

STATE OF CONNECTICUT

DOCKET NO. FBT-CV-23-6127336-S : SUPERIOR COURT
JOHN GOMES : JUDICIAL DISTRICT OF FAIRFIELD
v. : AT BRIDGEPORT
CHARLES CLEMONS, JR.
TOWN CLERK, ET. AL. : November 1, 2023

MEMORANDUM OF DECISION

INTRODUCTION

The original complaint in this action was filed on September 19, 2023, by the plaintiff John Gomes, against the following defendants: Charles D. Clemons, Jr. (as Bridgeport City Clerk), Patricia A. Howard (as Bridgeport Democratic Registrar of Voters), Stephanie Thomas (State of Connecticut Secretary of State), and Joseph P. Ganim (candidate of Mayor). While Mr. Ganim did not formally appear initially in this matter, all other defendants appeared through counsel and participated in each conference and hearing as ordered and scheduled by the court. During the evidentiary portion of the case, defendant Ganim was subpoenaed to testify. When he appeared in court, on October 17, 2023, Mr. Ganim did so with counsel. At that time counsel indicated to the court on the record that the appearance of counsel was limited to representing Mr. Ganim in his capacity as a witness. Subsequently, counsel appeared in the matter on behalf of Mr. Ganim as a party and filed an answer and special defense, #137.00. In addition, the Corporation Counsel for the City of Bridgeport, while not formally appearing in the case, did appear before the court and participated in various status conferences and proceedings to assist

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FAIRFIELD AT BRIDGEPORT
STATE OF CONNECTICUT

in the efficient response to voluminous discovery requests and court orders for requested information.

An amended complaint was filed October 12, 2023, and is the operable complaint. See, #126.00. The allegations of the plaintiff are brought under § 9-329a to contest the city of Bridgeport's municipal democratic primary election for Mayor held on September 12, 2023. Answers and Special Defenses were filed by Defendant Clemons, #132.00, Defendant Howard, #134.00, Defendant Ganim, as noted above, #137.00, and Defendant Secretary of State, #144.00.

The court held a hearing on the complaint that began on the record on September 22, 2023. After discovery and due diligence by the parties was engaged in¹, the court received evidence on the record on October 12, 13, 17, and 19, 2023. On October 19, 2023, the parties rested their respective cases with no defendants choosing to present evidence after the plaintiff rested². A briefing schedule was ordered by the court which required the submission of simultaneous post-hearing briefs on October 25, 2023, by 5:00 p.m., and reply briefs, if necessary, by no later than October 27, 2023, by 12:00 p.m.

The amended complaint (#126.00) makes the following allegations³:

13. Gomes is aggrieved of rulings of election officials, there has been a mistake in the count of the votes, and he is aggrieved by violations of the

¹ The court and the parties are indebted to the Corporation Counsel for the City of Bridgeport and Counsel from the Attorney General's Office as well as their respective staffs and colleagues who efficiently assembled the significant video and paper records in this case in a short amount of time. Their efforts allowed for the evidentiary portion of this case to not be delayed and to proceed with appropriate speed and efficiency while giving all parties the time necessary to review the information and prepare their respective cases.

² Note that the state did submit Defendant #3 Exhibits A and B which were marked as full exhibits. Those exhibits are affidavits which detail the production of evidence (copies of the absentee ballots and envelopes, etc. which had been seized by the state pursuant to a subpoena by the State Election Enforcement Commission) and the chain of custody of such evidence.

³ The evidence presented by the plaintiff and pursued in its brief and reply do not pursue claims of the allegations listed as 13b, c, e, and g in its complaint. The court considers such claims abandoned and will focus its review on the remaining allegations as outlined in this decision.

provisions of the Connecticut General Statutes governing the casting of absentee ballots, in one or more of the following respects:

- a. Absentee ballots were counted in violation of Conn. Gen. Stat. § 9-140b(a) in that they were deposited in ballot drop boxes by someone other than the ballot applicant or the designee of a ballot applicant allowed by statute.
- b. On information and belief voters were provided with and cast absentee ballots who did not personally sign the application for an absentee ballot, in violation of Conn. Gen. Stat. § 9-140(a).
- c. On information and belief voters who were provided with and cast absentee ballots were assisted by representatives of a campaign who failed to record on the absentee ballot application the fact of his or her assistance, in violation of Conn. Gen. Stat. § 9-140(a).
- d. Absentee ballots were counted in violation of Conn. Gen. Stat. § 9-140b(a)(4) in that they were returned by a member of the immediate family of an applicant without delivering them in person to the clerk.
- e. On information and belief voters were promised benefits in exchange for their votes.
- f. Absentee ballots were counted that lacked the Town Clerk's signature on the outer envelope in violation of Conn. Gen. Stat. § 9-140c(a).
- g. The Town Clerk issued absentee ballots to voters whose applications were not returned by the persons distributing applications forthwith to the town clerk after signing in violation of Conn. Gen. Stat. § 9-140(k)(2).

14. As a result of the foregoing, alone or in combination, the reliability of the result of the election is seriously in doubt.

Through their respective answers and special defenses, defendants Clemons, Howard, and Ganim deny statutory violations and further assert that the plaintiffs have failed to state a claim upon which relief can be granted. Defendant Howard further claims that the court lacks subject matter jurisdiction over the plaintiff's claims, that the claimed violations are beyond the scope of 9-329a, and that all election officials substantially complied with all statutory election requirements. In their brief, the defendants further submit that the plaintiff has abandoned certain elements of its claims based on a lack of evidence presented.

Ultimately, this complaint can be distilled into two main allegations, one technical and one more global. The technical allegation centers around the requirements of § 9-140c(a) and whether the stamp used by the Town Clerk was proper under the statute. The more global allegations center around the alleged improper handling of absentee ballots by partisan individuals. In considering these allegations, two controlling questions are presented: whether absentee ballots were mishandled by individuals in an unauthorized, illegal manner; and whether such conduct supports a finding that “the result of such primary might have been different and [the court] is unable to determine the result of such primary.” See, 9-329a(b) The plaintiff believes it has met its burden and that a new election must be ordered whereas the defendants believe that there are no proven violations and, in the alternative, to the extent that there was any misconduct, it is not of such a volume and scale as to render the election seriously in doubt. The defendants thus conclude that the court should not order a new primary based on the evidence, or lack of evidence, presented.

Each appearing⁴ party had the full opportunity to present evidence and witnesses before the court. The court received testimonial evidence from parties and fact witnesses and received documentary and video exhibits on the record. The volume of evidence in this case, including the many hundreds of hours of video surveillance disclosed and accepted into evidence is, perhaps, unprecedented in the State of Connecticut in an election case.

⁴ Defendant Ganim only appeared as a witness and did not appear for any other portion of the evidentiary hearing or conferences with the court. At the outset of the evidence, the court found proper service of Mr. Ganim and based on the questioning of Mr. Ganim and his counsel on the record, as well as that of the Corporation Counsel, the court is satisfied that Mr. Ganim was aware of the proceedings and waived his right to file a timely appearance and attend. The delayed filing of an appearance by his counsel and the filing of an answer and special defense, days after the conclusion of the evidence, on the same day that post-hearing briefs were due is evidence of Mr. Ganim’s deliberate decision to waive his opportunity to participate fully in this proceeding. As no default was filed for his failure to appear the court accepts his answer and special defense and takes due notice of his adoption of the co-defendants’ brief, #139.00.

At the conclusion of the hearing and by agreement of the parties on the record, the court entered a post-trial briefing schedule as noted above. In compliance with that schedule, the parties timely submitted post hearing briefs⁵ which included proposed findings of facts and proposed orders for the court's consideration.

II. DISCUSSION

“It is well established that in cases tried before the courts, trial judges are the sole arbiter of the credibility of witnesses and it is they who determine the weight to be given specific testimony ... it is the quintessential function of the fact finder to reject or accept certain evidence ...” (Citations omitted; Internal quotation marks omitted.) *In re Antonio M.*, 56 Conn.App. 534, 540, 744 A.2d 915 (2000). The trier of fact must evaluate the credibility of both testimonial and documentary evidence. *Coombs v. Phillips*, 5 Conn.App. 626, 627, 501 A.2d 395 (1985) (per curiam). “The fact-finding function is vested in the trial court with its unique opportunity to view the evidence presented in a totality of the circumstances, i.e., including its observations of the demeanor and conduct of the witnesses and parties.” (Internal quotation marks omitted.) *Cavoli v. DeSimone*, 88 Conn.App. 638, 646, 870 A.2d 1147, cert. denied, 274 Conn. 906 (2005).

