The General Statutes do not contain a specific provision outlining all the duties of a registrar, but rather title nine, which governs elections, includes a series of mandates for city registrars. General Statutes § 9 - 412, which deals with the duties of the registrar with respect to petitions, states in relevant part that the registrar "shall forthwith file such certified page in person or by mail, as described in section 9-140b, with the clerk of the municipality . . . within seven days after receipt of the page. . . . The registrar shall reject any page of a petition which does not contain the certifications provided in section 9-410, or which the registrar determines to have been circulated in violation of any other provision of section 9-410."[18] There is no case law in Connecticut addressing this duty to reject

[18]"Upon the receipt of any page of a petition proposing a candidacy for a municipal office or for member of a town committee, the registrar shall forthwith sign and give to the person submitting the petition a receipt in duplicate, stating the number of pages filed and the date and time of filing and shall forthwith certify on each such page the number of signers on the page who were enrolled on the last-completed enrollment list of such party in the municipality or political subdivision, as the case may be, and shall forthwith file such certified page in person or by mail, as described in

any petitions that violate § 9-410, but the statute clearly mandates that the registrar of voters is required to complete her review and certification of the petitions within seven days of receipt of the last completed enrollment list.

Finally, the parties have stipulated that the City of Bridgeport website states that the function of the Registrar of voters is: "To register voters; maintain voting and party enrollment lists; administer all elections, primaries; referenda; and absentee ballot central counting. Selection and training of election officials; voting machine mechanics; purchase and maintenance of voting equipment and accessories; redistricting of district boundaries; selection of polling locations and *respond to inquiries from all persons and agencies.*" http://www.bridgeportct.gov/RegistrarofVoters/Pages/Function.aspx. The registrar takes the position in the case that she is not required to respond to inquiries requiring her to provide legal advice.

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section 9-140b, with the clerk of the municipality, together with the registrar's certificate as to the whole number of names on the last-completed enrollment list of such party in such municipality or political subdivision, as the case may be, within seven days after receipt of the page. In checking signatures on primary petition pages, the registrar shall reject any name if such name does not appear on the last-completed enrollment list in the municipality or political subdivision, as the case may be. Such rejection shall be indicated by placing a mark in a manner prescribed by the Secretary before the name so rejected. The registrar may place a check mark before each name appearing on the enrollment list to indicate approval but shall place no other mark on the page except as provided in this chapter. The registrar shall not reject any name for which the street address on the petition is different from the street address on the enrollment list, if (1) such person is eligible to vote for the candidate or candidates named in the petition, and (2) the person's date of birth, as shown on the petition page, is the same as the date of birth on the person's registration record. The registrar shall reject any page of a petition which does not contain the certifications provided in section 9-410, or which the registrar determines to have been circulated in violation of any other provision of section 9-410. Petitions filed with the municipal clerk shall be preserved for a period of three years and then may be destroyed." Section 9-412.

b. The Registrar's duty in relation to
GENERAL STATUTES § 9-409

General Statutes § 9-409 provides, in relevant part: "Any person who requests a petition form shall give his name and address and the name, address and office or position sought of each candidate for whom the petition is being obtained, and shall file a statement signed by each such candidate that he consents to be a candidate for such office or position. . . . Upon receiving such information and statement, the registrar shall type or print on a petition form the name and address of each such candidate, the office sought and the political party holding the primary. The registrar shall give to any person requesting such form one or more petition pages, suitable for duplication, as the registrar deems necessary." The defendant cited this language in closing arguments for the proposition that Ayala not only had no duty or authority to reject consent forms.

"When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Internal quotation marks omitted.) *Cruz* v. *Montanez*, 294 Conn. 357, 367, 984 A.2d 705 (2009).

