
**SUPREME COURT
OF THE
STATE OF CONNECTICUT**

S.C. 20029

ROBERT T. KEELEY, JR.

v.

SANTA I. AYALA, REGISTRAR OF VOTERS, ET AL.

**BRIEF FOR THE PLAINTIFF-APPELLANT
ROBERT T. KEELEY, JR.
(WITH SEPARATE APPENDIX)**

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I.

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II.

Whether the trial court erred in rejecting twelve absentee ballots that were stamped but not postmarked on the ground that they were not "mailed" pursuant to Connecticut General Statute §9-140b. *(Pages 15-17 of Appellant's Brief)*

III.

Whether the trial court erred in deciding that the administration of the supervised absentee balloting at the Northbridge Health Care Center did not meet the minimum standards required by law. *(Pages 17-20 of Appellant's Brief)*

IV.

Whether the trial court erred in applying the burden of proof, and in rejecting votes validly cast by electors, thereby undermining the trial court's conclusion that there were substantial statutory violations that left the reliability of the election seriously in doubt. *(Pages 20-25 of Appellant's Brief)*

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STATEMENT OF PROCEEDINGS AND FACTS

The Transcript of 11-30-17, constitutes the Memorandum of Decision of the Trial Court, which includes factual findings incorporated by reference in this Brief.

Statement of the Nature of the Proceedings

The instant case arises from the Appellee's action pursuant to Connecticut General Statutes § 9-325 for an expedited special session of the Supreme Court of Connecticut, contesting the trial court's decision ordering a third Democratic primary election for the for the 133rd City Council district in Bridgeport, Connecticut.

On September 26, 2017, the Plaintiff, Robert Keeley Jr., commenced an action against Defendants Santa Ayala, the Bridgeport Democratic Registrar of Voters; James Mullen, Head Moderator; Thomas Errichetti, Head Moderator of Absentee Ballots; Charles D. Clemons, Bridgeport Town Clerk; and candidate for the 133rd Bridgeport City Council Jeanette Herron, and sought relief arising out of the September 12, 2017 City of Bridgeport democratic primary. (Record page 2) In the Plaintiff's complaint he alleged, among other things, various issues with respect to the absentee ballot voting. (p. 2) A vote recount was held on September 19, 2017. (R. Page 2) The hearing on the original complaint commenced on October 11, 2017 and continued to October 16, 2017. (pp. 2-3) Based on facts, testimony and argument provided at said hearing, the Defendants agreed with Plaintiff that the results of the September 12, 2017 Democratic Primary for the 133rd City Council District would be vacated, and a special election would be conducted on November 14, 2017. (p. 3) Attorney Maximino Medina was appointed as the court election monitor. (p. 3) On October 20, 2017, the Court approved the parties written joint order and additional clarifying orders were subsequently entered. (pp. 3-4) The trial court, pursuant to the

agreement of the parties as approved by court order, retained jurisdiction in the matter throughout the special election. (p. 4) Any disputes regarding the special election were to be brought to the immediate attention of the trial court. (p. 4) The mutual agreement of the parties set forth the procedure for any challenge to the special election. (p. 4) Based on the serious issues that did arise out of the special election, and the trial court's fact gathering and interpretation of the law with respect to those issues, a third primary election for the 133rd District (p. 19) was ordered on November 30, 2017.

Facts

What amounted to a bag of absentee ballots, went missing after the Bridgeport Democratic Primary election held on September 12, 2017. (pp. 2,3) Furthermore, a single absentee ballot was added to the tally and cast for City Council candidate and Defendant Herron after the recount of said primary election in the 133rd City Council District. (p. 3) This single vote gave Herron the victory over candidate Keeley, 171 votes to 170 votes, respectively. (pp. 2,3) Additionally, after giving some testimony, Bridgeport Town Clerk Clemons invoked his Fifth Amendment rights regarding further questioning about the signing of official absentee ballot affidavits that he signed and swore to the document in front of notary Aida Marquez. Initially Clemons testified that in fact he had never signed those affidavits in front of a Notary Public. (p. 3) Because of the aforementioned absentee ballot debacle, a special election was ordered for November 14, 2017 for Bridgeport's 133rd City Democratic Council Primary. (p.3)