⁵ The plaintiff submitted a post-hearing brief, #141.00. Defendant Clemons submitted a post hearing brief #138.00 which was filed as a joint brief with defendant Howard, See #143.00. Defendant Ganim adopted the joint defendant brief as well, See, #139.00. Defendant Secretary of State submitted a post hearing brief, #142.00 wherein the Secretary took no position on the credibility of the evidence or the facts this Court should find. The Secretary took no position on the ultimate question of whether Plaintiff, John Gomes, has made the necessary showing to establish that he is entitled to a new primary election under General Statutes § 9-329a(b). The Secretary’s brief was limited to its advocacy that the parties advocate for and apply the appropriate legal standards for determining (1) whether the Court has jurisdiction over election-related claims under § 9-329a(a); (2) whether a plaintiff has made the necessary showing to demonstrate that a new primary election is warranted under § 9-329a(b); and (3) whether the municipal stamp on absentee ballot outer envelopes substantially complies with the requirements of General Statutes § 9-140c(a).

From the evidence produced, in reaching its conclusions, the court has fairly and impartially considered all the evidence and full exhibits presented, evaluated the credibility of witnesses, assessed the weight, if any, to be given to specific evidence, measured the probative force of conflicting evidence, applied relevant statutory criteria and relevant case law, and has drawn such inferences from the evidence or facts established by the evidence it deems reasonable and logical. The court has considered the arguments of counsel and has taken into account the post-trial briefs and all operable pleadings filed in this case.

The court has considered the proposed findings of facts submitted by the parties, largely in narrative form within the briefs. In many respects, the proposed findings of fact align given the agreement among the parties of the authenticity to the many hours of video and the many documents submitted as full exhibits. Many base factual elements of this case are not in dispute. The respective findings differ substantively however in context and conclusions to be drawn from the facts. It is these differences of opinion on the facts and resulting legal consequences of such facts under the relevant election laws which is the basis for all the disputes in this case.

Recently in *Cohen v. Rossi*, 346 Conn. 642, 295 A.3d 75 (2022), the Supreme Court succinctly framed the law applicable to a case brought under Section 9-328⁶ as follows:

“Before turning to the plaintiff’s claims, we summarize the general principles guiding judicial review of those claims. Section 9-328 provides in relevant part: “Any . . . candidate claiming to have been aggrieved by any ruling of any election official in connection with [***26] an election for any municipal office . . . or any . . . candidate claiming that there has been a mistake in the count of votes cast for any such office at such election or primary . . . may bring a complaint to any judge of the Superior Court for relief therefrom. . . . Such judge shall forthwith order a hearing to be had upon such complaint,

⁶ § 9-328 covers contests and complaints in election of municipal officers and nomination of justices of peace. § 9-239a covers contests and complaints in connection with any primary. The analysis of the Supreme Court related to § 9-328 is applicable to §9-239a. “Accordingly, we conclude that our analysis of § 9-328 in *Bortner* is equally applicable to § 9-329a.” *Caruso v. City of Bridgeport*, 285 Conn. 618, 646, 941 A.2d 266, 285, 2008 Conn. LEXIS 63, *51

upon a day not more than five nor less than three days from the making of such order Such judge shall, on the day fixed for such hearing and without unnecessary delay, proceed to hear the parties. . . . Such judge shall thereupon, if he finds any error in the rulings of the election official or any mistake in the count of the votes, certify the result of his finding or decision to the Secretary of the State"

We have explained that "[§] 9-328 cannot be read in a vacuum. It must be read against its fundamental governmental background. That background counsels strongly that a court should be very cautious before exercising its power under the statute to vacate the results of an election and to order a new election.

First, under our democratic form of government, an election is the paradigm of the democratic process designed to ascertain and [***27] implement the will of the people. . . . The purpose of the election statutes is to ensure the true and most accurate count possible of [*656] the votes for the candidates in the election. . . . [**82] In implementing [the voting] process, moreover, when an individual ballot is questioned, no voter is to be disfranchised on a doubtful construction, and statutes tending to limit the exercise of the ballot should be liberally construed in his [or her] favor. . . . We look . . . first and foremost to the election officials to manage the election process so that the will of the people is carried out.

Second, § 9-328 authorizes the one unelected branch of government, the judiciary, to dismantle the basic building block of the democratic process, an election. Thus, [t]he delicacy of judicial intrusion into the electoral process . . . strongly suggests caution in undertaking such an intrusion. As we have indicated, therefore, § 9-328 provides for remedies only under narrowly defined circumstances . . . and for limited types of claims . . .

Third, § 9-328 requires a court, in determining whether to order a new election, to arrive at a sensitive balance among three powerful interests, all of which are integral to our notion [***28] of democracy, but which in a challenged election may pull in different directions. One such interest is that each elector who properly cast his or her vote in the election is entitled to have that vote counted. Correspondingly, the candidate for whom that vote properly was cast has a legitimate and powerful interest in having that vote properly recorded in his or her favor. When an election is challenged on the basis that particular electors' votes for a particular candidate were not properly credited to him, these two interests pull in the direction of ordering a new election. The third such interest, however, is that of the rest of the electorate who voted at a challenged election and arises from the nature of an election in our democratic society, as we explain in the discussion that follows. That interest [*657] ordinarily will pull in the direction of letting the election results stand.

An election is essentially—and necessarily—a snapshot. It is preceded by a particular election campaign, for a particular period of time, which culminates on a particular date, namely, the officially designated election day. In that campaign, the various parties and candidates presumably concentrate [***29] their resources—financial, political and personal—on producing a victory on that date. When that date comes, the election records the votes of those electors, and only those electors, who were available to and took the opportunity to vote—whether by machine lever, write-in or absentee ballot—on that particular day." (Citations omitted; internal quotation marks omitted.) *Bortner v. Woodbridge*, 250 Conn. 241, 253-55, 736 A.2d 104 (1999).

Moreover, that snapshot can never be duplicated. The campaign, the resources available for it, the totality of the electors who voted in it, and their motivations, inevitably will be different a second time around. Thus, when a court orders a *new* election, it is really ordering a *different* election. It is substituting a different snapshot of the electoral process from that taken by the voting electorate on the officially designated election day.

Consequently, all of the electors who voted at the first, officially designated election . . . have a powerful interest in the stability of that election because the ordering of a new and different election would result in their election day disfranchisement. The ordering of a new and different election in effect disfranchises all of those who voted at the first election because [***30] their validly cast votes no longer count, and the second election can never duplicate the complex combination of conditions under which they cast their ballots.

[*658] "All of these reasons strongly suggest that, although a court undoubtedly has the [**83] power to order a new election pursuant to § 9-328 and should do so if the statutory requirements have been met, the court should exercise caution and restraint in deciding whether to do so. A proper judicial respect for the electoral process mandates no less." (Emphasis altered.) *Id.*, 256-57.

Most fundamentally, we have explained that "in order for a court to overturn the results of an election and order a new election pursuant to § 9-328, the court must be persuaded that . . . (1) there were substantial violations of the requirements of the statute . . . and (2) as a result of those violations, the reliability of the result of the election is seriously in doubt." *Id.*, 258. "[A]lthough the underlying facts are to be established by a preponderance of the evidence and are subject on appeal to the clearly erroneous standard; see Practice Book § 60-5; the ultimate determination of whether, based on those underlying facts, a new election is called for—that is, whether there were substantial violations [***31] 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." *Bortner v. Woodbridge*, supra, 250 Conn. 258. *Cohen v. Rossi*, 346 Conn. 642, 655-658, 295 A.3d 75, 81-83, 2023 Conn. LEXIS 130, *25-31 (internal quotations omitted). *Cohen v. Rossi*, 346 Conn. 642, 655-658, 295 A.3d 75, 2023 Conn. LEXIS 130.

"Section 9-329a authorizes a court to set aside the results of a primary on the basis of, *inter alia*, "any mistake in the count of the votes" and order a new primary be held if the court finds that "the result of such primary might have been different and [the court] is unable to determine the result of such primary." In §9-329a(b)(3), "[t]he use of the conjunctive, 'and,' indicates that both conditions must be fulfilled before a new primary may be ordered. Even if the trial judge had found that the result 'might have been different,' the plaintiff could not prevail unless the judge were also 'unable to determine the [*13] result.'" *Penn v. Irizarry*, 220 Conn. 682, 687-88, 600 A.2d 1024 (1991).

