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# Advisory Guidelines Concerning Municipal Referenda

FROM THE OFFICE OF THE SECRETARY OF THE STATE  
165 Capitol Avenue, Hartford, CT 06106

## ADVISORY GUIDELINES CONCERNING MUNICIPAL REFERENDA NOT HELD IN CONJUNCTION WITH A REGULAR OR SPECIAL ELECTION

Pursuant to Section 9-4 of the General Statutes, we have authority to advise local election officials in connection with proper methods of conducting municipal referenda, including not only those held in conjunction with regular and special elections as defined in Section 9-1 of the Connecticut General Statutes but also referenda held at other times. We have formulated some advisory guidelines concerning municipal referenda in the hope that they will help settle certain recurring questions in advance and, by resolving ambiguity, will facilitate a smooth, uniform, and fair administration of the law. Except where a requirement is mandatory by state statute, compliance with these guidelines is to be voluntary, and it is up to the individual municipalities and their respective town attorneys to determine the extent to which they are followed. However, this office believes these guidelines to be workable and effective.

To fulfill our advisory function and in an attempt to better serve you, we have done extensive research of the Connecticut General Statutes and all municipal charters in our files, with a view to locating every type of referendum that might possibly take place. It is our intention to maintain the most up-to-date and relevant information so that we will be better able to assist you in carrying out your local referendum responsibilities.

The following advisory guidelines deal with recurrent questions which we have been called upon (but not authorized) to answer in the past:

1. How many polling places should there be and between what hours should the polls be open?

Although many municipalities choose to use the same number and location of polling places in a referendum as are used in a regular election in order to lessen voter confusion, we have found nothing in the general statutes that mandate the use of the same polling places. Therefore, some municipalities may choose to use fewer polling places than normally used in a regular election. If fewer polling places are used, it is recommended that the polling places chosen be centrally and conveniently located and that adequate notice be given to the voters of the changes.

The voting hours are normally from 12 noon to 8 o'clock p.m. as provided in Section 7-9b of the Connecticut General Statutes. The hour of opening the polls, however, (as with the number of machines and polling place personnel), should remain flexible so as to permit an earlier opening if the circumstances warrant. Section 7-9b allows the municipal legislative body to authorize the opening of the polls as early as 6 a.m. For example, if the referendum deals with a controversial issue and a large voter turnout is expected, then such provision should be made for an earlier opening hour so that all electors who wish to vote have an opportunity to do so.

Unless otherwise provided for in specific sections of the Connecticut General Statutes or your local charter, we recommend that the municipalities follow the form prescribed when questions are submitted to the voters at a regular or special election. Section 9-250 of the Connecticut General Statutes should be consulted for direction on the ballot label. In addition, Section 9-369\* should be consulted for the form of the question designation. We feel this practice should be followed for referenda being held separately from any election because there already exists a working knowledge of these formats among all parties concerned. (\*Also see sections 7-7, 7-171, 7-295, 7-304, 10-45, 10-63n, 11-36, 13a-11, 30-11 for specific referenda)

3. What form and rules should apply to petitions used to call a referendum?

When a referendum is initiated by a petition circulated pursuant to provisions of any town, city or borough charter, we recommend the use of a form which substantially resembles that prescribed in Section 7-9 for referendum petitions circulated pursuant to provisions of the General Statutes or any special act. The structure of the form easily lends itself to all types of referenda, which coupled with an already existing knowledge of the form by municipal officials, makes it an ideal choice.

It should be noted that this office may not participate in any discussion relative to whether a referendum has been properly called (including for example, the number of signatures necessary to force a referendum) beyond citing relevant charter or statutory provisions; nor may we advise with regard to acceptability of petitions or validity of signatures.