There is no case law addressing the language of § 9-409. Looking to the plain language of the statute, it is reasonable to conclude that the registrar does not have authority or a duty to reject

consent forms at this stage of the election process, provided that the petitioner has complied with the statutory requirement of providing his name and address, the name, address and office or position sought by each candidate, and statement signed by each candidate that he consents to the candidacy. When that information is properly provided, the registrar is mandated to provide the petition forms. "The word 'shall' in statutes is generally mandatory '[u]nless the text indicates otherwise . . . .' *State* v. *Cook*, 183 Conn. 520, 522, 441 A.2d 41 (1981)." *State* v. *Jevarjian*, 124 Conn. App. 331, 343, 4 A.3d 1231 (2010). Further, the statute does not refer to the rejection of such consent forms for any reason. This is in contrast to General Statutes § 9-412, which , as discussed above, provides in relevant part: "Upon the receipt of any page of a petition proposing a candidacy for a municipal office or for member of a town committee, the registrar shall . . . forthwith file such certified page in person or by mail . . . with the clerk of the municipality, together with the registrar's certificate as to the whole number of names on the last-completed enrollment list of such party in such municipality or political subdivision . . . within *seven* days after receipt of the page. . . . The registrar shall reject any page of a petition which does not contain the certifications provided in section 9-410, or which the registrar determines to have been circulated in violation of any other provision of section 9-410." Where the legislature is silent on the matter of rejection, in relation to other statutes, it is reasonable to presume that no such option of the registrar was contemplated.

The issue remains as to whether a registrar must issue the petition paperwork for a non-existent primary, or the ramifications where the registrar, in error, issues petition papers for a candidate or candidates for a non-existent primary. Additionally, the issue of whether the registrar, through her words and actions, induced the plaintiffs to believe that she had the authority to accept

or reject the consent form, and by "accepting" this consent form led the plaintiffs to rely on her acceptance of all four of their board of education candidates, is a separate issue.

c. The registrars duties pursuant to
GENERAL STATUTES § 9-410

After examining the Bridgeport City Charter and applicable statutes, the court concludes that the Charter, Chapter 15, § 1 provides that each political party may nominate no more that three candidates to the Board of Education, and each voter can only vote for three Board of Education candidates in an election, despite four seats being vacant.[19] The court agrees with the registrar's analysis of the interplay between the City Charter and Connecticut General Statutes § 9-204, the minority representation statute applicable to boards of education, and that in this case, because the charter specifically provides for how many votes may be cast by any elector, pursuant to the statute, the charter provision governs. The issue then becomes the number of candidates that can appear on a petition. C.G.S. § 9-410(a); which states in pertinent part: "[o]nly as many candidates may be proposed in any one primary petition for the same office or position as are to be nominated or chosen by such party for such office of position" suggests that in this instance, since the number

[19]The court agrees with the registrar, who states in her brief that the issue at hand requires "careful examination of the Bridgeport City Charter and the statutory scheme on elections, and their interplay with one another." In fact, the registrar's analysis of how many Board of Education candidates may properly appear on a petition required pages of analysis of complicated and unwieldy statutory language. This is unfortunate, as it simply makes it difficult if not impossible for the average citizen to understand what should be a simple issue - - i.e., how many Board of Education candidates can go on a primary petition. The ability to petition for a place on a ballot is of constitutional magnitude , and should be available to people of all walks of life and all levels of education and experience, not just those who have the resources to decipher a very confusing interplay between charter language and statutory language.

of candidates that may be nominated to the Board of Education is three, the primary petition can have only three candidates on it.

The court must then examine subsection (c) of C.G.S. § 9-410, which provides in relevant part: "No person shall circulate petitions for more than the maximum number of candidates to be nominated by a party for the same office or position, and any petition page circulated in violation of this provision shall be rejected by the registrar."