Attorney Maximino Medina, the appointed special election monitor, brought to the attention of the trial court issues that arose during the special election. (pp. 3,4) The first issue brought to the attention of the trial court on November 13, 2017 was the delivery of

nine (9) absentee ballots by Officer Nicola at the direction of Bridgeport Democratic Party Chairman Mario Testa and 133rd City Council District Candidate Michael DeFilippo. Prior to meeting Testa and Defilippo, Police Chief AJ Perez (pp. 4, 13) and Officer Nicola met face to face and was ordered by Chief Perez to contact Mario Testa because “Testa and the party needed an officer to pick up absentee ballots.” (p. 13) Subsequently, approximately one half hour later Officer Nicola was provided a list of absentee ballot pickups from DeFilippo. (p. 13) DeFilippo then went on to text additional names and addresses of absentee ballots to be picked up by Nicola. (p. 13) Nicola did not ask for any identification from any of the individuals that he picked up absentee ballots from on November 13 and 14. (p. 13-14) Nicola delivered nine (9) absentee ballots to the Town Clerk on November 13 and either four (4) or five (5) absentee ballots on November 14th. (p. 14) These 14 or 15 ballots were found to have “no legitimacy” and were disqualified by the trial court in violation of absentee ballot laws in that “illegal partisan party interference came into play.” (p.19) The trial court found that Nicola did not pick up absentee ballots from the actual absentee ballot voters but from unidentified individuals and even picked up an absentee ballot out of a mailbox. (p. 13-14)

Another issue brought to the trial court’s attention by Medina was the delivery of fifteen (15) absentee ballots to the mail room at Bridgeport’s City Hall on November 14, 2017. (p. 6) Twelve absentee ballots bore no postmarks or marks of cancellation. (pp. 6) The trial court determined that these twelve ballots were not mailed as per the statutory requirement. (p. 7) In addition, there was evidenced lack of security regarding those twelve absentee ballots. (p. 7). Furthermore, it was determined by the trial court that the twelve

absentee ballots were added to the mail either by mistake or by foul play and all twelve should have been rejected and not have been counted. (p. 7)

Another issue brought to the trial court's attention by Medina was that the registrar of voters, Santa Ayala did not follow the proper procedure with regard to the supervised absentee balloting at Northbridge Health Care Center. (pp. 9-13) During the special election there was no outreach by the registrar's office giving notice to the residents of Northbridge of the supervised absentee balloting, as there had been on the November 7, 2017 general election. (p. 11) For the November 7 general election, designees from the registrar's office went door to door in the Northbridge Health Care Center a few days prior to the supervised absentee balloting, but did not do the same for the November 14th special election. (p. 11) No effort was made in the special election to distribute the absentee ballot applications to the Northbridge residents. (p. 12) This stealth supervised balloting was found to be fundamentally unfair and not up to the standards set by law for supervised balloting. (p. 12) The trial court found that the registrar failed to take reasonable steps to deliver the applications and ballots and failed to post reasonable notice of the supervised absentee balloting so as to give proper notice to the Northbridge residents and the potential voters there that the supervised absentee balloting was taking place. (p. 12)

In addition, the trial court rejected an absentee ballot that shouldn't have counted because it was not signed on the Voter Registration Card. (p. 9)

Overall, the trial court found that even beyond a reasonable doubt, established by the Plaintiff having met his burden, that there were substantial violations of law and that these violations amounted to serious doubt in the reliability of the result of the special election. (p. 20) There were absentee ballots that should not have been counted

highlighted supra, and a third primary election was ordered for the 133rd City Council District of the City of Bridgeport, Connecticut. (p. 19) Here, the voters were due integrity in the electoral process and a fundamentally fair and honest election, but did not get that in the November 12th special election. (p. 20)

ARGUMENT

I.

Whether Connecticut General Statute § 9-140b prohibits any person other than the elector from arranging for a designee to return an electors absentee ballot to the Town Clerk.

