

RET. DATE: AUGUST 30, 2011	:	SUPERIOR COURT
	:	
MARY-JANE FOSTER	:	
MARILYN MOORE	:	
ALBERTO AYALA	:	
ROBERT J. WALSH	:	
GEORGE PIPKIN III	:	
PETRINEA CASH-DEEDON	:	
ANDREW FARDY	:	
DWAYNE McBRIDE	:	JUDICIAL DISTRICT OF FAIRFIELD
	:	
VS.	:	AT BRIDGEPORT
	:	
SANTA I. AYALA,	:	
DEMOCRATIC REGISTRAR OF VOTERS	:	AUGUST 24, 2011
FOR THE CITY OF BRIDGEPORT	:	

COMPLAINT BY AGGREVIED PRIMARY CANDIDATES
For relief Pursuant to C.G.S. §§ 9-328 and 329a et seq.

FACTUAL BACKGROUND

1. Mary-Jane Foster is, and at all times relevant hereto, an announced candidate for Mayor of the City of Bridgeport.
2. Ms. Foster's primary petition included the names of the people who were running on her slate. They included: three Sheriff candidates -- Joel Gonzalez (who since has withdrawn his candidacy), Dwayne McBride and Andrew Fardy; Town Clerk -- Alberto Ayala; City Clerk --

Marilyn Moore; and four Board of Education candidates: Charles Coviello (who has since withdrawn); Robert J. Walsh, George Pipkin, and Petrinea Cash-Deedon.

3. Jason Bartlett is, and at all relevant times relevant hereto, the campaign manager for Mary-Jane Foster. On July 19, 2011, Bartlett went to the Democratic Registrar of Voters' Office for the City of Bridgeport to request petitions for a slate of candidates, including the Board of Education for the September 13, 2011 primary election.
4. The Defendant, Santa I. Ayala is, and at all times relevant hereto, the Democratic Registrar of Voters for the City of Bridgeport ("Santa I. Ayala" or "the defendant Registrar"). Santa I. Ayala initially refused to provide petition forms because the Board of Education of the City of Bridgeport (the "Board") voted to dissolve after 6 members constructively resigned in a resolution on July 5, 2011. These resignations gave the State Board of Education, opportunity to take control of the Bridgeport Board which in fact occurred on July 6, 2011.
5. The Bridgeport City Charter, Chapter 15, provides that only three (3) Board of Education candidates from the same party may run in the general election that is held the first Tuesday after the first Monday in November, which this year is November 8, 2011. The Charter makes no reference to any primary elections, specifically, the primary to be held on September 13, 2011.
6. Ms. Foster and her slate began circulating their petition on or about July 29, 2011.

7. On or about August 5, 2011 a representative of candidate Foster attempted to speak with the defendant Registrar and deliver a letter asking whether the Registrar would accept properly signed petitions for the Board of Education candidates together with Ms. Foster's entire slate of candidates.
8. Ms. Ayala refused to speak with Ms. Foster's representative who was then told by the Bridgeport Deputy City Attorney, that neither she nor anyone from the Foster campaign could speak to Ms. Ayala in a ministerial capacity, since the Registrar was a defendant in another lawsuit by candidates of Ms. Foster's slate.
9. Ms. Ayala thereby intentionally failed to perform her duties as prescribed by Title 9 of the Connecticut General Statutes, specifically in violation of C.G.S. § 9-355.
10. The Secretary of State's office through its Attorney (Theodore Bromley) sent a ruling to the parties involved which stated, in sum, that this matter was not within the purview of the Secretary of State due to the reconstituted school board and that the Secretary of State is only charged with matters under title 9 of the Connecticut General Statutes.
11. However, after sending out that information, prior to August 22, 2011, Mr. Bromley did inform the Registrar to use Statute 9-401(c) as a basis to reject the Plaintiffs' petitions.