When examining whether an error or mistake adversely affected an election, the Supreme Court has held that a court may consider the number of votes called into question. See *Keeley v. Ayala*, supra, 328 Conn. 428. For example, in *Keeley*, "[b]ecause the number of absentee ballots properly invalidated by the trial court is greater than [the winning candidate's] eighteen vote margin of victory over the plaintiff . . . the court correctly determined that the results of the . . . special primary had been placed seriously in doubt, thereby necessitating that a new special primary be conducted." *Id.* On the other hand, a plaintiff may prevail under §9-329a without providing evidence directly or explicitly showing a specific number of invalid ballots because the law is well established that a plaintiff may meet his burden of proof by direct or circumstantial evidence. Although factual findings cannot be based on speculation or conjecture, the trier of fact may draw reasonable and logical inferences justified by the evidence. Thus, without proving a precise or specific number of invalid ballots, a plaintiff may

prevail under §9-329a(a)(2) by proving that the totality of the evidence, both direct and circumstantial, establishes mistakes [*14] in the count of the votes so extensive or severe that a finding may be made that, but for the mistakes, the result of the primary might have been different.” *Lazar v. Ganim*, 2019 Conn. Super. LEXIS 2893, *12-14

“We agreed with the plaintiff in *Caruso II* that our interpretation of § 9-328 in *Bortner* should guide our interpretation of § 9-329a (b). See *Caruso II*, supra, 285 Conn. 649-50 n.25. We then observed that the trial court in that case repeatedly had stated "that the plaintiff could not prevail unless he established that, but for [the conduct complained of], the result of the primary election 'might have been different.' " *Id.*, 650. In addition, the trial court had indicated [***32] that the plaintiff must establish that "the result of the election [was] seriously in doubt." (Internal quotation marks omitted.) *Id.* We concluded, therefore, that the trial court had applied the proper standard. *Id.* Thus, we clearly held in *Caruso II* that the phrase "the result of [the] primary might have been different," as used in § 9-329a (b), means that the reliability of the election result is seriously in doubt due to substantial violations of § 9-329a (a) (1) or (2).” *Lazar v. Ganim*, 334 Conn. 73, 97, 220 A.3d 18, 33, 2019 Conn. LEXIS 374, *31-32.

As this case is a contest of a democratic primary for Mayor and considering the fact that two of the parties to this action are also on the general election ballot for the position of Mayor, one as the endorsed candidate through the primary now being challenged and the other as an independent candidate, it is important to understand the role and authority of this court as it applies to the currently scheduled general election. The Supreme Court addressed this as follows: “We held in *Caruso v. Bridgeport*, 284 Conn. 793, 804, 937 A.2d 1 (2007) (*Caruso I*), however, that the courts have no authority to order a *postponement* of a general election in an

action brought pursuant to § 9-329a. In *Caruso I*, the plaintiff brought a certified appeal to this court pursuant to § 9-325, challenging the trial court's ruling [***11] in an action brought pursuant to § 9-329a denying his motion to postpone the general election pending the resolution of a separate appeal from other rulings by the trial court. *Id.*, 795-97. We held that "§ 9-329a does not authorize the courts under any circumstances to order the postponement of a general election in an action brought pursuant to that statute" because "the judge may go no further in extending relief than that outlined in the statute"; *id.*, 804; and, in a proceeding pursuant to § 9-329a (a), the statute authorizes the judge only to "[1] determine the result of such primary; [2] order a change in the existing primary schedule; or [3] order a new primary." (Internal quotation marks omitted.) *Id.*" *Lazar v. Ganim*, 334 Conn. 73, 82, 220 A.3d 18, 25, 2019 Conn. LEXIS 374 *10-11

"A valid general election could not be held without first holding a valid primary election to select the candidates. We [*84] conclude, therefore, that the provision of § 9-329a (b) authorizing the court to order a new primary election if it finds that the result of the primary might have been different but for the improprieties complained of, without any limits on the timing of such an order, implicitly authorizes the judge to order a new general election if the first general election is invalidated by operation of the judge's order invalidating the primary election. Because this court could provide this form of relief, we conclude that this appeal is not moot." *Id.*, at 83-84.

The Supreme Court has further outlined the law applicable to absentee ballot claims which are relevant to the allegations raised in the instant action in *Keeley v. Ayala*, 328 Conn. 393, 179 A.3d 1249, 2018 Conn. LEXIS 114, as follows:

“ . . . [T]his case concerns various statutes applicable to absentee balloting, which is "a special type of voting procedure established by the legislature for those otherwise qualified voters who for one or more of the [statutorily] authorized reasons are unable to cast their ballots at the regular polling place." *Wrinn v. Dunleavy*, 186 Conn. 125, 142, 440 A.2d 261 (1982); see also General Statutes § 9-135. "The right to vote by absentee ballot is a special privilege granted by the legislature, exercisable only under special and specified conditions to [e]nsure the secrecy of the ballot and the fairness of voting by persons in this class." [***18] (Internal quotation marks omitted.) *Hardin v. Montgomery*, 495 S.W.3d 686, 696 [*407] (Ky. 2016); see also 26 Am. Jur. 2d 129, Elections § 333 (2014) ("[t]he procedures required by the absentee voting laws serve the purposes of enfranchising qualified voters, preserving ballot secrecy, preventing fraud, and achieving a reasonably prompt determination of election results"). This court previously has recognized "that there is considerable room for fraud in absentee [ballot] voting and that a failure to comply with the regulatory provisions governing absentee [ballot] voting increases the opportunity for fraud." (Internal quotation marks [**1259] omitted.) *Wrinn v. Dunleavy*, supra, 142-44. At the same time, "[i]f there is to be [disen]franchisement, it should be because the legislature has seen fit to require it in the interest of an honest suffrage and has expressed that requirement in unmistakable language." (Internal quotation marks omitted.) *Id.*, 144-45. Guided by the foregoing governing legal principles, we now turn to the issues presented in this case. *Keeley v. Ayala*, 328 Conn. 393, 406-407, 179 A.3d 1249, 1258-1259, 2018 Conn. LEXIS 114, *17-18

“The return of absentee ballots, by various authorized methods, is governed by § 9-140b, which provides in relevant part that "(a) [a]n absentee ballot shall be cast at a primary, election or referendum only if . . . (3) it is returned by a designee of an ill or physically

disabled ballot applicant, in person, to [the town] clerk not later than the close of the polls on the day of the election, primary or referendum" The term "designee" is statutorily 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 [***23] 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 [**1261] applicant resides." General Statutes § 9-140b (b)." *Id.*, at 410.

"This court previously has held that the requirements of § 9-140b are mandatory. See *Wrinn v. Dunleavy*, [*411] *supra*, 186 Conn. 145-46 (interpreting predecessor statute). Accordingly, the return of ballots in a manner not substantially in compliance with § 9-140b will result in their invalidation, regardless of whether there is any proof of fraud. *Id.*, 148-49. 'Whether fraud has been committed in the handling of certain absentee ballots is irrelevant to the question of whether there has been substantial compliance with all of the mandatory provisions of the absentee voting law. . . Had the legislature chosen to do so, it could have enacted a remedial scheme under which ballots would . . . be invalidated [only] upon a showing of fraud or other related irregularity. The legislature has instead enacted a regulatory scheme designed to prevent fraud as far as practicable by mandating the way in which absentee ballots are to be handled. The validity of the ballot, therefore, depends not on whether there has been fraud, but on whether there [***24] has been substantial compliance with the mandatory requirements. *Id.*, 149; see also *Dombkowski v. Messier*, 164 Conn. 204, 209, 319 A.2d 373 (1972) (failure of town clerk to follow mandatory statutory requirements with respect to submission

of absentee ballots warranted voiding of those ballots without finding of fraud or willful misconduct). *Id.*, at 410-11 (internal quotation marks omitted).

“Section § 9-140b, read as a whole, reflects a clear legislative intent to maintain distance between partisan individuals and the casting and submission of absentee ballots, undoubtedly in recognition of the potential for undue influence, intimidation or fraud in the use of those ballots. That statute expressly provides that, [*412] except in certain narrowly defined circumstances, “[n]o (1) candidate or (2) agent of a candidate, political party or committee . . . shall knowingly be present when an absentee ballot applicant executes an absentee ballot . . .” General Statutes § 9-140b (e); see also *Gonzalez v. State Elections Enforcement Commission*, 145 Conn. App. 458, 471-74, 476, 77 A.3d 790 (candidate violated § 9-140b [e] by accompanying voters while they completed absentee ballots at town clerk's office), cert. denied, 310 Conn. 954, 81 A.3d 1181 (2013). Subsection (d), delineating which persons are authorized [***25] to possess absentee ballots, does not include any partisan individuals, and subsection (b) does not include such persons among the list of persons who may act as absentee voters' designees for the purpose of returning ballots. See General Statutes § 9-140b (b) and (d).” *Id.*, at 411-12.

“To the extent that any ambiguity remains, we agree with the trial court that [***1263] the legislative history accompanying Public Acts 1974, No. 74-312, § 1—which added to General Statutes (Rev. to 1972) § 9-146, as amended by Public Acts 1972, No. 196, § 14, and Public Acts 1973, No. 73-472, § 1, the predecessor to § 9-140b, the language describing permissible designees for absentee ballot returns—makes it abundantly clear that the legislature intended for partisan individuals . . . to be excluded from the process.” *Id.*, at 414.