Standard of Review: “[W]hether any rulings of an election official or mistakes in the count of votes were substantial, and whether the result of the election is seriously in doubt, are questions that call for plenary review on appeal.” *Bortner v. Town of Woodbridge*, 250 Conn. 241, 263 (1999)

- A. THE CLEAR AND UNAMBIGUOUS LANGUAGE OF CHAPTER 145 OF THE CONNECTICUT STATUTES SETS FORTH A CONSISTENT AND COMPREHENSIVE SET OF PROCEDURES TO ENSURE THE INTEGRITY OF ABSENTEE BALLOT PROCESS, AND IN PARTICULAR SETS FORTH BALLOTING REQUIREMENTS TO ENSURE THAT THE “DESIGNEE” OF THE VOTER BE CHOSEN BY THAT VOTER, NOT BY A PARTY BOSS.

Chapter 145 of the Connecticut General Statutes (C.G.S. § 9-133f -§ 9-163k) is a comprehensive statutory scheme designed to regulate every aspect of the absentee voting process, from the eligibility of voters, to the printing and possession of absentee ballots, to the procedures governing the counting of ballots, disqualification of ballots, and the supervision of the absentee balloting process through all aspects of the voting process.

In *Wrinn v. Dunleavy*, 186 Conn. 125 (1982) this Court wrote "...we are concerned with absentee voting, a special type of voting procedure established by the legislature for those otherwise qualified voters who for one or more of the authorized reasons are unable to cast their ballots at the regular polling place. We have previously recognized "that there is considerable room for fraud in absentee voting and that a failure to comply with the regulatory provisions governing absentee voting increases the opportunity for fraud." *Dombkowski v. Messier*, 164 Conn. 204, 209, 319 A.2d 373 (1972) In *Flanagan v. Hynes*, 75 Conn. 584, 588, 54 A. 737 (1903), we stated "[i]f there is to be disfranchisement, it should be legislature has seen fit to require it in the interest of an honest suffrage, and has expressed that requirement in unmistakable language." *Wrinn*, 186 Conn. at 143-145.

In *Wrinn*, the Court addressed the question of the applicability of the mandatory provisions of C.G.S. § 9-146(b) [Transferred to §9-140b], the predecessor statute to C.G.S. § 9-140, the statutory provision at issue in the instant case. The issue in *Wrinn* was whether 26 absentee ballots mailed by an individual not qualified to do so by the express statutory provisions could be counted. In determining that compliance with the express terms of § 9-146(b) was mandatory (and therefore required the ballots improperly mailed could not be counted), the Court stated:

In view of the express language of the absentee voting chapter and this court's decision in *Dombkowski v. Messier*, supra, there is no question that the provisions of § 9-146 [Transferred to § 9-140b] and specifically the mailing requirements of § 9-146 (b) are mandatory. . . . By its own terms § 9-146(a), in relevant part, unequivocally states: "An absentee ballot *shall be cast* at any election *only if*" the mailing requirements are fulfilled. (Emphasis added.) § 9-146 (b) provides that the ballot of an ill or disabled elector "shall only be mailed" by the elector or by a designated person who may be "only one" of the persons on a specified list...

Had the legislature intended that such clearly mandatory language not require the invalidation of a ballot not conforming to the statutory requirements, it could have so specified as it has in other Sections of the absentee voting chapter. In § 9-138 [Transferred to §9-140a], for example, which requires that the elector or an authorized agent sign and date the statement on the ballot's inner envelope, the legislature specifically provided that "[t]he failure of such applicant or such authorized agent to date such form shall not invalidate the ballot." . . . The absence of any type of saving provision in connection with the mailing requirements of § 9-146 (b) leads to the conclusion that these requirements are mandatory and that noncompliance with them requires the invalidation of such a ballot. *Wrinn*, 186 Conn. at 145-146.