When interpreting a statutory provision, the court first looks to the text of the statute. If the text is ambiguous, then the court must look to the relationship of the text to other statutes. If the meaning is still ambiguous, the court should then consider the legislative history in order to ascertain the intention of the legislature. *Gonzales* v. *Surgeon*, 284 Conn. 554, 565-66, 937 A.2d 13 (2007). If the legislative history does not clarify the ambiguity, then the Supreme Court recognizes the principle of public policy that ambiguities in election laws are construed "to allow the greatest scope for public participation in the electoral process, to allow candidates to get on the ballot, to allow parties to put their candidates on the ballot, and most importantly to allow the voters a choice on Election Day. . . . This principle, however does not authorize the court to substitute its views for those of the legislature or to read into an election statute a limitation on its application that the legislature easily could have imposed but did not." (Citations omitted; internal quotation marks omitted.) Id., 569.

The interplay between C.G.S. § 9-410(a) and (c) is confusing and ambiguous. The statute does not clearly state whether the registrar should reject "different offices" referred to in (a) that have the correct number of positions to be filled or only those offices or positions that may not.

In this case, the registrar arguably should have rejected only the Board of Education candidates while allowing the "different offices" that had the correct number of candidates.

The Supreme Court has already examined the legislative intent of § 9-410 (c) and found that the legislature's focus when enacting this section was "on prohibiting the circulation by any one person of petitions for multiple candidates, on the presumption that the purpose and effect of such conduct is to siphon votes from the strongest rival candidate to one of the circulator's candidates." *Gonzales* v. *Surgeon*, supra, 284 Conn. 567. The court further found that the statute "contains no requirement that the registrar establish the subjective intent of a person who circulated petitions for multiple candidates before rejecting the petitions." Id.

There is an important distinction between the present matter and *Gonzales*, however. In *Gonzales*, the plaintiff and her volunteers had collected petitions for her candidacy as mayor of Hartford. *Gonzales* v. *Surgeon*, supra, 284 Conn. 559. After she and her volunteers had collected enough petitions to be accepted as a candidate, some of her volunteers went on to collect more petitions for another candidate for the same office, mayor of Hartford, who later withdrew from the race. The Hartford Democratic registrar of voters rejected all petitions collected by the volunteers for both Gonzalez as well as the other candidate. Gonzalez therefore did not have enough petitions to be listed on the ballot. In the present case, Foster did not circulate petitions for a "straw" candidate, but rather circulated petitions arguably containing too many candidates for possible board of education positions. Although *Gonzalez* held that the registrar has no duty to ascertain the motivation of the petitioners when deciding if § 9-410 was violated, in order to allow the registrar of voters to prevent siphoning of votes without having the burden of examining the intent

of petitioners in such a short time frame, *Gonzalez* did not address whether petitions with different offices that did not violate § 9-410(a) should be rejected.

Given the uncertainty surrounding the board of education and confusion that abounded at all levels regarding whether there would even be a primary for the Board of Education in the present case, the court finds that the plaintiffs were not engaged in conduct that abused the process or involved any siphoning of votes, but rather the plaintiffs were including candidates in the event an election on the board of education would be held. The evidence established that the Foster slate was prepared to submit a consent form without any Board of Education candidates once they could reasonably be assured that there would not be a primary for the Board of Education. That assurance never came. The evidence further established that but for the issue with the Board of Education candidates, the petitions would otherwise have been certified, and the rest of the Foster slate would have qualified for the primary.[20] Thus, the mandate to reject petitions for different offices under § 9-410 (c) should not apply here.

There is no case law interpreting the language of this section to clarify the ambiguity, and comparing the language to other portions of the statute only confuses the matter. It does not appear that the legislative history of § 9-410 (c) contemplated this intersection between § 9-410 (a) and§

[20]The evidence is uncontroverted that the basis for the registrar's rejection was solely the fact that the slate contained four, rather than three, Board of Education candidates. Ironically, the registrar otherwise would have accepted and certified petitions for Board of Education candidates for an elected board that no longer existed and for a primary that was not going to take place absent court intervention.

9-410 (c).[21] Therefore, because the statute is ambiguous, it should be construed to allow the greatest scope of public participation and to allow names to get on a ballot.