First, it is an absentee voter himself or herself, and not a third party, who must appoint or select a designee, from within the approved categories of persons, to return his or her absentee ballot on the [**1264] voter's behalf. Second, similar to the mandatory procedures pertaining to in person voters, partisan individuals are required to distance themselves from absentee voters when those voters are in the process of casting their ballots, that is, when they are returning them to the town clerk for submission pursuant to § 9-140b." *Id.*, at 416

The instant action also raised issues about absentee ballots cast through the mail. The Supreme Court also addressed the statutory requirements related to mailing provisions.

"The return of absentee ballots by mail is governed by § 9-140b, and those mailing provisions, which we discuss more [***34] fully hereinafter, are mandatory. See *Wrinm v. Dunleavy*, supra, 186 Conn. 145-46. Thus, the return of ballots in a manner not substantially in compliance with the statutory mailing requirements will result in their invalidation, regardless of whether there is any proof or indication of fraud." *Id.*, 148-49.

"Subsection (a) of § 9-140b provides in relevant part that "[a]n absentee ballot shall be cast at a primary, election or referendum only if: (1) It is *mailed by (A) the ballot applicant . . . so that it is received by the clerk of the municipality in which the applicant is qualified to vote not later than the close of polls . . .*" (Emphasis added.) The term "mailed" is further defined as "sent by the United States Postal Service or any commercial carrier, courier or messenger service recognized and approved by the Secretary of the State." General Statutes § 9-140b (c). Reading these two provisions together, for absentee votes to be validly cast, the absentee ballot applicants must send their ballots by the United States Postal Service or another recognized carrier so that they are received by the municipal clerk before the close of the polls." *Keeley v. Ayala*, 328 Conn. 393 at 418.

In this case, unlike in *Keeley*, Drop Boxes were approved as a proper method of delivery of absentee ballots. Thus, the analysis of mailed absentee ballots must be expanded to factor in the legitimate use of Drop Boxes⁷ for the election in question. During this election the four Drop Boxes provided four locations for voters, or appropriate designees, to drop a completed Absentee Ballot into the Drop Box. Ballots dropped into the Drop Boxes were collected by representatives from the Town Clerk's office and returned to the Town Clerk for receipt and processing. Such processing followed the same review as absentee votes which were mailed in via the US Postal Service.

In this case there is also a challenge to the stamp requirement outlined in § 9-140c(a). Specifically, whether the lack of signature or facsimile signature of the Town Clerk on ballots received renders the ballots invalid or whether the facts and circumstances demonstrate "substantial compliance" with the statute such that the court should not invalidate the ballots.

The purpose of the signature requirement in § 9-140c (a) is to avoid fraud in the voting of absentee ballots. By requiring the town clerk to sign the outer envelope, the statute seeks to avoid the risk that an unauthorized person will somehow include an unauthorized absentee ballot among those validly sent and delivered.

"The signature requirement, however, must also be viewed in the context of the entire statutory scheme. That scheme requires that outer envelopes be logged out and logged in, that the serial numbers on the envelopes be checked against those on the sets assigned to absentee voters, that the town clerk deliver to the head moderator an affidavit attesting to the accuracy of

⁷ Conn. Gen. Stat. § 9-140b(c)(1) For purposes of this section, "mailed" means (A) sent by the United States Postal Service or any commercial carrier, courier or messenger service recognized and approved by the Secretary of the State, or (B) deposited in a secure drop box designated by the municipal clerk for such purpose, in accordance with instructions prescribed by the Secretary. (Emphasis added)

all the endorsements on the outer envelopes, and that the count of outer envelopes eventually be checked against the count of inner envelopes. Because this procedural rigor is a significant [***66] safeguard against fraud, the fact that the evidence before us reveals punctilious adherence to the remainder of these requirements informs our determination as to whether there has been substantial compliance with the statute. Furthermore, the [*653] extent of deviation from strict compliance is also relevant in drawing an appropriate line between substantial and insubstantial compliance.

Finally, we must recognize the overarching policy that, in construing voting statutes, " no voter is to be disfranchised on a doubtful construction, and statutes tending to limit the exercise of the ballot should be liberally construed in his [or her] favor." (Internal quotation marks omitted.) *Scully v. Westport*, supra, 145 Conn. 651-52. We, therefore, take into consideration whether the failure of strict compliance was due to the conduct of the voter or of someone not within his or her control." *In re Election of the United States Representative for the Second Congressional Dist.*, 231 Conn. 602, 652-653, 653 A.2d 79, 105, 1994 Conn. LEXIS 434, *65-66.

With the applicable law laid out, it is important to establish the facts of this case that the governing law is to be applied to. A section of findings of fact is appropriate to frame the court's decision in this case. This court articulates its findings of fact in narrative form as follows:

Findings of Fact⁸

1. The City of Bridgeport held a primary for the Democratic nomination for Mayor on September 12, 2023.

⁸ As part of the court's orders regarding post-hearing brief submissions, the parties were provided with the opportunity to present proposed findings of fact. The court has reviewed the proposed findings and has also reviewed the full exhibits, trial transcripts, and the recollection of the court to determine its findings of fact.

2. The candidates in the Mayoral primary were John Gomes, the plaintiff in this action and Joseph Ganim, a defendant in this action.
3. Mr. Ganim was the party endorsed candidate.
4. Mr. Gomes was the challenger.
5. The results of the primary election as reported to the state were 4,212 votes for Ganim and 3,961 votes for Gomes. The margin of victory equated to 251 votes.
6. Per the undisputed reported results, Mr. Ganim received 2648 votes on the "machines" in the polling places on primary day and 1,564 absentee ballot votes.
7. Per the undisputed reported results, Mr. Gomes received 3,100 votes on the "machines" in the polling places on primary day and 861 absentee ballot votes.
8. Bridgeport has ten voting districts which include twenty-two defined voting locations.
9. The Bridgeport Town Clerk has responsibilities for administering parts of elections including preparing absentee ballots, processing absentee ballot applications, and preparing absentee ballot reports.
10. The town clerk delivers absentee ballots received to the Democratic Registrar of Voters, who is responsible for counting the actual votes.
11. Conn. Gen. Stat. § 9-135(a) provides: "Any elector eligible to vote at a primary or an election and any person eligible to vote at a referendum may vote by absentee ballot if such elector or person is unable to appear at such elector's or person's polling place on the day of such primary, election or referendum for any of the following reasons: (1) Such elector's or person's active service with the armed forces of the United States; (2) such elector's or person's absence from the town of such elector's or person's voting residence; (3) sickness; (4) physical disability; (5) the tenets of such elector's or person's religion forbid secular activity on the day of such primary, election or referendum; or (6) the required performance of such elector's or person's duties as a primary, election or referendum official, including as a town clerk or registrar of voters or as staff of the clerk or registrar, at a polling place other than such elector's or person's own during all of the hours of voting at such primary, election or referendum."
12. A person may request absentee ballot applications from the Clerk by filling out an Absentee Ballot Application Distribution List form. The clerk's office tracks the applications by number and name of applicant. See Plaintiff Ex. 147A-147D.
13. The town clerk provides application circulators with "Do's and Don'ts" prepared by the Secretary of State.
14. If a person takes out more than five applications and then gives them to others to distribute to potential voters, the person receiving the applications need to register with the town clerk as a distributor of absentee ballots.
15. The town clerk's office examines completed applications for absentee ballots to ensure that the person is entitled to vote in the election at issue

and that an acceptable reason under the law as to why the person is voting absentee is identified.

16. The town clerk's office does not investigate the validity of the reason stated on the application or whether the signature on the application belongs to the named voter.
17. If someone has assisted the voter to fill out the application, the person assisting must also sign the application.
18. Members of the town clerk's office who review and process applications stamps it in when received.
19. In this primary the town clerk's office received approximately 5,000 applications for absentee ballots.
20. Wanda Geter-Pataky is a supporter of Mr. Ganim and help leadership titles within the Democratic Town Committee (Vice-Chair) and her local voting District (District Leader for Voting District 136).
21. As a Democratic Town Committee member, Ms. Geter-Pataky voted in favor of endorsing Ganim for mayor. (10/13 Tr. at 55). She was active in Ganim's campaign and those of the other endorsed candidates, acting as a district leader, canvassing and encouraging people to vote "in any and every way that they could." (10/17 Part I Tr. at 19-20).
22. Ms. Geter-Pataky did not register as an absentee ballot distributor as confirmed by the lack of her name on any of the forms supplied as part of a subpoena in this case.
23. Ms. Geter-Pataky's name does appear as the individual who assisted with over 300 applications based on her name and signature appearing on the forms in evidence.
24. A qualified voter who successfully submits and application for an absentee ballot receives a ballot set which includes a ballot on yellow paper, an inner envelope, and outer envelope, instructions (prepared by the Secretary of State), and the location of drop boxes.
25. A properly completed ballot includes a completed ballot which is placed inside the inner envelope and signed by the voter, then the inner envelope and ballot are place inside the outer envelope which is then returned to the clerk by the voter or proper statutory designee via US mail, hand-delivery or by placing into a drop box.
26. The outer envelope is not pre-posted.
27. The outer envelope contains the following warning, "Possession and return of this absentee ballot is restricted by law, Connecticut General Statute section § 9-140b. Willful, unauthorized completion or execution of this absentee ballot is illegal and may constitute a class D felony resulting in prosecution."
28. Within the instructions prepared by the Secretary of State the following warnings are included with a citation to § 9-140b: "A. The voter must personally mail or personally return the ballot for it to be counted. Exceptions: 1. You may have your dependent relative residing in your household or your spouse, child, sibling or parent deliver the ballot to the municipal clerk by the close of the polls. He must present identification