C.G.S. § 9-140b (formerly § 9-146(b)) sets forth the limited circumstances where an absentee ballot may be 'returned' by an individual other than the actual voter, via a statutorily defined 'designee':

(a) An absentee ballot shall be cast at a primary, election or referendum only if... (2) it is returned by *the applicant in person* to the clerk by the day before a regular election, special election or primary or prior to the opening of the polls on the day of a referendum; (3) it is returned by *a designee of an ill or physically disabled ballot applicant*, in person, to said clerk not later than the close of the polls on the day of the election, primary or referendum; (4) it is returned by *a member of the immediate family of the absentee voter, in person*, to this sub § shall present identification and indicate his address, his relationship to the voter or his position... As used in this §, "immediate family" means a dependent relative who resides in the individual's household or any spouse, child or parent of the individual." (*Emphasis supplied*).

Under § 9-140b(b) "designee" is defined as (1) a person who is caring for the applicant because of the applicant's illness or physical disability, including but not limited to, a licensed physician or a registered or practical nurse, (2) a member of the applicant's family, who is designated by an absentee ballot applicant and who consents to such

designation, or (3) if no such person consents or is available, then a police officer, registrar of voters, deputy registrar of voters or assistant registrar of voters in the municipality in which the applicant resides.

§ 9-140b(d) also precludes any person not specifically authorized by the voter or the statutory process governing absentee ballots from having in his possession any absentee ballot, which is clearly a legislative effort to prevent the corrupt manipulation of the absentee voting process.

The process by which the Democratic party boss of Bridgeport, and Michael DeFilippo, the candidate on the ballot running against Mr. Keely, contacted the Police Chief of the City of Bridgeport and were thereafter provided the (taxpayer financed) services of an on-duty Bridgeport police officer to collect absentee ballots from purported voters at the designation of those partisan political figures – and not the actual absentee voter – is precisely the kind of objective corruption the careful statutory scheme of Chapter 145, and C.G.S. § 9-140 was designed to eradicate. In this corrupt scenario, no ‘designee’ of the actual voter exists because there is absolutely no evidence that these purported voters contacted Officer Nicola to collect their absentee ballots. The actual collection of these 14 absentee ballots was the direct result of the coordinated efforts of the local political party boss, and a candidate in the election, who texted Officer Nicola and directed him to pick up absentee ballots from, among other places, an empty mailbox. The carefully constructed statutory scheme governing absentee ballot voting clearly requires that it is the voter who is to direct his ‘designee’, and a police officer can return an absentee ballot, but only if so designated by the absentee ballot applicant. Allowing a political party boss and a candidate to utilize a police officer to do their bidding in gathering under circumstances that infer a

nefarious and corrupt purpose – in effect fraud – is simply inapposite to the specific intent of C.G.S. § 9-140 and the careful statutory scheme of Chapter 145. The trial court was therefore correct under the holding in *Wrinn* to invalidate the absentee ballots procured through the efforts of the political party boss and his chosen candidate to use the ‘cover’ of a police officer to collect absentee ballots in clear violation of C.G.S. § 9-140.

B. TO THE EXTENT THAT ANY ARGUMENT IS ASSERTED THAT C.G.S. 9-140 CONTAINS AN AMBIGUITY AS TO THE APPROPRIATE ROLE OF A POLICE OFFICER IN THE COLLECTION OF AN ABSENTEE BALLOT (THEREBY POTENTIALLY ALLOWING A POLICE OFFICER, AT THE BEHEST OF A POLITICAL PARTY BOSS TO COLLECT ABSENTEE BALLOTS) THE LEGISLATIVE HISTORY OF C.G.S. § 9-140 CLEARLY ESTABLISHES THE LEGISLATIVE INTENT TO PREVENT THE INTERFERENCE OF PARTISAN POLITICAL ACTORS IN THE COLLECTION OF ABSENTEE BALLOTS.

The certified question on appeal raises an issue of statutory construction and, therefore, our review is plenary. *State v. Russo*, 259 Conn. 436, 447, 790 A.2d 1132, cert. denied, 537 U.S. 879, 123 S.Ct. 79, 154 L.Ed.2d 134 (2002). “The process of statutory interpretation involves a reasoned search for the intention 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 this case, including the question of whether the language actually does apply. In seeking to determine that meaning, we look to the words of the statute itself, to the legislative history and circumstances surrounding its enactment, to the legislative

policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter.” (Citation omitted; internal quotation marks omitted.) *Schiano v. Bliss Exterminating Co.*, 260 Conn. 21, 34, 792 A.2d 835 (2002). *Spears v. Garcia*, 263 Conn. 22, 27–28 (2003).

