

DOCKET NO. HHD-CV22-6156703-S	:	SUPERIOR COURT
MUAD HREZI, ET AL.	:	JUDICIAL DISTRICT OF HARTFORD
v.	:	AT HARTFORD
DENISE MERRILL, SECRETARY OF THE STATE, ET AL.	:	JUNE 24, 2022

MEMORANDUM OF DECISION

This matter came before the court on June 22, 2023, for a hearing pursuant to General Statutes § 9-329a¹ on the claim of the plaintiff, Muad Hrezi, a candidate for the United States House of Representatives in Connecticut's First Congressional District (First District), that the defendant, Secretary of the State Denise Merrill (Secretary), illegally (1) delayed for two days the release to the plaintiff of petitions for nomination and (2) disallowed the acceptance of signatures by the Towns of East Windsor and South Windsor.² The plaintiff seeks an order certifying that he be qualified for the First District democratic primary and that a primary be held in which he is included for that office. For the following reasons, the plaintiff's claims are denied.³ The following procedural history is relevant to this decision.

FILED

JUN 24 2022

HARTFORD J.D.

¹ General Statutes § 9-329a (a) provides in relevant part that "[a] Any (1) elector or candidate aggrieved by a ruling of an election official *in connection with any primary* held pursuant to (A) section 9-423, 9-425 or 9-464 . . . may bring his complaint to any judge of the Superior Court for appropriate action. . . . If such complaint is made prior to such primary such judge shall proceed expeditiously to render judgment on the complaint" (Emphasis added.)

² The additional defendants are Ned Lamont, the Governor of the State of Connecticut, Sue Larsen and Angelo Sevarino, the Democratic Registrar of Voters of the Town of South Windsor (South Windsor) and the Town of East Windsor (East Windsor), respectively. The defendant Democratic State Central Committee represents the Connecticut Democratic Party. These defendants are not implicated in this decision.

³ The additional plaintiffs are Muneeka Munir, Bazila Munir and John Fussell, registered voters who are alleged to have been restricted from voting for a wider variety of candidates and for voting or volunteering for the candidate of their choice, Hrezi.

The plaintiffs commenced the present action on June 14, 2022. They allege in their complaint that Hrezi is a candidate for the First District. He failed to secure the majority of votes at the party convention, which the record reveals was held on May 9, 2022, at which John Larson was endorsed as the democratic party's candidate for the First District. The plaintiffs allege that because of the burdens imposed by Connecticut law as applied to Hrezi's campaign during the COVID-19 pandemic, the campaign failed to secure the requisite number of valid petition signatures (3,833) to qualify for a primary. Hrezi and his campaign were allegedly severely burdened by the strict enforcement of Connecticut's ballot access requirements to qualify for the primary given the implications of the pandemic, in violation of the plaintiffs' rights to petition, speech, and free association protected by the first and fourteenth amendments to the United States constitution (first count) and article first, §§ 2, 4, 14 and 20 of the constitution of Connecticut (second count). The third count of the complaint is brought pursuant to § 9-329a and in it the plaintiffs claim aggrievement by the illegal rulings by the Secretary in (1) delaying the release of petitions for nomination of Hrezi for two days and (2) disallowing the acceptance of signatures by East Windsor and South Windsor. The plaintiffs further allege that absent the erroneous rulings by omission and commission, Hrezi's campaign would have qualified for access to the primary ballot, notwithstanding the burdens imposed on their state and federal constitutional rights. The plaintiffs' complaint sought an ex parte injunction as well as a temporary and permanent injunction seeking inter alia, an order that the Secretary be directed to hold a primary for the office of United States Representative for the First District to include Hrezi as a candidate.