and sign the envelope when he delivers it. 2. ILL OR PHYSICALLY DISABLED – If you applied for the ballot because of illness of physical disability you may designate one of the following persons, and no other person, to mail it or return it for you to the municipal clerk by the close of the polls; any person who is caring for you because of your illness or physical disability (including but not limited to a licensed physician or a registered or practical nurse); a member of your family; or 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 you reside. He must present identification and sign the envelope when he delivers it. . . B. NO PERSON SHALL HAVE IN HIS

POSSESSION any official absentee ballot or ballot envelope for use at any primary, election or referendum except the applicant to whom it was issued, the secretary of state, or his or her authorized agents, any official printer of the absentee ballot forms and his designated carriers, the U.S. Postal Service, any other carrier, courier or messenger service recognized and approved by the secretary of state, any person authorized by the municipal clerk to receive and process official absentee ballot forms on behalf of the municipal clerk, any authorized primary, election, or referendum official of any person authorized in the general statutes to possess a ballot or ballot envelope. No candidate or agent of a candidate, political party or committee shall knowingly be present when a person votes his absentee ballot, unless authorized by law.”

29. The town clerk’s office prepares Absentee Ballot Reports recording the date they were sent to voters, and when they were returned by mail, in person at the clerk’s office, under supervised voting, or delivered in person by a third party. See, Plaintiff Exs. 122-125.
30. The Absentee Ballot reports are tracked by voting district.
31. Not all ballots sent out were returned to the clerk.
32. In this primary election 4,380 ballots were sent out and 2,630 were returned to the clerk.
33. Ballots returned to the clerk in person are recorded in the report with a “P,” ballots received by supervised voting are recorded in the report with a “S.” Ballot returned through the US Mail and those through Drop Boxes are each recorded in the report as “Mail.” There is no further delineation on the report to distinguish between voted received through the mail and through the Drop Box. There was no delineation on the report of which Drop Box a ballot was retrieved from.
34. Four Drop Boxes were used for this primary. The location of the Drop Boxes were, Lyon Terrace (City Hall), 999 Broad Street, Boston Avenue Firehouse, and Ocean Terrace Firehouse. The drop boxes were emptied periodically by two members of the Town Clerk staff.
35. The Bridgeport Police Department maintains cameras that record the activity at each of the four Drop Box locations.

36. The Bridgeport Police produced videos of the recordings of the activity at the four Drop Boxes for a 21-day period that absentee ballots were cast in this primary.
37. The videos include date and time stamps on the image through proprietary software.
38. Based on a video compilation edited by the plaintiff from the hard drives produced by the Bridgeport Police Department, and entered into evidence without objection, 420 discreet approaches were made to the four Drop Boxes by individuals during the relevant period of video produced. See, Plaintiff Exs. 140A and 140B.
39. Video clips edited by the plaintiff, from the hard drive(s) provided, and entered into evidence without objection also show individuals approaching the Drop Boxes and depositing more than one envelope. See Plaintiff Exs. 141 and 141A.
40. The video clips from the drop boxes shows several people dropping multiple ballots into the drop box during a single approach to the drop box. *Id.*
41. Ms. Geter-Pataky was asked about the video clips asserted her privilege against self-incrimination when asked questions about her work on the primary campaign for Mr. Ganim, whether she appeared on the video Plaintiff Ex. 141, whether she took custody of absentee ballots that did not belong to her, or how many. (10/13 Tr. at 56, 59, 61-62, 70-71).
42. Ms. Geter-Pataky did confirm in her testimony that she works for the City of Bridgeport as a greeter at 999 Broad Street. (10/13 Tr. at 51). Her duty station is at the reception desk, and she agreed that the video clips showed her behind her desk.
43. Ms. Geter-Pataky is presently on administrative leave due to “the City of Bridgeport investigation. . . [t]hat we’re in court for.” (*Id.* at 71-72).
44. Eneida Martinez testified and confirmed that she is a candidate for City Council in the General Election (she was not on the primary ballot as she did not have an opponent in the primary) on a slate with Mr. Ganim, and Mr. Ganim supports her. (*Id.* at 76-77; 10/17 Part I Tr. at 29-30).
45. Ms. Martinez is also a member of the DTC and has been active politically for several years. (10/13 Tr. at 76; 10/17 Part I Tr. at 38).
46. Ms. Martinez was in favor of the Democratic Town Committee’s endorsement of Mr. Ganim. (10/13 Tr. at 77).
47. Ms. Martinez resides in District 139. (*Id.* at 77).
48. Ms. Martinez also asserted her privilege against self-incrimination when asked questions about her work on the primary campaign for Mr. Ganim, whether she appeared on the video (Plaintiff Ex. 141), whether she took custody of absentee ballots that did not belong to her, or how many. (*Id.* at 76-79).
49. Based on the video evidence and testimonial evidence from Ms. Geter-Pataky, Ms. Martinez, Ms. Josie-Bartlett, and Mr. Ganim, including the court making adverse inferences against Ms. Geter-Pataky and Ms. Martinez, as well as the court’s own observation of Ms. Geter-Pataky and

Ms. Martinez in person while sitting on the witness stand, the court concludes as a fact that both Ms. Geter-Pataky and Ms. Martinez appear multiple times in the video clips that were accepted into evidence making multiple drops of multiple ballots each time into the Drop Boxes.

50. Ms. Martinez made 5 separate drops. Wanda Geter-Pataky directly or through another made 10 separate drops.⁹
- a. On August 27 at 5:01:07 pm, Martinez moved her arm ten times while depositing ballots at Boston Avenue.
 - b. On August 28 at 5:39 am Geter-Pataky– identified by Ganim (10/17 Part I Tr. at 32 (“I believe that’s her”)) -- pulled and deposited three stacks of absentee ballots in the drop box at Broad Street.
 - c. On August 29 starting at 7:37 am Geter-Pataky accompanied a man to his truck, walked back with him, and watched as he deposited a stack of ballots using three arm motions at Broad Street.
 - d. On August 29 starting at 9:03 am Geter-Pataky handed several absentee ballots to a man at her desk, and he deposited them at Broad Street.
 - e. On August 29 a man in a car handed some number of ballots to what appears to be a passerby who deposited what he was given.
 - f. On August 29, Martinez deposited two sets of ballots at Boston Avenue.
 - g. On August 30, Geter-Pataky handed a woman who walked out from the hall where the Registrar’s office is located a group of ballots, and the woman deposited them at Broad Street.
 - h. On August 31 at 6:09 am, Geter-Pataky deposited a set of ballots at Broad Street.
 - i. On August 31 at 9:35 am, Geter-Pataky handed several ballots to a woman who then dropped them in the box at Broad Street while Geter-Pataky followed.
 - j. On September 1, Geter-Pataky deposited in two arm motions ballots at Broad Street.
 - k. On Sept. 2, Martinez deposited ballots she pulled from a bag using at least five arm motions at Boston Avenue. (Plaintiff Ex. 141A)
 - l. On September 4, Martinez dropped ballots from a bag using six arm motions at Boston Avenue.
 - m. On September 5, Geter-Pataky deposited two sets of ballots then returned and deposited four more groups of ballots at Broad Street.
 - n. On September 6, Martinez made a drop at Boston Avenue using four arm motions.