4. Are local referenda generally binding in effect, or can they be advisory?

The answer depends upon the authority under which the referendum is held. If the relevant provision of the local charter or general statutes specifically states that the result of the referendum is advisory only, then such provision governs. (e.g. 7-344 C.G.S authorizes an advisory referendum on the town budget in towns which have a town meeting form of government). In the absence of such a statement, however, the referendum would be binding in nature, (See State of CT v. Ansonia Sup. Ct. – Htfd. – October 30, 1987 – re advisory referendum held in conjunction with election)

5. How many voting machines should be available for use and what personnel should be present at the polling place during voting hours?

If a municipality chooses to use the optical scan voting machine, we would advise that one machine and one backup machine be made available for each polling place. We encourage the use of the IVS vote by phone system as well, provided that IVS has at least 30 days to prepare the ballot. In addition, some municipalities have chosen not to use any voting machine for adjourned town meetings, but instead prefer to count votes on paper ballots by hand. In making a decision, local officials should consider the size of the municipality and the expected turnout of the electorate.

6. Does the 75' limit apply to a referendum?

Yes; Section 9-236 prohibits solicitation or advertisement, on behalf of any question being voted on at such referendum, within a radius of 75 feet from any outside entrance in use as an entry to the polling place. In addition, at least 20 minutes before the polls open, the moderator should post signs defining the 75' area.

7. Who is eligible to vote at a referendum? What are the registration deadlines prior to a referendum?

It is our recommendation that, in the absence of specific provisions of the charter or the general statutes concerning eligibility to vote at a particular referendum, each person who fits the definition of an "Elector" in Section 9-1 be allowed to vote. In addition, a suggestion for consideration would be that persons who are not "Elector" but who are "Voters" as defined in Section 9-1 by reference to 7-6, be allowed to vote when the result of the referendum might affect the property tax structure or rate in the municipality.

The cut-off date for registration prior to a referendum is the day before the referendum pursuant to Section 9-172b(b). Section 9-172b(a) also provides that the registrars of voters, not later than the day before the referendum, shall cause to be printed a supplementary registry list of the names and addresses of those acquiring voting privileges after the completion of the last registry list.

8. Is absentee voting available at a referendum?

Yes. Pursuant to Conn. Gen. Stats. Section 9-369c(e) absentee ballots are available from the municipal clerk upon receipt of the application or upon the nineteenth day before the date of the referendum, whichever is later, with the following exception: When a referendum is held with less than three weeks notice, absentee ballots shall be made available within four business days after the questions to be voted on are finalized. In such situations, absentee ballots are issued only in person (not by mail) at the office of the municipal clerk.

9. What should the warning requirements be prior to the referendum?

Unless otherwise provided by law pertaining to a particular type of referendum, we recommend that the provisions of Section 7-9c of the Connecticut General Statutes be followed in this connection; i.e., a warning should be published at least thirty days in advance of the referendum. (Note that said section shall not apply to 'adjourned town meeting' voted held pursuant to Section 7-7.)

10. What is a municipality's responsibility as to notice that a referendum is to take place and filing requirements concerning the same, including filing of the form of the ballot with the Secretary of the State?

As previously stated, these guidelines are advisory in nature and compliance is voluntary. Our intent is to help the municipalities conduct their local referenda in an orderly manner. However, we are requesting that municipal clerks file with us a notice whenever a referendum is to take place. In addition, we request that the results of any referendum be filed with us within the same

time period required in the case of adoption of the amendment of a home rule charter as provided in Section 9-371. As previously stated, we are maintaining files for each municipality which we wish to keep as current as possible. By having on file the results of all referenda, we will be able to be of greater service to you when you seek our advice and counsel.

Although this is not a requirement, please do not hesitate to mail us your proposed referendum ballot for our review and suggestions if you so desire.

11. Should there be a canvass on a close vote?

The provisions of Section 9-370a mandating a canvass on close question vote apply to all local referenda. Therefore, in such a situation this section, and also Section 9-311 to which it refers should be consulted for guidance.

12. What effect will these guidelines have upon already existing charter or statutory provisions?

It should be remembered that these guidelines are advisory only. They are not meant to serve as regulations. Thus, if there is a conflict with any town, city, or borough charter, or any provision of the Connecticut General Statutes, the local or statutory provisions are to govern.