A status conference was held on June 17, 2022, at which time the court scheduled a hearing for June 22, 2022, and ordered briefing on both substantive issues and the court's

obligation to hold an expedited hearing on either the constitutional or statutory claims. Section 9-329a (b) obliges the court to “order a hearing to be held . . . not more than five nor less than three days after the making of such order” On June 21, 2022, the court issued an order pursuant to its case management authority that only the § 9-329a claim advanced by the third count proceed as scheduled.⁴

The following statutory scheme informs this decision. There are three avenues available for candidates to appear on the ballot for party primaries. Candidates for the First District may be endorsed by the relevant party at the party convention. General Statutes § 9-382. If there are no other candidates qualifying for a primary ballot, the endorsed candidate simply appears on the ballot for the November general election. Failing receipt of the party endorsement, a candidate may appear on a primary ballot if they obtain 15% of the votes of convention delegates in any roll call vote on endorsement of a candidate for the office. General Statutes § 9-400. The third avenue is available following the convention and requires the circulation of petitions and, relevant to the plaintiffs’ campaign, obtaining the signatures of 2% of the enrolled members of the party in the district. General Statutes § 9-400 (b). The commencement of the petitioning period is governed by General Statutes § 9-404a which also requires that on the day specified for commencement of the petitioning period the petition forms “shall be available from the Secretary of the State” The first day to seek petition forms in 2022 was April 26, 2022. Section 9-400

⁴ “[C]ase management authority is an inherent power necessarily vested in trial courts to manage their own affairs in order to achieve the expeditious disposition of cases. . . . The ability of trial judges to manage cases is essential to judicial economy and justice.” (Internal quotation marks omitted). *Barnes v. Connecticut Podiatry Group, P.C.*, 195 Conn. App. 212, 225, 224 A.3d 916 (2020) (citing *Krevis v. Bridgeport*, 262 Conn. 813, 819, 817 A.2d 628 (2003)). The court was obliged by § 9-329a (b) to proceed on the statutory claims of the plaintiffs within five days but no such obligation was articulated by counsel, and none was found by the court, relative to the constitutional claims. The bifurcated hearing was ordered to provide the defendants with the opportunity to conduct limited discovery on the constitutional claims. The latter claims are currently scheduled for a hearing on the plaintiffs’ request for a temporary injunction on July 19, 2022.

prescribes the day and time by which signed petitions must be submitted to the registrar of voters of the towns in which the respective petition pages were circulated. In 2022, the candidates had until June 7, 2022, at 4:00 p.m., to secure signatures and file their petitions with the relevant registrar of voters. Herzi was thus afforded twenty-two days within which to secure the appropriate number of signatures, in the present case 3,833 in number. Petition pages may contain only the signatures of members residing in the same municipality. General Statutes § 9-404b (d). The various registrars of voters must then certify the signatures on each petition page against the enrolled party members for the town and were required to file the certification with the Secretary by June 14, 2022, within seven days after receipt of the petition pages. General Statutes § 9-404c. The Secretary has limited authority to reject petition pages and must accept the number of signatures certified by the various registrar of voters. Id.

At the hearing, the parties stipulated to the following facts relevant to the § 9-329a claims. On May 10, 2022, the Secretary received a certificate of endorsement from John Larson certifying that on May 9, 2022, he had been endorsed as the democratic party's candidate for the First District and that he authorized his name to appear on the ballot, thus securing a place on the primary ballot should one be held. The Secretary was required to begin processing requests for petitions and issuing petitions forms to candidates for state and district office, including the First District, on April 26, 2022. General Statutes § 9-404a. On Tuesday, April 26, 2022, at 10:29 a.m., the Secretary stamped receipt of a hand-delivered application for Hrezi to petition to be placed on the democratic primary ballot for the First District. On April 28, 2022, at approximately 3:20 p.m., an election official employed by the Secretary received a phone call from Hrezi requesting that the petition pages be e-mailed to him. The election official immediately emailed the petition forms to Hrezi while he remained on the phone. Along with

Hrezi's petitioning forms, the Secretary sent a set of instructions for petitioning in multi-town district offices, which included the deadline to submit the petition forms.

The parties further stipulated that in order to qualify for the democratic primary ballot in the First District, Hrezi would need to submit 3,833 valid signatures, which is 2% of enrolled democratic party members in the First District. See General Statutes § 9-400 (b). The statutory deadline by which major party candidates seeking the office of Representative in Congress were required submit primary petition forms to municipal registrars of voters was June 7, 2022, at 4:00 p.m. General Statutes § 9-400 (b). The Hrezi campaign submitted petition pages containing signatures of purported electors with the Democratic Registrar of Voters for South Windsor at or after 4:09 p.m. on June 7, 2022. The Democratic Registrar of Voters for South Windsor rejected the 92 signatures submitted because they were received after 4:00 p.m. The Hrezi campaign attempted to file petition signature pages with the Democratic Registrar of Voters for East Windsor at or after 4:15 p.m. on June 7, 2022. The Democratic Registrar of Voters for East Windsor also rejected the 18 signatures submitted because they were received after 4:00 p.m. Although the campaign submitted 4,950 total signatures, at least 1,683 signatures were rejected. All municipalities within the First District are holding both democratic and republican primary elections on August 9, 2022.

