SUPREME COURT
OF THE
STATE OF CONNECTICUT

S.C. 19172

CARMEN L. LOPEZ, et al.
Plaintiffs-Appellees,

v.

PAUL VALLAS
Defendant-Applicant.

MOTION FOR REVIEW OF ORDER TERMINATING STAY
WITH APPENDIX

Defendant-Applicant,
PAUL VALLAS

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Preliminary Statement

Three things make it impossible to fathom the trial court's decision to terminate the stay on this record. First, there was no evidence – none – to support a finding that any actual harm will arise from Paul Vallas's continued tenure as school superintendent pending appeal. Plaintiffs declined to put on any evidence at the stay-termination hearing in support of their motion to lift the stay. The trial judge, moreover, had previously found, in the court's MOD on the merits, that Mr. Vallas is "deeply committed to improving the plight of the [Bridgeport] school system . . . [and] has made great strides during his tenure in Bridgeport towards improving the schools for the children of Bridgeport," MOD at 8 n.9 (emphasis added) (A185) – a finding strongly indicating that no actual harm will occur if Mr. Vallas remains at his post pending appeal. Indeed, the only evidence on this subject demonstrated that the immediate removal of Mr. Vallas would be "disastrous" for the Bridgeport school system. TR 7/10/13, Vol. II, at 11 (Attorney Tom Mulligan, member of the Bridgeport BOE [emphasis added]) (A109). For this reason alone, it was error to terminate the automatic stay under applicable law.

Second, the fundamental reason the stay rule exists is to preserve the status quo, so that the defendant's right to meaningful appellate relief is not lost before the appeal is decided on its merits. See Preisner v. Aetna Casualty & Surety Co., 203 Conn. 407, 414 (1987) ("The stay does not vacate the judgment obtained by the successful litigant. It merely denies the party the immediate fruits of his or her victory . . . in order to protect the full and unhampered exercise of the right of appellate review." (citations omitted; internal quotation marks omitted; emphasis added). The immediate ouster of Mr. Vallas will irrevocably destroy any meaningful appellate review of his case, because if he is removed now, by the time the merits of this appeal are decided, even on an expedited schedule, it is extremely likely that (i) Mr. Vallas will be gone, or (ii) the superintendent position will be filled, or (iii) both. If reversed, Bridgeport will have lost an exceptionally talented superintendent, and seen tremendous progress under his tenure undone, solely as the result of the judiciary allowing a trial court's erroneous judgment to be executed before the defendant is able to exercise his statutory right of appeal.

Third, this is not a case in which this Court can have confidence that the trial court arrived at the right outcome on the underlying merits. One of the leading school administrators in the country[1] has been deemed by a judge, after hurried proceedings of irregular nature, to be unqualified to serve as superintendent of the Bridgeport school system[2] – despite the Commissioner of Education's express determination that Mr. Vallas (1) successfully had completed his probationary period; (2) successfully had completed a school leadership program approved by the State Board of Education; and (3) is exceptionally qualified for the position of superintendent. See Pl. Ex. 15 (A437). The trial court's conclusions on the merits, like its decision terminating the stay, are dubious, factually and legally. General Statutes § 10-157 does not deputize the judiciary to second-guess decisions of the Commissioner of Education regarding school superintendent certifications; even if it did, the trial court's construction and application of the statute in this case is fatally flawed.

I. BRIEF HISTORY OF THIS CASE

A. The Lawsuit, Fast-Track Trial, and Judgment

Plaintiffs, two (of the 145,000 total) residents of Bridgeport, filed this lawsuit against multiple defendants in April 2013. An amended single-count quo warranto complaint seeking the ouster of Paul Vallas was filed on May 8, 2012. An immediate trial was ordered by the court (Bellis, J.) over objection. Defendant's motion to transfer to a different courthouse was denied.[3] A short trial was held on June 24 and 25, 2013. Three days later, the trial court

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[1] Mr. Vallas served as Superintendent of the post-Katrina New Orleans ("Recovery") School District from 2007 to 2011; Superintendent (CEO) of the Philadelphia School District from 2002 through 2007; and Superintendent (CEO) of the Chicago Public Schools from 1995 to 2001, see Pl. Ex. 14 (Vallas CV) (A427-32).