\* \* \*

Secretary of the State  
Elections Division Services  
165 Capitol Avenue  
Hartford, Connecticut 06106

Petitions for Local Referenda – Minimum Requirements

The following guidelines are suggested to assist town clerks in administering the provisions of Section 7-9 of the General Statutes. This section contains the minimum requirements for drafting and circulating petitions for local referenda. It has been brought to our attention that problems have arisen in connection with such petitions in various towns in the state, and we hope that these suggestions will be helpful in avoiding them in the future.

1. Section 7-9 contains only the minimum requirements for the form of the petition and the procedures to be followed by the circulator. The local charter or an ordinance may impose additional requirements, such as specifications for phrasing the text of the petition or the time limit for filing it.
2. The form of each petition must be either prescribed or approved by the Town Clerk. This means that the Town Clerk may draft the actual petition form in advance or the form may be drafted by someone else for approval by the Town Clerk. If the clerk does not do the actual drafting we strongly recommend that the form be submitted to the clerk before it is circulated for signatures; otherwise, the signed petitions may have to be rejected by the clerk because the form does not comply with the law.
3. Each page must contain the name and address of the circulator.
4. Each page must contain a statement that the individuals who signed the page did so in the presence of the circulator.
5. Each page must contain a statement that the circulator knows the individual who signed it or that the signer satisfactorily identified himself or herself to the circulator.
6. Each page must state the signatures were obtained within 6 months prior to filing the petition.
7. Each page must contain a statement signed by the circulator under penalties of false statement, that all the statements are true. This formula should be followed exactly; there is no necessity that the circulator's signature be notarized or sworn in any other way, and no other form of oath may be substituted.

Set forth below is a suggested form of the statement which should appear on each page of the petition for the circulator to fill out and sign.

I \_\_\_\_\_ am the circulator of the  
Name and address of the circulator

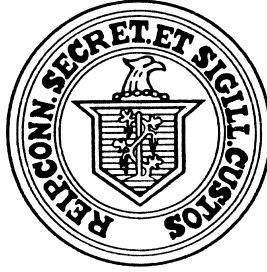
foregoing petition. Each person whose name appears on this petition page signed the same in person in my presence and is known to me or has been satisfactorily identified to me. None of the signatures on this page were obtained earlier than six months prior to the date the page is filed. I HEARBY STATE UNDER THE PENALTIES OF FALSE STATEMENT THAT THE FOREGOING STATEMENTS ARE TRUE.

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(Date)

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Signature of Circulator



## MEMORANDUM OF OPINION

September 5, 2003

Attorney Jeffrey B. Garfield  
Executive Director and General Counsel  
Connecticut State Elections Enforcement Commission  
20 Trinity Street  
Hartford, CT 06106

Dear Attorney Garfield:

This letter is in response to your recent correspondence dated September 3, 2003 regarding the treatment of certain primary petitions filed by a petitioning candidate with the Ridgefield Democratic Registrar of Voters. More specifically, you requested our opinion as to whether the incomplete petitions filed with the Ridgefield Democratic Registrar of Voters were properly rejected by the Registrar of Voters. We believe that such treatment was proper.

The relevant facts, as represented to us by your office, are as follows: After failing to receive the Democratic Party endorsement for a municipal office at the Democratic party's caucus, the petitioner in question requested primary petitions from the Ridgefield Democratic Registrar of Voters. The petitioning candidate was provided with two sets of instructions for circulating primary petitions (ED-619/Rev. 5/03), two blank signature pages (ED-619/Rev. 5/03), and two blank circulator statements by the Registrar of Voters in Ridgefield. The signature page was on a separate page from the circulator's statement and was not included on a double-sided form containing both the signature page on one side and the circulator's statement on the reverse. On the day of the petition deadline, the petitioner, who had circulated his own primary petitions, brought in 17 signature pages. However, each of the signature pages did not have a properly completed circulator's statement associated with such page. In fact, the reverse side of those pages was completely blank. The Deputy Registrar asked the petitioning candidate whether he circulated each page containing signatures, and the petitioning candidate responded in the affirmative. The Deputy Registrar then instructed the petitioning candidate to sign one circulator's statement that was intended to cover all 17 signature pages submitted. The petitioning candidate specifically questioned the Deputy Registrar whether this was the correct procedure, and she responded in the affirmative. The petitioning candidate stated that although required to do so, he failed to review any of the instructions provided to