General Statutes § 9-412 provides in relevant part that the registrar "shall forthwith file such certified page in person or by mail, as described in section 9-140b, with the clerk of the municipality . . . within seven days after receipt of the page. . . . The registrar shall reject any page of a petition which does not contain the certifications provided in section 9-410, or which the registrar determines to have been circulated in violation of any other provision of section 9-410." The only Connecticut case citing this provision holds that "[t]he registrar's duty is to check the name of the circulator against the rolls of registered voters in the municipality, in order to ensure that the circulator is a registered voter and member of that party for which they are circulating a petition and *ultimately certifying that the form has been filled in validly and completely before*

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[21] A review of the legislative history of § 9-410 provides no guidance on the interplay between § 9-410 (a) and (c), or the processing of consent forms and petitions. The legislature expressed its intent to permit the Superior Court to address abuses of the petition process, without further detail:

> Section 5 of the bill permits the Superior Court to issue an order removing a candidate from a ballot before the primary if it is shown that he was improperly on the ballot. These changes are designed to eliminate some specific abuses that have been observed to have occurred during primaries from time to time. By prohibiting circulation of petitions for rival candidates, the bill would prevent the somewhat unfair tactic of siphoning off votes of a strong rival to a weaker one, thereby increasing the circulator's relative strength. 21 H.R. Proc. Pt. 4 1978 Sess. p. 1455. The provisions of this bill which give the presiding judge the discretion to order a new election or change an existing election schedule would by statute resolve an issue which Judge Rubinow raised in the New Britain case to whether the court could interpret its power to grant injunctive relief to include other forms of equitable relief which might be sought in an election contest. Conn. Joint Standing Committee on Elections Hearings, Pt. 1, 1978 Sess., p. 12.

accepting the petition for filing." (Emphasis added.) *Kirkley-Bey* v. *Vazquez*, supra, Superior Court, Docket No. CV 10 6007952. In the present case, the registrar failed to certify the plaintiffs' petition pages to the municipal clerk within seven days after receipt of the petition. The court interprets the statute[22] as requiring that the registrar of voters to review the petitions for any § 9-410 within seven days of receipt of the final petitions, which duty was not met here.

II. THE IMPLICATION OF THE NEWLY CONSTITUTED BOARD

Deciding whether a petitioner could petition for three or four candidates under the city charter appears even to be unnecessary, in light of the fact that there were no longer any elected positions on the board of education and therefore no primary. While the registrar undoubtedly made her best efforts to follow her perceived mandate under § 9-410 (c), as the previous discussion concerning statutory interpretation of the section shows, it is doubtful that the statute was in fact even violated when the petitions were circulated.

The only guidance that the legislature has provided regarding § 9-410 (a) and (c), as discussed above, shows that the legislature intended to prevent siphoning of petition signatures from valid candidates. It is clear that the petitions circulated in this case did not have the effect that

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[22] "When construing a statute, [the court's] fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, [courts] seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning . . . [the court] first . . . [considers] the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Citation omitted; internal quotation marks omitted.) *Commissioner of Public Safety* v. *Board of Firearms Permit Examiners*, 129 Conn. App. 414, 420, 21 A.3d 847 (2011).

the legislature feared and wish to prevent. The court cannot forget the basic tenants of election laws and risk denying the will of the electorate to propose and elect officials of its choice based on the defendant's interpretation of a statute meant to prevent a specific abuse of the election process not at issue in this case.