[2] See TR 7/10/13, Vol. III, at 3-5 (trial judge repeatedly referring to need for lifting stay based on the importance of having a "qualified" superintendent) (A148-50).

[3] The motion for change of venue was based on the fact that plaintiff Carmen Lopez, a former superior court judge, is married to a judge who presently sits in the Bridgeport courthouse handling civil cases alongside the trial judge in this matter. Although this appeal does not challenge the trial court's ruling on the change-of-venue motion, the court's exercise of discretion to retain the case may be subject to legitimate criticism. Cf. In re Ganim, No. CV030404638S, 2012 WL 5200337 (Super. Ct., 9/27/12) (noting the "unenviable position" that

issued a 27-page MOD granting the writ of quo warranto and removing Paul Vallas as superintendent based on the court's conclusion that the certificate waiver issued by Commissioner Stefan Pryor was "invalid" because the independent study taken by Vallas at UCONN was not a proper "school leadership program" under C.G.S. § 10-157(b).

B. The Hearing to Terminate the Stay, and Order Terminating the Stay

"[I]n an effort to finally liberate themselves and the citizens of Bridgeport from the dilatory tyranny of the Defendant, Paul Vallas," plaintiffs promptly moved under P.B. § 61-11(d) to terminate the automatic stay pending appeal. (A7) Judge Bellis held a hearing on July 10, 2013. See TR 7/10/13 (transcripts in 3 "volumes") (A31-150). Plaintiffs introduced no evidence on any issue. Defendant, by contrast, offered extensive evidence of the harm that would be caused if the stay were lifted. See id., Vol. I, at 11-63 (Vallas) (A42-94); id., Vol. II, at 3-22 (Atty. Mulligan) (A101-20). Mr. Vallas testified about the many programs, projects and initiatives currently in progress in which he had direct involvement. These included, by way of example only, an expanded summer school program targeting 5,000 students, id., Vol. I, at 12-13 (A43-44); ongoing budget negotiations with Bridgeport, id. at 14-16 (A45-47); the opening of five new high schools in August 2013, id. at 20-22 (A51-53); numerous capital improvement projects, id. at 23-24 (A54-55); ongoing fundraising and grant-related efforts, id. at 25-28 (A56-59); and the implementation of a wide variety of major curricular and structural reforms as the second phase of a five-year plan for the complete overhaul and reform of the Bridgeport school system, id. at 18-20, 28-39 (A49-51, A59-70); see also id. at 31-39 (explaining Ex. 32, a document entitled "Good Schools Bridgeport: 2013-2014 Update") (A62-70). Mr. Vallas also stated that he would lose his job and present source of income if the stay were lifted, id. at 42-43 (A73-74), and expressed concerns about reputational harm that would be caused if he were ousted summarily. Id. at 43-44 (A74-75).

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a decisionmaker [attorneys in Ganim, a judge in this case] assumes when asked to determine the fate of a former colleague [the spouse of a present colleague in this case], and suggesting that a change of venue would help ameliorate the problem).

Bridgeport Board of Education member Attorney Tom Mulligan also testified at the stay-termination hearing. Mr. Mulligan described the qualities and achievements he had observed since Mr. Vallas began his tenure, and expressed in unequivocal terms his view, as a member of the local school board, that the immediate removal of Vallas would have a "disastrous" effect on the Bridgeport school system. Id., Vol. II, at 11 (A109); id. at 19 (testifying that "the adjective 'deleterious' is not strong enough") (A117). Attorney Mulligan also testified that the "instability" caused by Vallas's removal would be "terribly harmful" in light of the historical lack of continuity in the superintendent position, id. at 12 (A110); that the process to replace Vallas would involve a "long-term" project, id. at 11 (A109); and that the difficult task of replacing Vallas would be made worse because the Bridgeport Board of Education was driven by "rancorous . . . hostility between individual [board members]." Id.