him by the Ridgefield Democratic Registrar of Voters either before circulating or submitting such petition pages. The Deputy Registrar, being a notary, acknowledged the petitioning candidate's signature on the one separate sheet containing the circulator's statement.

Within several days after receipt of the defective petition pages, the Ridgefield Democratic Registrar of Voters began to review such pages. Upon review, the Ridgefield Democratic Registrar of Voters rejected such pages because the pages as submitted failed to satisfy the requirements of the Connecticut General Statutes.

While a Court of proper jurisdiction may be able to invoke their equitable powers in this case, this Office does not have such authority. Pursuant to Connecticut General Statutes §9-4 this Office has the authority to "... (1) advise local election officials in connection with proper methods of conducting elections..." We are confined to the interpretation of the law as it exists relevant to certain factual scenarios. However, we are unable to conduct independent factual investigations of matters concerning elections as this ability is reserved for your agency pursuant to Connecticut General Statutes §9-7b.

If a Court of proper jurisdiction were to review this issue it may take into account several factors such as the failure of the petitioning candidate to review the instructions provided to him by the Registrars of Voters upon issuance of such petitions; the apparent disregard by the petitioning candidate of the pages containing the circulator's statement that was admittedly provided to him by the Registrars of Voters; the apparent circulation of such petition pages on a form not approved by this Office; the apparent circulation of such petition pages without the proper circulator's certification contained on each sheet; the fact that the petitioning candidate was a candidate in the past and familiar with the process; and the apparent incorrect information provided to the petitioning candidate by the Deputy Registrar of Voters in Ridgefield. Balancing these factors, a Court may find for the petitioning candidate or, more importantly, a Court may find in favor of the Registrar of Voters. In similar cases involving misinformation by governmental officials the United State Supreme Court has consistently held that, "When the Government is unable to enforce the law because the conduct of its agents has given rise to an estoppel, the interest of the citizenry as a whole in obedience to the rule of law is undermined. It is for this reason that it is well settled that the Government may not be estopped on the same terms as any other litigant." *See generally* Heckler v. Community Health Services, 467 U.S. 51 (1984).

Without the authority to conduct factual investigations and without a Court's power to balance the equities at issue and grant relief where a remedy at law is inadequate, this Office is left to interpret the Connecticut General Statutes as they apply to this situation. Connecticut General Statutes §9-410(c) states:

"...Each **separate sheet** of such petition **shall** contain a statement as to the authenticity of the signatures thereon and the number of such signatures, and **shall be signed under the penalties of false statement by the person who circulated the same**, setting forth such circulator's address and the town in which such

circulator is an enrolled party member and attesting that each person whose name appears on such sheet signed the same in person in the presence of such circulator, that the circulator either knows each such signer or that the signer satisfactorily identified the signer to the circulator and that the spaces for candidates supported, offices or positions sought and the political party involved were filled in prior to the obtaining of the signatures. **Each separate sheet** of such petition shall also be acknowledged before an appropriate person as provided in section 1-29. **Any sheet of a petition filed with the registrar which does not contain such a statement by the circulator as to the authenticity of the signatures thereon, or upon which the statement of the circulator is incomplete in any respect, or which does not contain the certification hereinbefore required by the registrar of the town in which the circulator is an enrolled party member, shall be rejected by the registrar.**” (Emphasis Added).