12. The Office of the Secretary of State has inserted itself in this dispute and has failed and neglected to provide the Plaintiffs any guidance regarding the matters at issue, thereby intentionally failing to perform its duty as prescribed by Title 9 in violation of C.G.S. § 9-355.
13. Prior to August 22, 2011 the Registrar's office verified over 2,300 signatures.
14. The amount needed to appear on the ballot was approximately 2,109.
15. The letter, (¶ 7, supra) was a question regarding the certification of petitions, which falls squarely within the Secretary of State's responsibilities under the Connecticut Constitution, Article 4 and C.G.S. §§ 9-3 and 9-4.
16. Mary-Jane Foster and the other plaintiffs herein were aggrieved by its ruling of the Secretary of State in its refusal to become involved, and then its advising the Registrar's office to use C.G.S. §9-401 (c) as a basis for denial.
17. On or about August 22, 2008 Santa Ayala sent the following ruling to the Foster Campaign, stating that she would not certify any of the petitions due to her interpretation of provisions in the Bridgeport City Charter and her reliance on C.G.S. § 9-401(c).

COUNT ONE: The Registrar's Reliance on the Bridgeport City Charter to Reject the Primary Petitions of Mary-Jane Foster and her Slate is Misplaced.

18. ¶ 1-17 are hereby incorporated by reference as ¶ 18 of Count One.

19. In her denial letter of August 20, 2011, the Democratic Registrar's based her rejection of all Plaintiff's 248 petition pages on the grounds that:

“Pursuant to the City of Bridgeport Charter, the maximum number of candidates that could be nominated by any one political party for those positions would have been three (3).”

20. The Bridgeport City Charter, Ch. 15, §1(a) provides that the Bridgeport Board of Education shall be comprised of 9 members, serving 4 year terms.
21. Chapter 15, § 1(c) of the Charter provides that each political party shall nominate three persons and the four persons receiving the highest number of votes at such election shall be elected.
22. Chapter 15 of the Charter places no restrictions on the number of candidates a political party may place on its primary petition for the Board of Education.
23. C.G.S. § 9-167a (b) and (c) provides the appropriate a remedy in the event that a political party nominates an excessive number of candidates for boards, commissions, legislative bodies, committees or similar bodies of the state or any of its subdivisions.
24. C.G.S. § 9-410(a) provides that "... any one primary petition may propose as many candidates for different office or positions as there are nominations to be made, or positions to be filled" (emphasis added).
25. In a letter dated August 18, 2011 from defendant Registrar to the Bridgeport Town Clerk Alma Maya she wrote:

“In accordance with 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 as to how you should proceed.

26. Defendant Registrar intentionally left out the following language of C.G.S. 9-410(a) “positions to be filled” (emphasis added).
27. Pursuant to the Minority Representation Statute, C.G.S. §9-167(a) (1), a Board of Education membership of 9 would allow to a maximum of six (6) members from any party.
28. Irrespective of the state's takeover of the Bridgeport Board of Education on or about July 6, 2011, there was a significant probability that at least 4 Democratic nominees would have been eligible to run for the Board of Education in the general election in November 2011 should there be a judicial finding that the State's takeover of the Bridgeport Board of Education was improper.
29. Accordingly, the entire basis for the defendant Registrar's rejection of the subject primary petitions -- that only three (3) nominees for the Board of Education could have been placed on the general election ballot in November 2011 -- was totally misplaced and clearly erroneous.

**COUNT TWO: The Registrar and the Secretary of State's
Office has misinterpreted C.G.S. § 9-410(c).**

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30. ¶ 1-29 are hereby incorporated by reference as plaintiff's ¶ 30.

31. In her denial letter of August of August 22, 2007, the Democratic Registrar notes that her decision to reject the primary petitions in question was based on the “clear language of C.G.S. § 9-401(c).” In fact, the language of C.G.S. § 9-401(c) had been determined by the Supreme Court to be ambiguous in Gonzalez v. Surgeon, 284 Conn. 554, 937 A. 12, 13 (Conn. 2007), thereby justifying analysis of its legislative history. See 284 Conn. at 567.
32. The Court reviewed the 1978 legislative hearings on the Bill (P.A. 78-125 now § 9-401(c)) where a member of the state election commission discussed an instance where a primary candidate “had circulated petitions for another candidate for the same office in order to draw votes from a third, stronger candidate. Secretary of State Gloria Schaffer testified the legislation “was designed to eliminate some specific abuses ... by prohibiting the circulation of petitions for the rival candidates [P.A. 78-125] would [prevent] ... the somewhat unfair tactic of siphoning off the votes of a stronger rival to a weaker one.” (Citation omitted). 284 Conn. 567.
33. The Supreme Court noted that P.A. 78-125’s focus

“was in 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 candidates to one of the [petition] circulator’s candidates.” Id.
34. The Supreme Court then concluded that the essential purpose of the legislation was to require registrars to reject petition pages circulated “by any person who has circulated pages for more

than maximum number of candidates to be nominated by a party for the same office or position
(emphasis added). *Id.* at 569.