The trial court – who had been informed that a petition for immediate certification pursuant to General Statutes § 52-25a had been filed – nonetheless ruled from the bench at the conclusion of the hearing. Id., Vol. III (A146-50). Despite the compelling evidence of harm introduced by defendant, and the absence of any evidence from plaintiffs, the court terminated the stay. The trial judge found that defendant was unlikely to succeed on appeal, id. at 1-2 (A146-47); that his ouster would not stain his reputation or harm his job prospects elsewhere, id. at 2-3 (A147-48); and repeatedly emphasized that "the residents of Bridgeport are entitled to have a properly credentialed superintendent." Id. at 3 (A148); see also id. at 4-5 (A149-50). Contrary to all record evidence, the trial court stated that it "cannot accept the evidence that was offered that replacing the superintendent at this point would be disastrous to the school system . . . ." Id. at 4 (A149). Bizarrely, the trial court expressly found that there was a formal process in existence to replace the superintendent, id. – despite emphatic and unequivocal evidence that no such formal (or even informal) plan existed, and extensive evidence that the school district was entering year 2 of a 5-year transformation plan, a critical point in Mr. Vallas's effort to transform the educational system in Bridgeport. Id., Vol. I, at 49-56 (Vallas) (A80-87); id., Vol. II, at 10-14, 20 (Mulligan) (A108-12).

Finally, the trial court concluded that right now is the "best time" to remove Vallas from office, despite the absence of any advance warning or existing replacement plan, because it is "the start of summer vacation . . . [and] the case is likely to be unsuccessful on appeal, [so] I think it's going to be inevitable anyway." Id., Vol. III, at 5 (A150).

II. SPECIFIC FACTS RELIED UPON

The transcript of proceedings are submitted with this motion for two reasons. First, there is not enough space in a few pages to explicate all relevant facts. Second, based on the history of proceedings so far, plaintiffs' objection to this motion will rely on factual distortions, and it will be important for this Court to have the transcript at hand.

The most critical facts will be very briefly summarized here. The significance of these facts will be addressed in Part III below. Five factual points warrant emphasis:

- Plaintiffs, for whatever reason, elected not to introduce any evidence in support of their stay-termination motion. Id., Vol. I, at 5, 10 (A36, A41). There is no evidence whatsoever that anyone is at any risk of suffering any actual, identifiable, concrete harm if the stay remains in place pending appeal. The only evidence bearing on this subject demonstrated the opposite: Mr. Vallas is doing an excellent job. See MOD at 9 n.9 (finding that "Vallas has made great strides during his tenure in Bridgeport towards improving the schools for the children of Bridgeport.") (A186); TR 6/24/13, Vol. II, at 20-22 (Commissioner Pryor describing some of Vallas's accomplishments in Bridgeport) (A324-26); TR 7/10/13, Vol. I, at 13-14 (Vallas balanced school budget two years running, this year without laying off a single teacher) (A44-45); id. at 18 (reviewing accomplishments) (A49); id. at 20-21 (opening 5 new high schools) (A51-52); id. at 23-24 (describing capital improvement projects) (A54-55); id. at 25-28 (describing fundraising initiatives) (A56-59); id., Vol. II, at 4-9 (Atty. Mulligan, member of Bridgeport BOE., testifying to Vallas's accomplishments) (A102-07). See also Ex. 32 (year 2 of 5-year plan) (A152).

- It would be disastrous for the school system if Mr. Vallas is terminated now. TR 7/10/13, Vol. II, at 10-14 (Atty. Mulligan) (A108-12); see also id., Vol. I, at 38-40 (Vallas testifying about various initiatives that will "go by the wayside" if he is removed) (A69-71).