⁹ The court has reviewed the video exhibits and accepts the proposed facts submitted by the plaintiff with respect to the description of what is depicted in the video clips related to Ms. Geter-Pataky and Ms. Martinez

- o. On September 7 a man watched and instructed by Geter-Pataky dropped at least three ballots at Broad Street followed by a high five.
 - p. On September 8 a person pulls ballots from a bag and deposits them at Boston Avenue using at least four arm motions.
 - q. On September 9 a person pulls ballots from a bag and deposits them at Boston Avenue using at least three arm motions.
 - r. On September 10, a person in a burgundy sweatshirt pulls ballots from a bag and deposits them at Boston Avenue using several arm motions. The person carried a clipboard with a piece of paper.
 - s. On September 11 at 8:50 am Geter-Pataky carried a stack of ballots to her desk. She handed them to a man outside 999 Broad Street, and he deposited them while she watched.
 - t. On September 11, a person deposited ballots at Boston Avenue that were pulled from a visible bag that was about half full. (Plaintiff Ex. 140B, Plaintiff Ex. 141A).
 - u. Plaintiff Ex. 141 shows seven other instances of persons depositing more than one ballot although in smaller numbers than those listed above.
 - v. The video at Lyon Terrace is of insufficient quality to see whether multiple ballot drops were committed there. (Plaintiff Exs. 140B, and 142A).
51. On September 12, 2023, 2,631 absentee ballots were conveyed to the Democratic Registrar of Voters with affidavits being signed confirming the transfer.
 52. The absentee ballots were taken to a central counting location and 999 Broad Street and counted.
 53. The Democratic Registrar of Voters, Patricia Howard, and her office count the absentee ballots after the polls close. (10/12 PM Tr. at 53).
 54. Howard appointed Maurice Nelson absentee ballot moderator for this primary. (Id. at 54; 10/13 Tr. at 10-11). Nelson has filled that role or an assistant moderator role since 2020. (10/13 Tr. at 11, 13).
 55. The absentee ballot moderator supervises the count of absentee ballots at 999 Broad Street after the town clerk gave them to the Registrar. (10/12 PM Tr. at 55-56).
 56. The absentee ballot counters first review the outer envelopes to see if they were stamped by the town clerk. (10/12 PM Tr. at 62). Nelson understood that the Secretary of the State's manual states that "the endorsement must show the date, the precise time the clerk received the ballot and the clerk's signature." (10/13 Tr. at 24; Plaintiff Ex. 126 at 374). Nelson understood that "signature" means the clerk's name and that if the outer envelope does not substantially comply with this requirement the ballot cannot be counted. (10/13 Tr. at 25-26). Nelson was trained that the endorsement had to include the clerk's name to be counted. (10/13 Tr. at 26-27). If it was properly endorsed, they would open the outer envelope and see if the inner envelope was signed and if the completed ballot was inside. (10/12

- PM Tr. at 62; 10/13 Tr. at 21-22). They do not compare the signature on the inner envelope to the signature on the voter registration card or absentee ballot application. (10/12 PM Tr. at 76).
57. The stamp used by the Town Clerk's office on the ballots in this primary did not contain a signature or facsimile of a signature of the Town Clerk, Mr. Clemons.
 58. The court accepts the credible testimony of Assistant Town Clerk Christine Resto that the stamp with the signature was damaged and inoperable prior to the primary. (See, 10/12 Tr. At 13). Consequently, the Clerk's Office used a more generic stamp which contained the date, time, and words "Town Clerk" on it.
 59. Given the totality of the evidence presented and further considering that the invalidation and virtually all Absentee Ballots in this primary would have far reaching impacts to disenfranchise voters, through no fault of their own, and to potentially impact many other races that were on the Primary Ballot which contests and candidates have not been noticed or made a party to this action, which is limited to the Primary of Mayor, the court finds as a fact and a matter of law that the stamp used by the Town Clerk's office was in "substantial compliance" with § 9-140c(a).
 60. A total of 2,509 absentee ballots were counted and a total of 152 ballots were rejected by the Registrar.
 61. The State produced duplicates of the original outer and inner envelopes taken by subpoena from the town clerk. (Plaintiff Ex. 1-122, 182; Def. #3 Ex. A and B; 10/17 Part II Tr. at 2-3).
 62. Christine Bartlett-Josie, Gomes' campaign manager, prepared Plaintiff Ex. 149, showing all the polling locations and in-person and votes by absentee ballots in each of the 22 precincts, and the percentage of votes by absentee ballot for each candidate by precinct. (10/17 Part II Tr. at 8).
 63. Ms. Bartlett-Josie prepared Plaintiff Ex. 181 to record the results of her count, by precinct. (Id. at 16-17).
 64. The count revealed that the town clerk had 885 outer envelopes with a stamp and a postmark. (Id. at 22). A total of 1355 outer envelopes had no stamp and no postmark. (Id. at 22). There were 356 outer envelopes with a stamp but no postmark which she believed "clearly was not processed through the post office." (Id. at 23). Of those 356 with only a stamp, 52 were received by the clerk on September 11 and 35 on September 12. (Id. at 24). The total of 2596 is very close to the total of 2630 that the town clerk reported receiving. (Id. at 26).
 65. The 1355 outer envelopes with no stamp and no postmark, minus those in person (61), supervised (35) or third-party (6), means that at least 1253 were cast in drop boxes. (Id. at 28, 33; Plaintiff Exs. 122-125).
 66. The additional 356 with a stamp and no postmark also likely "were dropped in the drop box." (Id. at 27). Of those, 87 were received by the clerk on September 11 or September 12. (Id. at 45).
 67. Accordingly, based on the count presented by Ms. Bartlett-Josie, at a minimum 1253 ballots and likely close to 1609 were cast in drop boxes.

68. Combining Plaintiff Ex. 181 and Plaintiff Ex. 149, it can be determined approximately what percentage of votes from any single precinct were by drop box. (Id. at 29-30). For example, in precinct 136- 01, at total of 94 absentee ballots were counted and 81 had no stamp and postmark, or 86.1%. (Id. at 29). In precinct 136-02, 36 of 42 had no stamp or postmark, or 85.7%. In precinct 136- 03, 87 of 104 absentee ballots likely came in through the drop boxes, or 83.6%. (Id. at 30). In the two precincts of District 139 together, 165 of 210 had no stamp or postmark, or 78.5%. (Plaintiff Ex. 149, Plaintiff Ex. 181). Thus, there is a total of 369 ballots that had no stamp and postmark among the ballots from the precinct that Ms. Geter-Pataky as the District leader, 136, and the district where Ms., Martinez resides and is running for office, 139.

THE CLERK STAMP SUBSTANTIALLY COMPLIES WITH § 9-140c(a)

As previewed in the findings of fact above, the court is not inclined to invalidate all the absentee ballots filed in this primary because of the lack of signature or facsimile signature on the Clerk stamp. The evidence demonstrates that the Clerk's Office did have a stamp with a facsimile of Mr. Clemons signature on it. However, the evidence also demonstrates the credible testimony of the Assistant Town Clerk who explained that the stamp with the signature was broken or inoperable. As a result, the Clerk's office had to order a new stamp and in the meantime was forced to use a substitute stamp which contained the date, time and "Town Clerk" on it but not a signature or facsimile signature of Mr. Clemons.

The totality of the circumstance and evidence, which includes affidavits from the Clerk's office as part of the chain of custody of the transfer of ballots to the Registrar of Voters for counting, various tracking sheets and methods including numbered ballots and applications, represents to the court that there is integrity in the handling of the absentee ballots. While in hindsight, the Clerk's Office could have perhaps used some other solutions such as actually

signing the ballots by hand, getting a new stamp as a rush order, fixing the old stamp in some serviceable manner, etc., the court recognizes the practical realities on the ground and accepts the testimony of the Assistant Town Clerk as credible.

Further, the use of the replacement stamp appears to have applied to all absentee ballots processed. As such, applying a hyper-technical analysis to reject all absentee ballots where the replacement stamp was used would serve to not only disenfranchise every voter who chose and/or had to vote absentee through no fault of their own, but also to potentially impact many other races on the primary ballot outside of Mayor where the voters chose to cast ballots for the other races, in addition to that of Mayor, on their absentee ballot. There was no evidence presented about the potential impact on those races, and no candidate was served or noticed, to the court's understanding and review of the pleadings, about such a claim or potential detrimental outcome to their race.

As a Defendant in this action the Secretary of State took no position on the various claims except for this one. With respect to the stamp, the Secretary of State argued in its brief that the court should reject the plaintiff's challenge to the stamp. Given that the Secretary's position, as noted by the plaintiff in his reply brief, appears to diverge from the Secretary's own published guidance on the stamp, the court finds that the position of the Secretary, is premised on the unique and limited circumstances of this case. It is, therefore, less a departure from its guidance and more a common sense and practical application of law to the facts of the case. The court joins in that assessment and accepts the recommendation from the Secretary of State.

The court does not accept that it can throw out one line or list of candidates on the ballot based on an alleged statutory violation of the stamp, yet still allow those same votes with the same stamp affixed thereto, to count for other candidates. Rather, the stamp must either be

substantially compliant, or it is not. In this case, based on the specific facts and unique circumstances raised through the credible evidence presented the court finds that the stamp is substantially compliant with the § 9-140c(a). Therefore, the court rules in favor of the defendants on this aspect of the complaint.