35. In this instance, there has been no “siphoning of votes by the plaintiffs:

(a) There were not multiple candidates for the mayoralty primary; Mary-Jane Foster is the only challenger;

(b) As shown in Count One:

(i) The Bridgeport City Charter’s Chapter 15 applies to general elections in November. There are no restrictions on the number of primary candidates a party may run for the Board of Education;

(ii) C.G.S. § 9-167a(b) provides the remedy if a political party nominates an excessive number of candidates for certain multi-seat boards;

(iii) in light of the constructive resignation of six (6) members Board of Education on July 5, 2011, and the pending litigation over the propriety of the State’s takeover of the Board of Education there are at least six (6) possible vacancies, and potentially 9 should the Bridgeport Board of Education be reconstituted.

36. Based on this, the evil anticipated in the enactment of C.G.S. § 9-410(c) -- siphoning of votes from a strong candidate to a weaker one through circulation of multiple petitions by a single “circulator” --is totally absent here.

37. For these reasons the Secretary of State and the defendant Registrar have misapplied C.G.S. § 9-410(c) to illegally and improperly exclude plaintiffs from the Bridgeport Democratic primary of

September 13, 2011. Plaintiffs have fully qualified to appear on the ballot at this primary. Plaintiffs are aggrieved thereby.

COUNT THREE: MUNICIPAL ESTOPPEL

38. ¶ 1-37 of the preceding counts are hereby incorporated as ¶ 38 of Count Three.
 39. On or about July 27, 2011, the defendant Registrar had printed petitions containing only three (3) candidates for the Bridgeport Board of Education
 40. When questioned about the petitions containing only three (3) candidates, the defendant Registrar blamed it on a clerical error and requested that the petitions be returned to her.
 41. The Registrar then proceeded to print petitions with the four candidates on the petition including the Plaintiff, Robert J. Walsh who had previously been excluded from the petitions.
 42. At no time prior to August 21, 2011 did defendant Registrar question the addition of a fourth candidate for the Bridgeport Board of Education on the Plaintiffs' primary petition. Rather, the Registrar prepared the petitions with four board of education candidates for the Plaintiffs' primary petition and delivered them to the Plaintiffs for soliciting signatures.
 43. Despite knowing, at the time she issued the petitions, that the inclusion of four names for the Board of Education was a defect that the defendant Registrar would later use to reject the petitions, the Registrar failed to disclose such defect to the Plaintiffs.
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44. Defendant Registrar did not act upon Plaintiff's primary petition in a timely manner. It was not until August 18, 2011 that the defendant Registrar initially certified the number of signatures on the Plaintiffs' petitions to the Bridgeport Town Clerk.
45. Accordingly, Defendant Registrar had a total of 10 days to perform a final review of the petitions, she did not issue her rejection ruling until August 21, 2011, the day before absentee ballots were to be printed.
46. In light of the fact that Defendant Registrar prepared the allegedly defective petitions and failed to inform Plaintiffs of the alleged defect in their petitions, the defendant Registrar, acting on behalf of the city of Bridgeport is estopped from rejecting said petitions based upon this purported defect.
47. In addition to the actions set forth in ¶ 44, the fact that the Defendant Registrar failed to timely certify Plaintiffs' petitions, the defendant Registrar, acting on behalf of the City of Bridgeport, is estopped from rejecting said petitions.

Prayer for Relief:

Plaintiffs respectively move that, after hearing, the Court:

- (a) issue a declarative ruling that the refusal of the defendant Registrar to accept Plaintiff's primary petition was improper and in violation of applicable law;

- (b) issue a writ of mandamus requiring the defendant Registrar to accept the Plaintiffs' primary petitions and restore their names to the primary ballot;
- (c) issue a writ of mandamus requiring the defendant Registrar to accept the Plaintiffs' primary petitions and forward them to the Town Clerk for placement of their names on the primary ballot; and
- (d) issue a temporary and permanent injunction preventing the Registrar from taking any action that would further impede the ability of the Plaintiffs from running in the Democratic primary on September 13, 2011.

THE PLAINTIFFS

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