Here, the statute was ambiguous enough to give rise to viewing and relying on the Legislative history for guidance in interpreting the statute. In this election, a political party boss coordinated with his endorsed candidate to utilize an on-duty Bridgeport police officer to pick up absentee ballots at the specific request of these partisan political actors. This is tantamount to the party boss going into the voting booth with the voters, which is the most egregious offense to democracy and fair elections. A review of the legislative history of C.G.S. Sec (House Amendment Schedule “A”, L.C.O. No. 2790, April 30, 1974, Connecticut General Assembly House Proceedings 1974, Vol. 17, Part 10, 4521- 5064) as cited by the trial court in its decision, refers to the significant legislative concerns regarding the corruption of the absentee voting process by political actors. (p. 16-17) The proponent of the bill Representative M. James Canali, “was proposing the bill to restrict partisan party workers’ involvement and harassment after the voter received the absentee ballot”. Representative Canali in arguing in favor of this bill, hammered home this concept when he said:

“This bill will accomplish a very important inequity in our absentee ballot process that exists under the current laws. It will, as much as possible, restrict the partisan party worker from any involvement with the voter after he or she has received his or her ballot, thereby preventing the harassment that currently occurs in many cases today. . . . The common practice of pursuing

the voter and sometimes harassing him to allow the ballot to be picked up by party workers has reached the point in many areas of our state where the inherent privacy of the voter is entitled to is being seriously violated. We would be seriously outraged if a party worker brought a voter to a polling place, into the place itself, and then sits in the voting booth with him or her and exerted pressure for them to vote one way or another . . . We must once and for all end the absentee ballot contest that pervades our political process.” (pp. 16-17)

Here, Officer Nicola was directed by partisan political operatives to pick up these absentee ballots. (p. 13,19) He was not directed by the actual voter to pick up the absentee ballots. (p. 19)

In the 43 years since the passage of the amendments to the absentee ballot laws that Representative Mr. Canali debated highlighted *supra*, and the same concerns regarding the legitimacy the absentee ballot ‘contest’ exists and continues to “pervade our political process.”(pp. 16-17) Clearly, the 1974 amendments advocated by Representative Canali were not intended to create loopholes in the law that would provide additional opportunities for interested political operatives to collude with police officers to act as designees under the statute to pick up absentee ballots from voters. On the contrary, it was the intention of the legislature to eradicate the potential for fraud arising from allowing political party workers to interfere with the absentee ballot process. Allowing a police officer to be utilized by political party bosses, as is advocated by the City’s position, would clearly subvert the Legislature’s careful scheme to prevent fraud and corruption of the absentee balloting process.

II.

Whether the trial court erred in rejecting twelve absentee ballots that were stamped but not postmarked on the ground that they were not “mailed” pursuant to Connecticut General Statute §9-140b.

A. THE TRIAL COURT PROPERLY REJECTED TWELVE ABSENTEE BALLOTS THAT FAILED TO COMPLY WITH THE STATUTORY REQUIREMENT THAT THEY WERE ‘MAILED’ PURSUANT TO C.G.S. § 9-140(b)(c).

C.G.S. § 9-140b(a) states that “...an absentee ballot shall be cast at a primary, election or referendum only if: (1) It is mailed by (A) the ballot applicant (B) a designee of a person who applies for an absentee ballot because of illness or physical disability, or (C) a member of the immediate family of an applicant who is a student.”

§ 9-140b (c) states that for purposes of this § “mailed” means “...sent by the United States Postal Service or any commercial carrier, courier or messenger service recognized and approved by the Secretary of the State.”