The plain language of the above referenced section of the statute requires that the petition pages submitted pursuant to the facts set forth above must have been rejected by the Registrar of Voters. Any other interpretation of the above referenced language would render this section of the General Statutes meaningless. While a Court sitting in equity might or might not fashion a remedy favorable to the petitioning candidate, the law is clear.

In addition, within the instructions provided with each primary petition submitted, and admittedly received by the petitioning candidate in this case, it states, “The Circulator’s Statement of Authenticity of Signatures, including address and number of signatures obtained, must be completed and signed by the Circulator after obtaining all the signatures and before filing the page with the appropriate Registrar of Voters. *The page must be rejected by the registrar if the Statement is not completed and signed.*” (Emphasis Added). Even if the petitioning candidate did not have access to the Connecticut General Statutes at issue, he admittedly had access to the instruction pages provided with each primary petition, which by his own admission, he did not review.

After reviewing the relevant statutory authority and primary petition instructions in this case, this Office has concluded that the Democratic Registrar of Voters in Ridgefield acted lawfully in rejecting the primary petition pages submitted as they did not meet the statutory requirements of Connecticut General Statutes §9-410(c).

If you have any questions, please contact us at (860) 509-6100.

Sincerely,  
Susan Bysiewicz  
Secretary of the State

By: \_\_\_\_\_  
Michael T. Kozik  
Managing Attorney

(g:\corres\teb\2003\ridgcompl)



OFFICIAL OPINION  
**OFFICE OF THE SECRETARY OF THE STATE**

May 22, 2008

*Validity of Nominating Petition to Gain Ballot Access for Existing Minor Parties*

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**Question:** May a nominating petition issued by the Office of the Secretary of the State to an existing minor party for an office that such party has already achieved minor party status for at a previous General Election be used for ballot access?

**Answer:** No. However, as discussed in the conclusion below, nothing in this opinion restricts the issuance of such petitions to a minor party with preexisting ballot access solely for purposes of gathering signatures to qualify for public campaign financing under the Citizens' Election Program ("CEP"), a program administered by the State Elections Enforcement Commission ("SEEC"). Chapter 153, Part C "Petitioning Parties" is silent on the use of nominating petitions by preexisting minor parties for the purposes of participation in the CEP. Accordingly, if the SEEC authorizes the use of petitions for purposes of qualifying for public campaign financing, this office will issue petitions, count valid signatures gathered thereon and convey signature totals to the SEEC. Such petitions will not, however, be considered for purposes of ballot access.

**Authority:** We are issuing this opinion pursuant to the authority vested in this office pursuant to C.G.S. §9-3. "The Secretary of the State, by virtue of the office, shall be the Commissioner of Elections of the state, with such powers and duties relating to the conduct of elections as are prescribed by law and, unless otherwise provided by state statute, the secretary's regulations, declaratory rulings, instructions and opinions, if in written form, shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under this title, except for chapter 155, provided nothing in this section shall be construed to alter the right of appeal provided under the provisions of chapter 54." Therefore, our authority is limited to questions regarding nominating petitions for the purpose of gaining ballot access. The Connecticut General Statutes specifically remove issues related to campaign finance from the jurisdiction of our office. As such, this opinion cannot consider whether a nominating petition issued to an already existing minor party can be used for purposes of participation in the public campaign finance system.

## **Reasoning:**

### *Minor Party Candidate vs. Petitioning Candidate*

Connecticut General Statutes create a distinct difference between nominating petition candidates and minor party candidates. In fact, pursuant to the General Statutes, the only method available to establish a minor party is to first use a nominating petition to place candidates on the ballot under a name designation. Nominating Petitions function to allow a candidate ballot access when such candidate is not endorsed by either a major or minor party.

C.G.S. §9-372(6) defines a minor party as “a political party or organization which is not a major party and whose candidate for the office in question received at the last-preceding regular election for such office, *under the designation* of that political party or organization, at least one per cent of the whole number of votes cast for all candidates for such office at such election;” (Emphasis added).