"State statutes which restrict the access of political parties to the ballot implicate associational rights as well as the rights of voters to cast their votes effectively." *Munro* v. *Socialist Worker's Party*, 479 U.S. 189, 193, 107 S. Ct. 533, 93 L. Ed. 2d 499 (1986). "There can no longer be any doubt that freedom to associate with others for the common advancement of political beliefs and ideas is a form of orderly group activity protected by the First and Fourteenth Amendments. . . . The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom. . . . Freedom of association means not only that an individual voter has the right to associate with the political party of her choice . . . but also that a political party has a right to identify the people who constitute the association . . . and to select a standard bearer who best represents the party's ideologies and preferences." (Citation omitted; internal quotation marks omitted.) *Nielsen* v. *Kezer,* 232 Conn. 65, 86-87, 652 A.2d 1013 (1995). "Therefore, to give due weight to the interests of the voters, candidates and political parties, on the one hand, and the legislature, on the other hand, we are guided by the following additional principles. **Ambiguities in election laws are construed to allow the greatest scope for public participation in the electoral process, to allow candidates to get on the ballot, to allow parties to put their candidates on the ballot, and most importantly to allow the voters a choice on Election Day. . . .** This principle, however, does not authorize the court to substitute its views for

those of the legislature. . . ." (Emphasis added; citation omitted; internal quotation marks omitted.) *Butts* v. *Bysiewicz*, 298 Conn. 665, 675, 5 A.3d 932 (2010).

In *Buckley* v. *American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 186-87, 119 S. Ct. 636, 142 L. Ed. 2d 599 (1999), the complaint challenged six of Colorado's many controls on the initiative-petition process. The Supreme Court of the United States stated: "Precedent guides our review. In *Meyer* v. *Grant*, 486 U.S. 414 (1988), we struck down Colorado's prohibition of payment for the circulation of ballot-initiative petitions. Petition circulation, we held, is 'core political speech,' because it involves 'interactive communication concerning political change.' *Id.*, at 422 (internal quotation marks omitted). First Amendment protection for such interaction, we agreed, is 'at its zenith.' *Id.*, at 425 (internal quotation marks omitted). We have also recognized, however, that 'there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.' *Storer* v. *Brown*, 415 U.S. 724, 730 (1974); see *Timmons* v. *Twin Cities Area New Party*, 520 U.S. 351, 358 (1997); *Anderson* v. *Celebrezze*, 460 U.S. 780, 788 (1983)." *Buckley* v. *American Constitutional Law Foundation, Inc.*, supra, 186-187.

Given the facts of the present case, it appears that the interests and Constitutional rights of the voters, candidates and political parties outweigh any interest the legislature has in enacting laws which are meant to make the election process fair and orderly. Denying candidates a place on the ballot for a primary after they have demonstrated that the required amount of electors were willing to sign a petition to endorse their candidacy does not further the expressed intent of the legislature and it risks violating the rights of political parties and candidates and disenfranchising voters in this

case where the registrar has disqualified all of the candidates based on a technical violation for a candidacy that no longer existed due to the state take-over of the board.

III. MUNICIPAL ESTOPPEL

"[A] claim of municipal estoppel is . . . inherently fact bound." (Internal quotation marks omitted.) *Conservation Commission* v. *Red 11, LLC*, 119 Conn. App. 377, 387, 987 A.2d 398 (2010). "The party claiming estoppel . . . has the burden of proof." (Internal quotation marks omitted.) *Levine* v. *Sterling*, 300 Conn. 521, 535, 16 A.3d 664 (2011). "[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." (Internal quotation marks omitted.) Id., 535. "Our Supreme Court has cautioned 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 who seeks to do so." *Conservation Commission* v. *Red 11, LLC*, supra, 386; see also *Zoning Commission* v. *Lescynski*, 188 Conn. 724, 732, 453 A.2d 1144 (1982) (finding that as applied to zoning regulations, municipal estoppel may only be invoked "with great caution . . . only when the resulting violation has been unjustifiably induced by an agent having authority in such matters, and . . . only when special circumstances make it highly inequitable or oppressive to enforce the regulations").