The trial court’s findings, based upon the first-hand observations of the court-appointed election monitor, were that twelve absentee ballots reported to him as having been “...brought directly...from the post office to city hall” bore no postmarks or signs of cancellation from the postal service. The court further noted that evidence presented regarding the process by which the mail, including these absentee ballots, was transported to city hall established “...a lack of security with the absentee ballots that day and there

was clear opportunity for absentee ballots that were not sent by the United States Post Office to be added to the mail whether by mistake or by foul play.”

The Supreme Court in *Wrinn* found that compliance with the mailing requirements of the absentee ballot statutes is mandatory:

This court has previously held that the provisions of the absentee voting statute are mandatory. *Dombkowski v. Messier*, supra. In *Dombkowski*, we specifically concluded that the provisions of § 9-148 of the General Statutes, dealing with the handling of absentee ballots by the municipal clerk, were mandatory by reference to the mandatory language contained in an earlier version of § 9-146.¹ Though the specific language of § 9-146 has been modified since *Dombkowski*, the mandatory nature of the statute, as discussed above, remains unchanged. There is, therefore, no reason for us to disturb the holding of *Dombkowski*.

Having concluded that the mailing requirements of § 9-146(b) are mandatory, we next consider whether there has been compliance with these provisions. In *Dombkowski v. Messier*, supra, 209, this court stated that "where the legislature has provided mandatory requirements specifically designed to prevent fraud, at least a substantial compliance with such statutes is necessary." *Wrinn*, 186 Conn. at 147.

Under the plain meaning of the law, the twelve absentee ballots in question here were not ‘mailed’ because they bore no post marks or other indicia of cancellation from the USPS. The statutory requirements for an absentee ballot mandate that each absentee ballot must strictly conform to the statutory requirements and there is simply no evidence that the twelve ballots in question were “mailed” under the plain meaning of the statute. Clearly, if absentee ballots had been delivered by the USPS and thereafter brought to city hall, the ballots would have borne a postmark or other indicia of having been sent by the USPS. Because these twelve ballots show no objective evidence of having been ‘mailed’, they were properly excluded by the trial court pursuant to C.G.S. § 9-140(b).

III.

Whether the trial court erred in deciding that the administration of the supervised absentee balloting at the Northbridge Health Care Center did not meet the minimum standards required by law.

A. THE REGISTRAR OF VOTERS DID NOT MEET THE MINIMUM STANDARDS REQUIRED BY LAW WHEN SHE FAILED TO TAKE REASONABLE STEPS TO DELIVER APPLCIATIONS AND BALLOTS AND FAILED TO POST REASONABLE NOTICE TO THE RESIDENTS OF NORTHBRIDGE OF THE SUPERVISED ABSENTEE BALLOTING.

Connecticut General Statutes §9-159q(g) states that the registrars or their designees, as the case may be, shall jointly deliver the ballots to the respective applicants at the institution and shall jointly supervise the voting of such ballots. § 9-159r calls for mandatory supervised voting at institutions and lays out the procedure. (a) Notwithstanding any provision of the general statutes to the contrary, if twenty or more of the patients in any institution in the state are electors, absentee ballots voted by such electors shall be voted under the supervision of the registrars of voters or their designees of the town in which the institution is located, in accordance with the provisions of this Section. § 9-159q (a)(1) defines “Institution” as a veterans' health care facility, residential care home, health care facility for the handicapped, nursing home, rest home, mental health facility, alcohol or drug treatment facility, an infirmary operated by an educational institution for the care of its students, faculty and employees or an assisted living facility; and (2) “Designee” as an

elector of the same town and political party as the appointing registrar of voters which elector is not an employee of the institution at which supervised voting is conducted.