- Continuity of leadership is critical for positive change in an educational system, and this is true in Bridgeport in particular. Id. at 40-41 (Vallas) (A71-72); id., Vol. II, at 12 (Mulligan) (A110).

- The Bridgeport BOE, as of July 10, 2013, has no contingency plan for replacing the superintendent in the event that Mr. Vallas is terminated. Id., Vol I, at 49-56 (A80-87); id., Vol. II, at 10-14, 20 (Atty. Mulligan) (A108-12, A118).[4]

- Replacement of the superintendent would be a long-term project, and would be made more difficult due to the rancorous relations among members of the Bridgeport BOE. Id., Vol. II, at 11-12 (Atty. Mulligan) (A109-10).

III. LEGAL GROUNDS RELIED UPON: IT WAS ERROR TO LIFT THE STAY PENDING APPEAL.

Plaintiffs conceded in the trial court that the automatic stay applied to the trial court's judgment under Practice Book § 61-11(a), but argued that the stay should be terminated pursuant to Practice Book § 61-11(c) because the "due administration of justice so requires" based on the four-factor test articulated in Griffin Hospital v. Comm'n on Hospitals, 196 Conn. 451, 456-57 (1985). (A7) Defendant's written objection filed with the trial court argued that none of the Griffin Hospital factors supported lifting the stay – "not even close" – primarily because all of the record evidence at that point weighed heavily in defendant's favor. Def. Obj. (A14). Defendant's position became even stronger after the stay-termination hearing.

A. Likelihood of Success on the Merits

At least three independent grounds for reversal will be presented to this Court. First, as a threshold issue, the writ of quo warranto should not have been entertained here because it cannot properly be used to obtain judicial review of an administrative agency's professional-certification decisions. A writ of quo warranto, like mandamus, is an "extraordinary remedy." State ex rel. Stage v. Mackie, 82 Conn. 398, 401 (1909). The writ has a strictly limited use which "lies only to test the defendant's right to hold office de jure." Town of Cheshire v.

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[4] Through wordplay and gamesmanship – made worse by the fact that it apparently succeeded – plaintiffs' counsel left the trial court with the false impression that the "transformation" plan described by Mr. Vallas, TR 7/10/13, Vol. I, at 31-38 (describing Ex. 32) (A62-69), was actually a "transition plan" for the replacement of Mr. Vallas. Id. at 27 (plaintiff's counsel arguing that "there is a transition plan that is in place, I believe a transformation plan it was referred to as") (A58). Remarkably, this sleight-of-hand led the trial judge to conclude that there was "evidence of a formal process to replace a superintendent," id., Vol. III, at 4 (A149), a wildly inaccurate finding. A review of the transcript demonstrates that, despite the effort of plaintiff's counsel to alter reality through a badgering cross-examination, plaintiffs have deliberately inverted the meaning of Mr. Vallas's testimony about the school transformation plan to mislead the trial court. Id., Vol. 1, at 31-38 (A62-69).

McKenney, 182 Conn. 253, 256 (1980) (emphases added). A writ of quo warranto is not appropriate for the purpose employed by the plaintiffs in this case because Vallas was appointed by lawful vote of the duly elected local board of education,[5] see Pl. Ex. 14 (A424), and granted a certification waiver by the Commissioner of Education, exercising his statutory authority under Section 10-157(c), based on his express finding that Vallas "had successfully completed a probationary period as an acting superintendent pursuant to [§ 10-157(b)]" and was "exceptionally qualified" for the position. See Pl. Ex. 15 (Waiver of Certification) (A437).