VIOLATIONS OF ABSENTEE BALLOT RULES – § 9-140b

The case presented by the plaintiff is based on violations of § 9-140b. That statute reads as follows:

- (a) 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, so that it is received by the clerk of the municipality in which the applicant is qualified to vote not later than the close of the polls; (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 said clerk not later than the close of the polls on the day of the election, primary or referendum; (5) in the case of a presidential or overseas ballot, it is mailed or otherwise returned pursuant to the provisions of section 9-158g; or (6) it is returned with the proper identification as required by the Help America Vote Act, P.L. 107-252, as amended from time to time, if applicable, inserted in the outer envelope so such identification can be viewed without opening the inner envelope. A person returning an absentee ballot to the municipal clerk pursuant to subdivision (3) or (4) of this subsection shall present identification and, on the outer envelope of the absentee ballot, sign his name in the presence of the municipal clerk, and indicate his address, his relationship to the voter or his position, and the date and time of such return. As used in this section, "immediate family" means a dependent relative who resides in the individual's household or any spouse, child, parent, or sibling of the individual.

(b) As used in this section and section 9-150c, "designee" means (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) a police officer, registrar of voters, deputy registrar of voters or assistant registrar of voters in the municipality in which the applicant resides.

(c)

(1) For purposes of this section, "mailed" means (A) sent by the United States Postal Service or any commercial carrier, courier or messenger service recognized and approved by the Secretary of the State, or (B) deposited in a secure drop box designated by the municipal clerk for such purpose, in accordance with instructions prescribed by the Secretary.

(2) In the case of absentee ballots mailed under subparagraph (B) of subdivision (1) of this subsection, beginning on the first day of issuance of absentee voting sets, as provided in subsection (f) of section § 9-140, and on each weekday thereafter until the close of the polls at the election, primary or referendum, the municipal clerk shall retrieve from the secure drop box described in said subparagraph each such ballot deposited in such drop box.

(d) No person shall have in his possession any official absentee ballot or ballot envelope for use at any primary, election or referendum except the applicant to whom it was issued, the Secretary of the State or his or her authorized agents, any official printer of absentee ballot forms and his designated carriers, the United States Postal Service, any other carrier, courier or messenger service recognized and approved by the Secretary of the State, any person authorized by a municipal clerk to receive and process official absentee ballot forms on behalf of the municipal clerk, any authorized primary, election or referendum official or any other person authorized by any provision of the general statutes to possess a ballot or ballot envelope.

(e) No (1) candidate or (2) agent of a candidate, political party or committee, as defined in section 9-601, shall knowingly be present when an absentee ballot applicant executes an absentee ballot, except (A) when the candidate or agent is (i) a member of the immediate family of the applicant or (ii) authorized by law to be present or (B) when the absentee ballot is executed in the office of the municipal clerk and the municipal clerk or an employee of the municipal clerk is a candidate or agent. Conn. Gen. Stat. § 9-140b

"This court previously has held that the requirements of § 9-140b are mandatory. See *Wrinn v. Dunleavy*, [*411] supra, 186 Conn. 145-46 (interpreting predecessor statute). Accordingly, the return of ballots in a manner not substantially in compliance with § 9-140b will result in their invalidation, regardless of whether there is any proof of fraud. *Id.*, 148-49. "Whether fraud

has been committed in the handling of certain absentee ballots is irrelevant to the question of whether there has been substantial compliance with all of the mandatory provisions of the absentee voting law. . . . Had the legislature chosen to do so, it could have enacted a remedial scheme under which ballots would . . . be invalidated [only] upon a showing of fraud or other related irregularity. The legislature has instead enacted a regulatory scheme designed to prevent fraud as far as practicable by mandating the way in which absentee ballots are to be handled. The validity of the ballot, therefore, depends not on whether there has been fraud, but on whether there [***24] has been substantial compliance with the mandatory requirements." *Id.*, 149; see also *Dombkowski v. Messier*, 164 Conn. 204, 209, 319 A.2d 373 (1972) (failure of town clerk to follow mandatory statutory requirements with respect to submission of absentee ballots warranted voiding of those ballots without finding of fraud or willful misconduct)." *Keeley v. Ayala*, 328 Conn. 393, 410-411, 179 A.3d 1249, 2018 Conn. LEXIS 114, *23-24

In this case the plaintiff has, admittedly, not presented 251 or more voters to testify about their ballot and whether it was mishandled under the statute. Rather, the plaintiff relies on the video submitted into evidence along with testimonial evidence to establish a substantial statutory violation by partisans which should result in the voiding of the ballots. Due to the volume of alleged conduct, the plaintiff argues that it need not prove specific violations adding up ballots to over 251 that were tainted. Rather, the plaintiff submits that the court should accept the totality of the evidence to support such a scale of violations that call the result of the primary election into substantial doubt.

The defendants counter that the burden for the plaintiff is high and that the court should not entertain speculation and conjecture to come to its conclusion. The defendants are quite right in that regard. The burden is high, and the court does grant great deference to the sanctity of an

election and the will of the individual voters. On the other hand, the parties have not cited, and the court has not located, any case involving the number of election law violations and the volume of supporting evidence that has been presented here. The evidence here has involved hundreds of applications and ballots, thousands of hours of video of drop boxes, testimony of partisan actors, assertion of privilege against self-incrimination by Ms. Geter-Pataky and Ms. Martinez, and analysis of ballot numbers, particularly in the voting Districts linked to Ms. Geter-Pataky and Ms. Martinez.

In analyzing the evidence in this case, the court concludes that Ms. Geter-Pataky and Ms. Martinez are partisans who supported Mr. Ganim in this primary. The court further concludes that the conduct captured on video along with the negative inference to be drawn from each witness's invocation of the privilege against self-incrimination¹⁰ when asked specific questions about their handling of ballots represents multiple violations of § 9-140b. That is, the mishandling of absentee ballots by Ms. Geter-Pataky and Ms. Martinez in violation of § 9-140b render those ballots, so mishandled, incapable of being validly cast and thus incapable of being counted. Therefore, the counting of any ballots that were mishandled in violation of state law and placed into drop boxes by Ms. Geter-Pataky, Ms. Martinez, and others, was a mistake in the vote count. Given the volume of votes at issue, the miscounting of those statutorily invalid votes leaves this court unable to determine the result of the primary.

The evidence also demonstrates that Bridgeport has a high concentration of absentee ballot voters. It is therefore of little surprise that many thousand applications for absentee ballots are

¹⁰ If the witnesses had a legitimate reason under the law to be in possession or handling absentee ballots, such as if they were an authorized designee under the law, they could have provided that testimony directly and truthfully. The fact that each witness invoked their privilege against self-incrimination to this line of questioning is likely because answering that they did not have such authority would be admitting to a class D felony under Conn. Gen. Stat. Section 9-359.

taken out and that candidates and partisans seek to get those applications into the hands of voters who will vote absentee. Connecticut allows absentee voting and allows for applications to be solicited and distributed. Advocacy for a preferred candidate and focus on absentee voters make perfect logical and political sense given the history.

The issue in this case is not the applications or even the push to deliver absentee votes. The issue is whether that advocacy crossed a line of the established laws. Specifically, whether individuals who were not the voter and were not authorized under statute handled ballots. Based on the video and the numbers of absentee votes submitted through the drop box method in Districts 136 and 139 in particular, this court finds that such violations did occur.

Rather than working as a greeter at City Hall, the videos show numerous clips of Ms. Geter-Pataky serving as an absentee ballot depositor and facilitator. Perhaps some of that can be explained by her role of directing people who may not know where the drop box is in front of City Hall, but the video depicts a much more consistent level of conduct where Ms. Geter-Pataky is actively dropping numerous ballots into the box herself (in some cases very early in the morning or later in the evening and in other cases during what should be her work day), handing stacks of ballots to others to drop into the box while she watches or directs them to do so, or coming out to greet and escort others who are delivering numerous ballots into the box. These instances do not appear to the court to be random. They appear to be conscious acts with a partisan purpose that violates the mandatory requirements of how absentee ballots are supposed to be handled or delivered. Similarly, Ms. Martinez is depicted multiple times on video approaching the drop box and dropping numerous ballots into the box.

The court finds that it is not a coincidence that the districts that Ms. Geter-Pataky and Ms. Martinez reside in, and/or are politically connected with, had a high percentage of absentee

ballots. Rather, it is a direct consequence of the efforts of Ms. Geter-Pataky and Ms. Martinez to deliver numerous ballots into the drop boxes from the districts where they hold partisan positions. Per *Keeley*, partisan individuals are required to distance themselves from absentee ballots. In this case there is evidence of partisans taking possession and harvesting ballots to engage in bulk drops of the absentee ballots into drop boxes. The number of ballots at issue, when considering the corroborating evidence of the video, documentary evidence and calculations which show a large number of votes in drop boxes and a large percentage of absentee votes in districts connected to Ms. Geter-Pataky and Ms. Martinez, along with the negative inference to be drawn against their preferred candidate, Mr. Ganim, brings the reliability of the primary into serious doubt.