According to the findings of the trial court, in a facility of at least 80 residents, not one vote was cast at Northbridge when the supervised balloting took place on November 8. (pp. 9,10) The registrar failed to meet the minimum standards because the registrar's designees in the special election failed to give proper notice to Northbridge residents to see who wanted to vote and distribute absentee ballots. (p. 11) When Attorney Medina, the court appointed election monitor reported to Northbridge on November 8 at 9:30am, the front receptionist had no knowledge about the supervised balloting. (p. 10) The trial court also acknowledged that there was no overhead announcement to the residents that morning regarding the balloting. (p.10) The receptionist Ms. Rodriguez and the designees also failed to go room to room to see who wanted to vote either on November 8 or on the days leading up to the supervised balloting of November 8. (p. 10) This procedure is in sharp contrast to the prior supervised absentee balloting at Northbridge facility when designees from the Registrar of Voter's office providing voting services in that prior election came to the facility a few days prior to the supervised absentee balloting and went room to room with Ms. Rodriguez to notify prospective voters and to distribute absentee ballot applications. (p. 10) In contrast, for the November 8th election, the two designees from the Registrar's office were tucked away in a room at Northbridge with limited if any outreach to the residents of the facility. Without any reasonable notice to the residents of Northbridge regarding the supervised absentee balloting process, and without going room to room, the residents had no knowledge about the absentee voting opportunity in the November 8th supervised absentee balloting. The result was likely pre-ordained and obvious – the result

of the Registrar's lack of effort to competently supervise the absentee balloting process at Northbridge resulted in not a single absentee ballot being cast in the November 8th election from the residents at Northbridge. The complete failure by the Registrar of Voter to supervise the absentee balloting at Northbridge was a clear violation of minimum standards of the statute.

B. THE PAST PRACTICES IN THE SUPERVISED ABSENTEE BALLOTING AT NORTHBRIDGE FROM THE PRIOR ELECTION BY THE REGISTRAR SET THE MINIMUM STANDARDS REQUIRED BY LAW.

Since C.G.S. Sec 9-159q is not specific as to the actual procedures governing the practice of conducting supervised absentee balloting, the Registrar of Voters, pursuant to her legal authority, sets the procedure. The trial court found that, in contrast to the preceding election the normal procedures were not followed. (p. 12). The Registrar's designees did not go room to room either on November 8th or shortly before as they had done for the prior election to see who wanted to vote, and although they brought with them on November 8th absentee ballot applications to distribute, they made no efforts to distribute them. (p. 12) The practice of the Registrar during the prior election established the minimum standard for the procedures to be conducted in order to operate a supervised absentee ballot election – which included normal outreach like knocking on the resident's doors and publicizing the election. The Registrar knew what was supposed to be done, but on November 8th it is clear she did not comply by the operating standards for supervised absentee balloting that She had previously established. "Stealth supervised balloting is not

supervised balloting and it is fundamentally unfair to the Northbridge residents and the candidates here who, along with the residents of Bridgeport are entitled to cast their votes in a fair and honest election.” (p. 13) Given the totality of circumstances, this was an abdication by Registrar of Voters Santa Ayala, of her duty to meet the minimum standards which she set by her past practice to conduct a fair and honest supervised absentee balloting for the residents of Northbridge.

IV.

Whether the trial court erred in applying the burden of proof, and in rejecting votes validly cast by electors, thereby undermining the trial court’s conclusion that there were substantial statutory violations that left the reliability of the election seriously in doubt.

Standard of Review

[A]lthough the underlying facts [in an action pursuant to § 9–328] are to be established by a preponderance of the evidence and are subject on appeal to the clearly erroneous standard ... the ultimate determination of whether, based on those underlying facts, a new election is called for—that is, whether there were substantial violations of the statute that render the reliability of the result of the election seriously in doubt—is a mixed question of fact and law that is subject to plenary review on appeal”

Caruso v. City of Bridgeport, 285 Conn. 618, 650–51 (2008)

A. UNDER THE CARUSO AND BORTNER STANDARDS, THE PLAINTIFF MET HIS BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE AT TRIAL THAT THERE WERE SUBSTANTIAL STATUTORY VIOLATIONS IN THE ABSENTEE VOTING PROCESS THAT ACTUALLY AND SERIOUSLY UNDERMINED

THE RELIABILITY OF THE RESULT OF THE ELECTION AND LEFT THE RESULTS
SERIOUSLY IN DOUBT

CGS § 9–328 as explained in *Bortner* sets the standard that must be met in order for a court to order a new election. The court must be persuaded that: (1) there were substantial errors in the rulings of an election official or officials, or substantial mistakes in the count of the votes; and (2) as a result of those errors or mistakes, the reliability of the result of the election, as determined by the election officials, is seriously in doubt. *Bortner*, 250 Conn. at 263.