Plaintiffs' claim in this case is not that Mr. Vallas failed to obtain a certification waiver, but that the Commissioner of Education should not have issued that waiver. This is not a challenge to Vallas's legal title. Rather, it is a challenge to the underlying agency waiver determination, and therefore is a misuse of a writ intended only to permit courts to decide whether the title of office was proper on the face of the relevant statute. See, e.g., Bateson v. Weddle, 306 Conn. 1 (2012) (quo warranto proper to challenge appointment that, on its own terms, violated municipal charter); Town of Cheshire v. McKenney, 182 Conn. 253, 256 (1980) (quo warranto proper to enforce town charter prohibition against a town councilor "hold[ing] any office or position of profit" applied to a schoolteacher employed by the town). Cf. AvalonBay Comm., Inc. v. Sewer Comm'n, 270 Conn. 409, 422-29 (2004) (mandamus may only be used to compel ministerial duty, and will not lie to compel performance of duty involving exercise of discretion or judgment).

If quo warranto can be used to second-guess the agency's certification decision here, the floodgates are wide open. Any resident taxpayer can file a quo warranto action, and there are thousands of "public officers" whose "title" to office is subject to challenge using the writ. While the present case involves certification of school superintendents, many other statutes

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[5] Mr. Vallas was recruited in 2011 to come to Bridgeport to help turn around a school district in profound crisis. He initially was hired by the Bridgeport Board of Education ("BOE") that had been appointed by the State Board of Education. After the Bridgeport BOE was reconstituted following this Court's decision in Pereira v. State Board of Education, 304 Conn. 1 (2012), Vallas was reappointed by the new Bridgeport BOE (by a 5-4 vote).

govern the appointment or certification of "public officers" such as police officers and firefighters, members of various licensing boards and training councils appointed under C.G.S. Titles 7, 10, 20 and 29, and scores of other municipal and state positions. For example, if the trial court here had authority to remove Mr. Vallas because the Commissioner's waiver decision was improper, then a disgruntled citizen on the receiving end of a speeding ticket can seek ouster of the offending police officer on the ground that the Police Officer Standards and Training Council has improperly "certified" that the officer "satisfactorily completed [a] minimum basic training program" under C.G.S. §§ 7-294d(a)(7) and 294d(b). The possibilities of litigation abuse are endless for any enterprising taxpayer with time on his hands and a chip on his shoulder. Quo warranto was never intended to permit judicial review in this context.

Second, wholly apart from the existence of removal authority under these circumstances, the trial court's construction of the relevant statute is erroneous. Section 10-157 exists to ensure that the state BOE and Commissioner of Education have authority over local boards in the appointment of superintendents; the statute is not designed or written to limit the state's authority to certify (or waive certification of) those superintendents. See C.G.S. § 10-157 (A471).[6] Ignoring that framework, the trial court held that the legislature had prohibited the Commissioner of Education from determining that the course of independent study undertaken by an exceptionally qualified out-of-state school administrator was a "school leadership program . . . offered at [UCONN]" within the meaning of General Statutes § 10-157(b). The trial court reached this conclusion by (a) focusing on the wrong dictionary meaning of the word "program;"[7] (b) employing the false and unsupported assumption that the

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[6] The legislative history, unexamined in substance by the trial judge, establishes that the fundamental purpose of the statute was to make it easier for Connecticut cities and towns to recruit successful school administrators like Paul Vallas to come to Connecticut. (A472) The language provides flexibility, rather than rigid formality, in the type of course work that could be approved by the State BOE to waive the conventional route to certification. The trial court's decision in this case destroys that flexibility as it usurps the role of the State BOE in determining the individualized programs that will suffice in lieu of formal certification.

[7] The dictionary includes a definition of "program" as "a plan of study for an individual student over a given period." Merriam-Webster's Dictionary (3d ed. 1986).

statute's use of the word "program" was meant to incorporate a particular formalized meaning as employed at the University of Connecticut;[8] and (c) ignoring extensive record evidence demonstrating the bona fides of the course work done by Vallas under the supervision of Dr. Robert Villanova. See TR 6/24/2013, Vol. II, at 60 (Vallas completed the course with "very high quality work") (A364); id. at 55 (Vallas completed "six major assessments, [which] met or exceeded significantly the expectations for the assignment") (A359).