In *Byrnes* v. *Horan*, Superior Court, judicial district of New Britain, Docket No. CV 96 0473361 (May 10, 1996, *Fineberg, J.*) (17 Conn. L. Rptr. 14), the plaintiff attempted to submit a petition of a challenge slate of delegates for a democratic party convention. The plaintiff presented a slate of ten delegates, and each delegate was required to be an enrolled member of the democratic party. One of the proposed delegates, however, was not a member of the democratic party and, thus, the petitions were rejected as they failed to set forth a full slate of eligible candidates. The plaintiff commenced an action claiming, inter alia, municipal estoppel, alleging that the proposed delegate was told on the telephone by someone in the registrar's office that she was a registered democrat. Moreover, the plaintiff claimed that "when she brought in the delegate consent forms, she was advised that all was in order by the assistant registrar, who then typed the delegate names on the petition forms." The court, however, rejected the plaintiff's claim, finding that the proposed delegate voted in a republican presidential preference primary just several weeks before, that after she had the phone call with the registrar's office, she was given a list of registered Democrats from her neighborhood and her name was not on that list, and that up-to-date voting lists were available for public inspection in four books and two computer screens on the counter of the registrar's office. The court held that "[t]he onus was on the [p]laintiff . . . and her supporters to comply with the pertinent statutory requirements, including to make certain that the entire challenge slate consisted of registered [d]emocrats. Resources therefor were readily available. Estoppel does not lie."

Here, the evidence provides a firm basis for the plaintiffs' municipal estopped claim. The registrar was initially unwilling to accept the consent forms. She also told Bartlett that she would not sign off on a consent form with Board of Education candidates on it if he wasn't going to run

them. She informed the Foster campaign that she would seek a written legal opinion from the Secretary of State as to whether they would accept the consent forms, and whether she should issue petitions for those seats. Instead of immediately preparing the petitions, she informed the campaign that she would obtain written direction from the Secretary of State. After several hours, she presented the Foster campaign with the petition form which indicated a September 13, 2011 primary date for the Board of Education candidates, as well as the other candidates. When it was pointed out to her that the fourth Board of Education candidate had not been included on the petition form she had issued, the registrar, with many years of experience, never suggested that there was any problem with including any number of Board of Education candidates, and re-issued the petition forms with all four Board of Education candidates on it. All of these actions led to the plaintiffs' reasonable belief that their consent form was in order and had been approved by the registrar. As early as August 5, 2011, before the deadline for the submission of the petition forms and signatures, the registrar knew that the elected board was no longer in existence and that there was no need for a primary for a non-existent board, yet she took no action and the petitions continued to circulate. In short, the registrar made the decision to prepare and issue a petition form for four Board of Education candidates for a September 13, 2011 primary, where she should have known that the proper number was three, knowing that no other major parties were running Board of Education candidates, and knowing that the board was being reconstituted by the state and that as such there would be no primary or general election absent a court ruling to the contrary. The registrar had direct involvement in the Waterbury litigation, and knew of the many attempts by the Foster campaign to get a ruling on whether there would be a primary. When the registrar received the August 5, 2011 email asking whether she would certify their petition, including their Board of

Education candidates, no one from the office of the registrar responded to that inquiry. The registrar's unfortunate decision not to respond to that inquiry, either personally or through some other staff member in her office, effectively prevented any further meaningful inquiry by the Foster campaign and left them with no guidance from the office statutorily charged with the extraordinary responsibility of issuing petitions and certifying candidates for the ballot and who best knew how to proceed. She did not meet the August 17, 2011 deadline to decide whether or not to certify the petitions, although the court credits her testimony that she was reluctant to disqualify the entire slate and was looking for guidance. Nonetheless, seventeen days after she learned for certain that there was no elected Board of Education and hence no need for a primary for Board of Education candidates, she disqualified the entire Foster slate for having one to many Board of Education candidates.