The court received testimony from Hrezi; the manager of his campaign, Bazila Munir; Attorney Theodore Bromley, a staff attorney with the Secretary whose duties include director of elections; Heather Augeri, an employee of the Secretary; Lori Magora, an election officer with the Secretary, and Andrew Gottlieb, a current candidate for the Connecticut 98th State House District. Several exhibits were accepted as evidence during the hearing. After careful review of

the testimony⁵ and exhibits, the court makes the following findings of fact - in addition to those stipulated to by the parties - as having been found by the preponderance of the evidence.

The policy of the Secretary in April of 2022 was to deliver petition signature pages to applicants who desired to seek placement on a primary in three ways. The petitioner would be permitted to wait for the petition signature pages to be processed on the day of submittal of the application, the petition signature pages could be emailed to the applicant, or they would be mailed to the applicant. The Secretary recently adopted a policy of requesting an applicant's email address be written on the application. Hrezi appeared at the Secretary's office at approximately 10:20 and submitted his application for primary petitions and was told by Augeri - who accepted the application that was later processed by Magora - that it would take approximately two hours. While Hrezi testified that he was told by Augeri that the petition signature pages would be emailed to him, the court makes a finding of fact, that he was asked to put his email address on the application and only presumed that they would be emailed to him. Hrezi delayed calling the Secretary unto inquire as to the status of his receipt of the forms until April 28, 2022, because he did not want to be a nuisance. Magora mailed to Hrezi the petition forms on April 26, 2022.

Hrezi provided an affidavit in support of his initial for injunctive relief in which he claims that because one of his staffers was delayed at the Bloomfield registrar of voters his campaign was delayed in delivering the petition forms to South Windsor and East Windsor causing the forms to be submitted after 4:00 p.m. Although the plaintiffs alleged in their

⁵ As the trier of fact, the court must weigh the evidence and determine the credibility of witnesses. *Connecticut Light & Power Co. v. Proctor*, 324 Conn. 245, 259, 152 A.3d 470 (2016). "[I]t is the exclusive province of the trier of fact to weigh the conflicting evidence, determine the credibility of witnesses and determine whether to accept some, all or none of a witness' testimony." (Emphasis omitted.) *Palkimas v. Fernandez*, 159 Conn. App. 129, 133, 122 A.3d 704 (2015) (quoting *Stein v. Tong*, 117 Conn. App. 19, 24, 979 A.2d 494 (2009)).

complaint that despite the difficulties occasioned due to the pandemic, “by the end of the petitioning period, Mr. Hrezi’s campaign was collecting approximately 200 valid signatures per day.” Hrezi and Munir testified, that the largest daily collection of raw signatures collected by the campaign was approximately 500. The court credits this testimony.

The court further finds that the plaintiffs untimely submitted 92 total petition signatures to the registrar of voters for the Town of South Windsor and 18 total petition signatures to the registrar of voters for the Town of East Windsor. These were rejected by the two registrars of voters as having been submitted later than 4:00 p.m. The Hrezi campaign submitted a total of 4,950 signatures of which 1,683 were rejected, inclusive of the 110 votes from East and South Windsor. The number of valid votes was thus 3,253, or 580 less than the required 3,833 votes. The Secretary declined to schedule a primary for the democratic candidate to the general election.

The following principles inform this decision. Section 9-329a is, by its express terms, the proper statute for consideration of the plaintiffs’ claims. See footnote 1 of this opinion; see also *Fay v. Merrill*, 336 Conn. 432, 449, 246 A.3d 970 (2020) ([Section] 9-329a plainly and unambiguously furnishes a remedy for disputes arising from federal congressional primaries.”) “Our election laws, moreover, generally vest the primary responsibility for ascertaining that intent and will on the election officials, subject, of course, to the court’s appropriate scope of review when the officials’ determination is challenged in a judicial proceeding. . . . We look, therefore, first and foremost to the election officials to manage the election process so that the will of the people is carried out. . . . [The election statutes authorize] the one unelected branch of government, the judiciary, to dismantle the basic building block of the democratic process, an election. Thus, the delicacy of judicial intrusion into the electoral process strongly suggests

caution in undertaking such an intrusion.” (Citations omitted, internal quotation marks omitted). *Bortner v. Woodbridge*, 250 Conn. 241, 254, 736 A.2d 104 (1999), abrogated on other grounds by *Arciniega v. Feliciano*, 329 Conn. 293, 184 A.3d 1202 (2018).