"[A] court cannot, by judicial construction, read into legislation provisions that clearly are not contained therein." Stone-Krete Constr., Inc. v. Eder, 280 Conn. 672, 682 (2006) (emphasis added). The relevant portion of the statute at issue in this case required only that the Commissioner determine that the candidate has "successfully complete[d] a school leadership program, approved by the State Board of Education, offered at a public or private institution of higher education in the state." C.G.S. § 10-157(b). As the trial court itself found, Mr. Vallas was offered an independent study course through the Neag School at the University of Connecticut, he paid the required tuition, he completed the necessary coursework, and he earned a grade of "A" from his instructor. MOD at 5-8 (A182-85). The program was approved by the State BOE. See Resolution of State BOE (A433). That is all the statute requires for Superintendent Vallas to secure the waiver of certification.

Third – even if the trial court was right about everything else – it erroneously concluded that Mr. Vallas had no time left to satisfy the "school leadership program" requirement in § 10-157(b). See MOD at 20 (holding that the "probationary period" ended on June 17, 2013) (A197). Vallas in fact had been appointed as acting superintendent "for a probationary period of January 1, 2013 to December 13, 2013." MOD at 5 (A182); see Pl. Ex. 5 (A420). The court held that the probationary period ended on June 17, 2013 because that was the date when Commissioner Pryor found that the requirements of § 10-157(b) had been met. MOD at 20

[8] The trial court also found that the program which had been approved by the State BOE was not the same program that Mr. Vallas completed. See MOD at 22 n.25 (A199). This conclusion is without any basis, and contrary to fact. TR 6/24/2013, Vol. II, at 23 (Commissioner Pryor testifying to awareness of the program and satisfaction with it) (A327).

(A197). But if (as the court concluded) Pryor was wrong about the requirements being met, then he was also wrong that the probationary period was over. The probationary period runs through December 31, 2013, and he has until that date to satisfy the statutory requirements.

B. Balancing the Equities: The Harm Caused By Terminating the Stay Compared to Leaving the Stay in Place Pending Appeal.

There was no evidence of any actual, identifiable harm to anyone that would arise if the stay remains in place pending appeal. See above at pp. 3-5. The trial judge (like the Commissioner of Education and the democratically-elected majority of the Bridgeport BOE) acknowledged that Mr. Vallas is doing a superb job under exceedingly difficult circumstances. MOD at 9 n.9 (finding that "Vallas has made great strides during his tenure in Bridgeport towards improving the schools for the children of Bridgeport.") (A186). See also above at pp. 5-6. The certification issue raised by plaintiffs simply does not involve conduct *malum in se* requiring immediate judicial intervention.

Conversely, if the stay is lifted, the harm that will arise is obvious, palpable, and virtually inevitable – "disastrous," in the words of Board member Tom Mulligan. Most importantly, the Bridgeport school system will be left rudderless and without leadership as the school year begins, while the local Board – wholly unprepared for this sudden occurrence, and virtually paralyzed by internal squabbling[9] – scrambles to find a replacement willing to enter the maelstrom. The damage to Bridgeport caused by the immediate ouster of Paul Vallas will be immeasurable and the effects will be long-term. The removal of Mr. Vallas will also be terribly unfair to him personally; not only will he be out of a job, but there will be no way to restore the status quo in the (likely) event of an appellate reversal. That result, profoundly damaging and unfair, is entirely unnecessary under the present circumstances. The judicial branch should not be the cause of such an outcome.

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[9] If there is any doubt about the accuracy of Attorney Mulligan's characterization of the "rancorous" atmosphere gripping the Bridgeport BOE, and its debilitating effects, the Court may take judicial notice of the transcript of its most recent meeting, on July 16, 2013 (A439).

Respectfully submitted,

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CERTIFICATION

This is to certify that a copy of the foregoing has been sent on July 19, 2013 by email (without exhibits) and by U.S. Mail, postage prepaid, (with exhibits) to the following Counsel of record:

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I further certify that the foregoing complies with Practice Book §§ 62-7 and 66-3.

Steven D. Ecker