Regardless of whether the registrar was initially motivated by an effort to be helpful or a desire to have the Secretary of State decide this difficult issue for her, or some combination of both factors or other factors, her words and actions with respect to the initial issuance of the petition papers, and re-issuance of the corrected petition papers, along with her subsequent words and actions, as discussed above, reasonably induced the plaintiffs to believe that their consent form and petition papers with respect to their Board of Education candidates were in order and had been approved by this experienced registrar. After the registrar's attention was specifically drawn to the exact number of Board of Education candidates on the petition following her offices' clerical error, she allayed Bartlett's concern that there was a problem with the fourth Board of Education candidate, attributing it to a careless mistake. Putting aside the issue of whether she had any duty to relay the correct information to Bartlett, Bartlett was understandingly misled, to his detriment,

by her reassurance that there was no problem with that fourth candidate, or with any of his candidates for that matter.

The court recognizes that the registrar took her duties very seriously, as evidenced by the late night and weekend calls and work, the willingness to return to the office after having already left at the end of the day, and the extensive efforts she made to obtain advice and assistance when issuing the petition papers and determining whether or not to certify the Foster slate in whole or in part. The court also recognizes that the job of a registrar is often difficult and challenging. At the end of the day, however, it is the registrar who is entrusted, among her other responsibilities, to administer primaries, decide the issues relating to consent forms and petition papers and handle related inquiries, and the plaintiffs here were entitled to rely on the actions of the registrar, which reasonably induced the plaintiffs to believe that their slate was in order .

The plaintiffs here took all reasonable steps in difficult and unusual circumstances and took every reasonable action to ascertain the true status of the Board of Education and September primary, including verbal and written inquiries to the registrar, communications with the Secretary of State, and knowledge of what this court finds to be confusing and ambiguous statutory and charter language relating to the number of Board of Education candidates, made even more complicated by resignations and the state take-over of the board. The plaintiffs used all convenient means of obtaining that information, and reached a dead-end on August 5, 2011 when the registrar would no longer communicate with the Foster slate on the very issue the Foster slate was seeking guidance on. The court finds that the plaintiffs changed its position, to its detriment, in reliance on the registrar's actions, as they were prepared to submit a consent form without any Board of Education candidates on it had the registrar remained firm in her initial decision to reject the

consent form . Finally, the plaintiffs, who have all been disqualified from the primary as a result of the registrar's decisions, have clearly suffered an immeasurable loss.

IV. WRIT OF MANDAMUS

"A party seeking a writ of mandamus must establish: (1) that the plaintiff has a clear legal right to the performance of a duty by the defendant; (2) that the defendant has no discretion with respect to performance of that duty; and (3) that the plaintiff has no adequate remedy at law. . . . . In deciding the propriety of a writ of mandamus, the trial court exercises discretion rooted in the principles of equity." (Citations omitted; internal quotation marks omitted.) *Hennessey* v. *Bridgeport*, 213 Conn. 656, 659, 569 A.2d 1122 (1990).

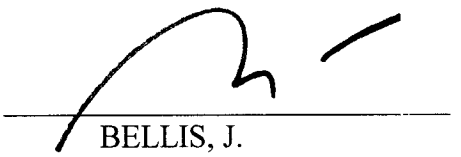
V. CONCLUSION

For the foregoing reasons, judgment is entered in favor of the plaintiffs Foster, Moore, Ayala, McBride and Fardy. Insofar as the Bridgeport Board of Education has been reconstituted by the state obviating the need for a Board of Education primary absent a ruling from a higher court, the court finds in favor of the defendant as to the claims of Walsh, Pipkin, and Cash-Deedon. A writ of mandamus is hereby issued requiring the registrar to accept the plaintiffs' primary petitions and place the names of the non-Board of Education candidates on the primary ballot, and requiring the registrar to forward the primary petitions to the Town Clerk for placement of the non-Board of Education candidates on the primary ballot.

Therefore, pursuant to the authority set forth in Connecticut General Statutes § 9-329a(b)(2), the date for the primary, originally set for September 13, 2011, is changed to September

27, 2011, with the same two week extension extended to the filing of the absentee ballots for the primary.

The Clerk of the Court is directed to immediately transmit a copy of this decision and order to the Secretary of State and to the State Elections Enforcement Commission.



BELLIS, J.