The lower number of people observed approaching the drop boxes as compared to the higher number of absentee ballots received without postmarks or stamps also supports the conclusion that a segment of those people seen approaching the drop boxes, including Ms. Geter-Pataky and Ms. Martinez among a few others, dropped far more than one ballot when they approached the box. The dates listed on ballots of when the ballot was filled out by the voter and when the ballot was received by the clerk's office and stamped in demonstrates a lapse in time in many instances. The plaintiff considers such lapses to be a violation of the statutory requirement to return the ballot "forthwith." The court will not make that finding based on the evidence submitted, but the court does find that the dates, when linked to the video showing stacks of votes being dropped by Ms. Geter-Pataky and Ms. Martinez into the drop boxes, provides credible evidence that ballots were being "harvested" in violation of state election laws by partisans.

Absent any testimony that Ms. Geter-Pataky and Ms. Martinez were authorized to touch any of these ballots and considering the negative inference¹¹ that this court draws based on their failure to answer questions about such authorization, this court concludes that neither Ms. Geter-Pataky nor Ms. Martinez was authorized, under law, to touch any absentee ballots. Yet, they did in clear violation of the mandatory provisions of § 9-140b.

In their post hearing brief and reply, the defendants make much of the fact that “not one voter” was called to testify about their vote being mishandled by someone other than a voter of statutory designee. The court does not accept that characterization of the evidence. Ms. Geter-Pataky and Ms. Martinez were called. They were voters and they acknowledged their support of the endorsed candidate, Mr. Ganim. The negative inference that the court draws from the testimony of these voters is significant. Mr. Ganim was surely a voter in the primary and he credibly testified that he was “shocked” by what he saw on video. The totality of the evidence presented is sufficient to demonstrate that a substantial number of ballots were handled improperly in violation of mandatory provisions of Connecticut law.

Having found that the direct and circumstantial evidence presented in this case demonstrates violations of § 9-140b by unauthorized partisans handling and submitting absentee ballots in this primary the court now turns to whether those violations of law render the reliability of the result election seriously in doubt.

While the defendants argue that the court needs to hear from voters as to whether their ballot was mishandled, and/or needs to find specific evidence of over 251 votes being mishandled or otherwise disqualified in order to order a new primary, that is not the law. The issue that the Court must decide is not to a mathematical certainty whether 251 or 252 absentee ballots were

¹¹ See, *Rhode v. Milla*, 287 Conn. 731, 738 2008, *Demaria v. Bridgeport*, 339 Conn. 477, 493 (2021).

mishandled. The issue of fact that the Court must decide is whether on this record enough ballots were mishandled to conclude that “the reliability of the result of the election is seriously in doubt,” Bortner, 250 Conn. at 258

Of the approximately 5000 total applications for absentee ballots, Geter-Pataky herself submitted at least 347 to the town clerk. She should have registered as a distributor of absentee ballots per state law and the local rules of the Clerk (10/12 PM Tr. at 47) but did not. See Plaintiff Exs. 147A-D (Absentee Ballot Distribution Registrations). Of her applications, nearly all listed “sickness” as the reason for the inability to vote in person – often weeks or even months later - on September 12. See, e.g., Plaintiff Exs. 128A-135F. Surely some voters may have chronic illnesses that they know will impact their ability to vote weeks or months in advance, but all the ballots linked to Ms. Geter-Pataky having the same excuse is dubious, particularly given her unwillingness to provide any context to her role with voters in her testimony.

In the three precincts making up the 136th District (where Geter-Pataky was district leader), Ganim received 61.31%, 40.96%, and 55.06% of his votes respectively by way of absentee ballots. (Plaintiff Ex. 149). In the 139th District, where Martinez lives, Ganim received 29.08% and 43.35% of his votes by absentee ballots respectively. But in two other districts, 130-02 and 135-03, only 5.23% and 7.87% of his votes were by absentee ballots.

In precinct 136-01, a total of 94 absentee ballots were counted and 81 had no stamp and postmark, or 86.1%. In precinct 136-02, 36 of 42 had no stamp or postmark, or 85.7%. In precinct 136-03, 87 of 104 absentee ballots likely came in through the drop boxes, or 83.6%. (Id. at 30). In the two precincts of District 139 together, 165 of 210 had no stamp or postmark, or 78.5%. (Plaintiff Ex. 149, Plaintiff Ex. 181).

The numbers provide grounds to question the reliability of the primary. Review of the video evidence combined with the inferences that the court draws from the assertions of privilege by Ms. Geter-Pataky and Ms. Martinez establishes the requisite proof that this primary was seriously undermined. The totality of the evidence demonstrates that absentee ballots were mishandled at the Boston Avenue and 999 Broad Street drop boxes. (Plaintiff Exs. 140A, 140B, 141, 141A). Geter-Pataky was involved with at least 10 separate drops of multiple ballots. (Plaintiff Exs. 141 and 141A). Martinez made 5 separate drops. (Id.). Two other figures made at least three drops at Boston Terrace, one pulling ballots out of a bag and making repeated deposits. (Id.). Although an exact count of mishandled ballots from each of those drops is not possible due to the nature of the misconduct, the video allows an assessment that the drops did not involve an inconsequential number. For example, as the plaintiff summarizes its evidence in its brief, in Plaintiff Exs. 140B and 141, the video shows pickups at Boston Avenue on August 25 at 2:20:37 PM and August 28, 2023, at 10:08:02 AM. Only three people visited that drop box in the interim: Martinez with a stack on August 27 at 5:00:05 PM that took her about 30 seconds to deposit, and two individuals on August 28 at 6:59:57 AM and 7:28:42 AM. (Plaintiff Exs. 140B, and 141). But at the pickup on August 28, a large number of ballots can be seen being emptied – although only three people had used it since it was last emptied. (See Plaintiff Exs. 142C and 140B).¹²

In contrast to the drops by Ms. Geter-Pataky, Ms. Martinez and a few other unidentified people who clearly dropped multiple ballots into the drop boxes (at least one person seen clearly reaching into a bag multiple times and pulling out multiple ballots each time) there is also a

¹² All parties had access to the same video evidence, and each had the opportunity to present video evidence, in complete or edited formats, to support its position. The plaintiff took the opportunity to present such evidence and the court finds the video evidence to be compelling.

considerable amount of video depicting a single person approaching the drop box and depositing a single vote. This contrast is significant as the total number of absentee ballots that likely came through the drop boxes must include these legitimate and appropriate single ballot drops by individual voters. That means that the much smaller number of people, including Ms. Geter-Pataky and Ms. Martinez, who dropped multiple ballots at one time must have dropped a significant total number of ballots in their collective trips to the drop boxes to result in the number of unstamped and unmeted ballots that were accepted at the Town Clerk's office from the drop boxes.

Quite simply the defendants ask this court to ignore the significant mishandling of ballots by partisans that were caught on video flouting the mandatory provisions of Connecticut law. To do so would undermine the clear intention of the statutes which specifically prohibit such ballot contact and would endorse this blatant practice of ballot harvesting. It would also endorse the illegal conduct engaged in by these partisan actors and the improper counting of invalid votes.

Mr. Ganim was correct in his testimony where he confirmed that he advised campaign staff to follow the do's and don'ts related to absentee ballots and to that the message from his campaign to volunteers was "don't touch someone's ballot." Ballots should not be touched by anyone other than those authorized by statute. Mr. Ganim was also correct to be "shocked" at what he saw on the video clips in evidence that were shown to him while he was on the witness stand. The videos are shocking to the court and should be shocking to all the parties.

Therefore, based on the totality of the evidence presented, the court finds that the plaintiff has met its burden of proof and established substantial violations of § 9-140b in the placing of absentee ballots into drop boxes by partisans who were not designated to handle such ballots and that the volume of ballots so mishandled is such that it calls the result of the primary

election in serious doubt and leaves the court unable to determine the legitimate result of the primary.

III. CONCLUSION

Therefore, Judgment shall enter in favor of the Plaintiffs, against the Defendants with respect to the violations of § 9-140b in the mishandling of absentee ballots.

The court orders a new primary for the Democratic party nomination for mayor of the city of Bridgeport shall be held. The clerk of the court is directed to certify this decision to the Secretary of State.

The parties are ordered, withing ten (10) day so this order, to confer with each other in good faith, and with election officials of the City of Bridgeport and the State of Connecticut as necessary, in order to file a proposed order to effectuate this decision ordering a new primary for the Democratic Party nomination for the mayor of the city of Bridgeport, including a date for the new primary.

Absent agreement, the plaintiff shall file a proposed, supplemental order by November 15, 2023, and any party may respond by November 17, 2023.



William F. Clark
Superior Court Judge