[T]he plaintiff bears the heavy burden of proving by a preponderance of the evidence that any irregularities in the election process actually, and seriously, undermined the reliability of the election results before the courts will overturn an election. *Caruso*, 285 Conn. at 653.

In *Caruso*, the plaintiff failed to meet his heavy burden of proving that the combined effect of the understaffing of the polling places, the alleged bias of the poll workers and the alleged irregularities were sufficient to place the result of the election *seriously in doubt*, thereby entitling the plaintiff to a new election. *Caruso*, 285 Conn. at 652.

This matter differs significantly from *Caruso* in that there is much more specific evidence of statutory election violations presented here to the trial court than in *Caruso*. The statutory violations found by the trial court (...even beyond a reasonable doubt, p. 25) included Officer Nicola picking up 14 absentee ballots at the direction of a party boss and political candidate, and the 12 absentee ballots that were clearly not 'mailed', as well as the obvious abdication of the legal responsibility by the Registrar of Voters to properly

supervise absentee balloting at Northbridge. It is significant that the eventual difference between Mr. Keeley and the candidate who 'won' the contested seat was only 18 votes. The number of questionable absentee ballots involved in the scheme by the Democratic party boss and candidate DeFilippo to utilize Officer Nikola to procure ballots was 14. The number of questionable absentee ballots that were purportedly obtained directly from the United States Postal Service but mysteriously bore no postmark or other indicia of being 'mailed' was 12. The total number of these obviously questionable and likely fraudulent absentee ballots (26) exceeds the margin of victory (18). For this reason, the likely irregularities present in this absentee voting process actually and seriously undermined the integrity of this election and leaves the result seriously in doubt.

In *Bortner*, the Court found that the margin between the plaintiff and his opponent was fifty-six votes, and that even by giving the plaintiff the full benefit of any mistakes in the count established by the evidence, the Court could not conclude that those mistakes would have brought the plaintiff's number of votes significantly closer to that of the plaintiff's opponent so as to cast doubt on the reliability of the result of the election. Here, in contrast to *Bortner*, Keeley's number of votes did significantly come closer to that of his opponent Heron's number of votes. The 26 absentee ballots that the trial court rejected were counted when they should not have been counted. Officer Nicola delivered 14 ballots that should not have been counted and the 12 absentee ballots that were not "mailed" should not have been counted. Since Keeley lost in the second election by 18 votes to Herron, this change in 26 votes "actually and seriously" undermined the reliability of the election.

The trial court's finding that – beyond a reasonable doubt – the irregularities, statutory violations and potential fraud that permeated this election process was sufficient

to require a new election should be upheld by this Court, as the gravity and seriousness of these established violations of election law "...rendered the reliability of the result of the election, as reported by the election officials, seriously in doubt." *Bortner*, 250 Conn. at 277.

Conclusion

"[A]s a practical matter, 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." *Butts v. Bysiewicz*, 298 Conn. 665, 674, 5 A.3d 932, 939 (2010)

The Court should uphold the trial court's ruling and order a new Democratic primary election for the 133rd City Council District in that substantial statutory violations caused the reliability and the integrity of the election to be in doubt.

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CERTIFICATE OF SERVICE

Pursuant to Connecticut Practice Book §67-2, the undersigned counsel hereby certifies that the brief and appendix being filed with the Connecticut Supreme Court, complies with all provisions of this rule and are true copies of the brief and appendix and do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law and have been sent to Judge Bellis and electronically sent to the following attorneys of record:

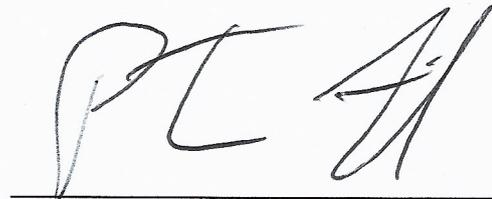
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