As previously noted, the plaintiffs claim that there has been errors in the rulings of the Secretary. The court in *Green v. Vazquez*, Superior Court, judicial district of Hartford, Docket No. CV-10-6013904-S, 2010 WL 4227123 (September 17, 2010, *Peck, J.*) identified a two part test to determine whether there have been such errors. First, it must be determined whether there is a ruling of an election official. *Id.*, *7. This has been defined as “some act or conduct by the official that (1) decides a question presented to the official, or (2) interprets some statute, regulation, or other authoritative legal requirement, applicable to the election process.” (Internal quotation marks omitted.) *Arciniega v. Feliciano*, *supra*, 329 Conn. 302. Because the test is broad it includes “conduct that comes within the scope of a mandatory statute governing the election process, even if the election has not issued a ruling in any formal sense. When an election statute mandates certain procedures, and the election official has failed to apply or to follow those procedures, such conduct implicitly constitutes an incorrect interpretation of the requirements of the statute and, therefore, is a ruling. . . . Conversely, the court will not find a party aggrieved by a ruling when the ruling is made in conformity with the law.” (Citation omitted, internal quotation marks omitted). *Id.*, 303. Second, “it must be determined whether there was *error* in the rulings of the election official.” (Emphasis in the original.) *Green v. Vazquez*, *supra*, Superior Court, Docket No. CV-10-6013904-S, *7. The error must be a “substantial violation of the [elections statute]” (Emphasis in original; internal quotation marks omitted.) *Caruso v. Bridgeport*, 285 Conn. 618, 649, 941 A.2d 266, 287 (2008), abrogated

on other grounds by *Arciniega v. Feliciano*, supra, 329 Conn. 293; see also *Arciniega v. Feliciano*, supra, 299.

The court holds that the claimed failure of the Secretary to make available the petition forms on April 26, 2022, constitutes a colorable error of conduct that comes within the scope of a mandatory statute. This is so because § 9-404a mandates that the Secretary shall make the petition forms available on a date certain, in the present case April 26, 2022. The weakness in the plaintiffs' argument is that the petition forms were indeed available on April 26, 2022. Even if Hrezi's testimony were to be accepted, which it is not, that he was told by Augeri that she would email him the petition forms, they were nevertheless available for him to receive on April 26, 2022. Section 9-404a does not mandate *delivery* of the petition forms, only their *availability*. The Secretary's policy regarding provision of the petition forms by allowing the candidates to wait for them to be processed, as well as emailing or mailing the forms concerns only the delivery of the forms. Moreover, Hrezi or his campaign staffers could have returned to the Secretary's office later on the day of the 26th and simply requested delivery of the petition forms. The court finds that had he done so the petition forms would have been delivered to him on that day. Accordingly, the court finds no error on the part of the Secretary and the plaintiffs' request that such be certified to the Secretary is denied.

The plaintiffs next assert that the Secretary erred in disallowing the East Windsor and South Windsor petition forms containing a total of 110 signatures. The assertion fails because there has been no ruling of an election official. The plaintiffs have not identified any mandate compelling the Secretary to reverse the decision of the registrar of voters of East Windsor and South Windsor to reject the petition forms as untimely, as indeed Hrezi admitted they were. Moreover, the clear mandate of § 9-400 (b) requires the submission of such petitions

no later than four o'clock and the statute vests no discretion in either the registrar of voters or the Secretary to accept untimely submissions. Because this claimed error does not raise a ruling of an election official, the plaintiffs' request that such be certified to the Secretary is denied.

For the foregoing reasons, the court declines to certify error on the part of the Secretary and denies the request that Hrezi be included in a primary for the democratic candidacy for the general election. Therefore, judgment for the Secretary shall enter as to the third count.

THE COURT

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Cesar A. Noble
Judge, Superior Court