

DOCKET NO.: FBT 11-6021487S : SUPERIOR COURT  
MARY-JANE FOSTER, ET AL : J.D. OF FAIRFIELD  
VS. : AT BRIDGEPORT  
SANTA I. AYALA : AUGUST 31, 2011

**PLAINTIFFS' RESPONSES TO  
QUESTIONS RAISED BY THE COURT<sup>1</sup>**

**Question 1:** Does the Registrar have the authority to reject consent forms assuming she knew they were defective (i.e. what if 972 names were on the consent form for petitions?).

**Answer:** By her own trial testimony, the Registrar may reject consent forms on submission, before circulation. Exh. 2, the Primary Petition for Municipal Offices at large, clearly states that "the Registrar must fill out this Part (A) before giving out this form", which assures the circulating party that the petition was - - at least from the vantage point of the Registrar - - valid when received.

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<sup>1</sup> The Court's questions required some reference to authorities not previously referred to at trial. Plaintiffs respectfully request that the Court take judicial notice of these references (e.g., the City of Bridgeport Code of Ethics).

Further, the Court may take judicial notice of the City of Bridgeport's official website, which notes that the function of the Registrar is, *inter alia*, "To register voters...and respond to inquiries from all persons and agencies."

C.G.S. § 9-368, Misrepresentation of Contents of a petition, provides: (a) "No person shall intentionally misrepresent the contents of a petition circulated under title 9; (b) any person who violates any provision of this section shall be guilty of a Class D Felony."

In sum, based upon the totality of the exhibits, testimony and law, plaintiffs believe that the answer to Question 1 is clearly in the affirmative.

**Question 2:** Does the Registrar have a duty to disqualify herself from the Registrar's typical decision – making process if a conflict of interest is involved (i.e., if she had a child running for office)?

**Answer:** According to the Bridgeport Code of Ethics:

**Standards of conduct:**

§ 2.38.030:

- A. **General Prohibition.** No official or employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business employment, transaction or professional activity, or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his

duties or employment in the public interest and of his responsibilities as prescribed in the provisions of this chapter.

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- D. Fair and Equal Treatment. No official or employee shall use his position to secure or to grant special consideration, treatment, advantage, privilege or exemption to himself or any person beyond that which is available to every other person; except that nothing herein is intended to, or shall void, affect, restrict or limit in any way the power or authority of any officer to exercise that discretionary authority granted him pursuant to his position.

Plaintiffs submit that §§ 2.38.030 A. and D., when read together, impose a duty upon the Registrar to avoid the appearance of impropriety if she believed that the pending action in Waterbury, or her relationship with incumbents, or any other factor, would interfere with the critical responsibilities with which she is entrusted. As the United States Supreme Court held in *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 186-187 (1999): “petition circulation is core political speech, because it involves interactive communication concerning political change...”. In short, the fair administration of primary petitions is of constitutional magnitude.

**Question 3:** Assuming that three board of education candidates was the appropriate number to be nominated, and three were submitted on petitions, what would happen if one of those candidates were to withdraw after the deadline for submitting petitions? Is there an expectation that all candidates will run?

**Answer:** The statutes provide definitive remedies on the possibility that candidates will drop out, or that certain candidates will not run in the general election. C.G.S. § 9-418 provide for instances where a party fails to endorse a candidate; C.G.S. § 9-426 establishes a procedure when there are vacancies for office or town committees in non-party-endorsed candidacies and slates.

As to specific questions posed by the Court regarding what would happen if one of three Board of Education candidates should withdraw, § 9-426 provides that

[I]f any person on a slate, prior to the opening of the polls at such primary, dies, withdraws his name from nomination or for any reason becomes disqualified...such partial slate shall appear on the ballot at the primary, and, if such partial slate wins, then the remaining members may fill the vacancy....

See also C.G.S. § 9-329(b), Removal of Candidates' Name from Ballot Label: (prior to any primary, the Superior Court "may issue an order removing a candidate from a ballot label where it is shown that said candidate is improperly on the ballot").

Accordingly, there is an expectation that all remaining candidates will remain in place in the event one or more withdraws.

**Question 4:** Assume that there are three Board of Education candidates on the slate. After the deadline for submitting petitions, but before primary, the Court rules that there is no primary for Board of Education. What happens to the entire petition slate?

**Answer:** We find no statutory or common law basis to disqualify an entire slate of candidates based on a ruling that there shall be no primary for board of education. The hypothetical assumes that the court order does not concern the remainder of this slate. Therefore, there is no legal basis whatsoever to disqualify an entire slate from a primary based on a court-imposed disqualification under C.G.S. §§ 9-426 or 9-329b.

**Question 5:** Assuming there are three board of education candidates on the slate, but before the deadline for submitting petitions, the elected board of education dissolves itself. Does the Registrar have any duty or obligation to take any action without a slate of candidates?

**Answer:** Yes. As shown by her own testimony, and by Exh. 13, there is no question that the defendant Registrar was advised on July 28, 2011 by a staff attorney at the Secretary of State's office that "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." This advice was received by the defendant Registrar

approximately one week before petitions were circulated by the plaintiffs. C.G.S. § 9-368(c) defines the duties of both the Registrar and the circulators concerning the circulation of petitions. If an office or positions were to be dissolved, or otherwise ineligible to appear on the ballot, the petitions that contain candidates for that office or positions are being misrepresented to voters. Since the Registrar knew that the positions for the board of education would no longer exist, but chose not to convey this information to those who received the petitions, the Registrar intentionally caused those petitions to be misrepresented. Since the defendant Registrar admittedly did not convey this information to the plaintiffs, and the subject petitions for the board of education were circulated prior to the actual dissolution of the board, the Registrar should count all signatures for the remaining (non-B of E) candidates pursuant to C.G.S. § 9-426.

**Question 6:** Assume that the Foster campaign submitted 972 candidates for the board of education and the Registrar knew that the maximum number of candidates could only be three. Does the Registrar have the authority to reject the consent form? Does the Registrar have the duty to reject the consent form and inform the candidates of the proper number?

**Answer:** As noted *supra*, the Registrar has admitted she could reject any improper petitions. It is undisputed that she has the authority to do so. As to whether she has the duty to reject such a form and pass that information to the candidates, the question assumes, *arguendo*, that the number of candidates submitted is, *ipso facto*, improper. If that assumption is made based on statute, regulation or simply logistical impossibility, the answer to this question would be Yes, for the reasons set forth in plaintiffs' responses to Questions 1 and 2, *supra*. See also, Exh. 2, primary petition for municipal offices at-large, Part A.

**Question 7:** Assume the Foster campaign submitted the consent form with three Board of Education candidates and the Registrar knew or should have known that there was no Board of Education in existence. Does she have the authority or duty to reject the form and pass that information to the candidates?

**Answer:** Yes. Again, authority is undisputed. As noted *supra*, C.G.S. § 9-368c(a) provides that no person shall intentionally misrepresent the contents of a petition candidate under title 9. Further, as noted *supra*, the primary petition form itself is an assurance to circulators that the form of the petitions has been reviewed by the Registrar.

Further, City Charter ch.2,38.001 clearly provides: "officials and employees will conduct themselves with propriety, discharge their duties fairly... [under] high standard of ethical conduct."

In sum, given the extensive knowledge that the defendant Registrar had on or about July 28, 2011, before the primary petitions were circulated, the Registrar clearly had the duty to inform the plaintiffs of the board of education in Bridgeport at that time.

**Question 8:** Assume there would be three candidates for the board of education. After petitions forms were submitted, the Registrar knew or should have known that there would be no primary. Did she have a duty or responsibility to take any action thereupon?

**Answer:** Yes. Plaintiffs' response to Question 8 would generally be the same as their response to Question 7. In addition, C.G.S. § 9-426 establishes procedure to be used when there are vacancies for non-party-endorsed candidacies and slates. The Registrar should have followed those procedures, rather than disqualifying the entire slate.

**Question 9:** After the petitions forms are issued, the Registrar knows that there will be no primary for the board of education. Does she have any duty or responsibility to take any action? Further, after the August 10<sup>th</sup> deadline for submitting signatures on the petitions, but before the petitions are certified, the Registrar knows there is not going to be a primary for the board of education candidates. What responsibility does the Registrar have to notify the parties?

**Answer:** Plaintiffs respectfully suggest that is question is indeed theoretical in light of the evidence that the defendant Registrar knew at the time the primary petition forms were issued on July 28, 2011 that there almost certainly would be no Board of Education elected in the general election on November 8<sup>th</sup>. As noted in response to Questions 1 and 2, the Registrar has a duty and obligation to make sure that primary petitions are circulated accurately. In addition, since the defendant Registrar has no difficulty in obtaining legal advice, impartial counsel would have informed her of the provisions of C.G.S. § 9-426, which establishes the procedure when there are vacancies for office on non-party-endorsed candidacies and slates. § 9-426 makes clear that the remedy for withdrawal, disqualification, or any other reason is the continuation of partial slates. The remedy here was for elimination of board of education candidates only, and not disqualification of the entire slate.

THE PLAINTIFFS  
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**CERTIFICATION**

I hereby certify that a copy of the foregoing was filed electronically on August 31, 2011. Notice of this filing will be sent by e-mail to all parties, Betsy A. Edwards, Esq. and Arthur Laske, Esq. ([betsy.edwards@bridgeportct.gov](mailto:betsy.edwards@bridgeportct.gov)); Paul Ganim, Esq. ([paul@ganimlawfirm.com](mailto:paul@ganimlawfirm.com)) by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

  
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