C.G.S. §9-372(8) further defines the party designation committee as “an organization, composed of at least twenty-five members who are electors, which has, on or after November 4, 1981, reserved a party designation with the Secretary of the State pursuant to the provisions of this chapter;”

By definition, a minor party is established if a candidate is placed on a general election ballot by nominating petition, under a party designation, and then at such election, receives at least one per cent of the whole number of votes cast for all candidates for such office. Once this requirement is satisfied, the entity in question would achieve minor party status only for the office on the ballot whose candidate received one per cent of the vote.

Thereafter, the next time such office appears on the general election ballot, such minor party would nominate a candidate for that office in accordance with their established party rules. “All minor parties nominating candidates for any elective office shall make such nominations and certify and file a list of such nominations, as required by this section, not later than the sixty-second day prior to the day of the election at which such candidates are to be voted for.” C.G.S. §9-452 (*See also* C.G.S. §9-451 where minor parties are required to endorse candidates pursuant to established party rules filed with the Secretary of the State). Once established as a minor party, there exists no authority to nominate a candidate by means other than those established by existing minor party rules.

### *Use of Nominating Petitions for an Office with Minor Party Status*

#### *Issuing Petitions*

Having established a procedure to create a minor party, the general assembly does not provide any alternate procedures to allow an already existing minor party to petition again for the same office. The general statutes prohibit the Secretary from issuing a nominating petition for the purposes of ballot access if petitions have previously been issued on behalf of the same candidate for the same office. “The secretary shall not issue such forms... (3) if petition forms have previously been issued on behalf of the same candidate for the same office unless the candidate files a written statement of withdrawal

of his previous candidacy with the secretary;...” C.G.S. §9-453b. It appears from the plain language of the statute that the general assembly has restricted the issuance of nominating petitions for ballot access when petitions for the same office and candidate have previously been issued. Clearly, the goal and statutorily defined result of gaining ballot access by nominating petition is to achieve minor party status. Once this goal has been achieved, the nominating petition can be of no further utility to gain further ballot access.

#### *Reservation of Party Name*

In addition to the prohibitions regarding the issuance of the specific petition pages, the general assembly has also prohibited the reservation of a party name if such reservation includes the name of an existing minor party. “The statement shall include the party designation to be reserved which (1) shall consist of not more than three words and not more than twenty-five letters; (2) shall not incorporate the name of any major party; (3) shall not incorporate the name of any minor party which is entitled to nominate candidates for any office which will appear on the same ballot with any office included in the statement; (4) shall not be the same as any party designation for which a reservation with the secretary is currently in effect for any office included in the statement; and (5) shall not be the word "none", or incorporate the words "unaffiliated" or "unenrolled" or any similarly antonymous form of the words "affiliated" or "enrolled.” C.G.S. §9-453u. Logically, to appear on the ballot as desired in this situation the nominating petition, the associated application, and the party reservation would have to contain the name of an already existing minor party. Alternatively, even if a new party reservation is not required pursuant to 9-453b, such exception requires such minor party to be qualified for a different office or offices on the same ballot. This requirement further demonstrates the intended distinction between minor party candidates and petitioning candidates.

#### *Separate Rows of Candidates*

To further demonstrate the inability of existing minor parties to circulate nominating petitions to gain ballot access for the same offices, the general assembly established that separate rows shall be provided for petitioning candidates whose names are contained in a petition with a party designation. “A separate row on the ballot shall be used for a petitioning candidate whose name is contained in a petition approved pursuant to section 9-453o, bearing a party designation.” C.G.S. §9-453r. A strict reading of this statutory section would provide that a minor party who petitions a second time for the same office would be provided two separate party lines on the ballot, with one line being used for the established minor party and a second for the petitioning candidate. Similar provisions exist that allow a single party line when a minor party is nominating candidates for some offices and petitioning for separate offices. However, in the instant case, an opportunity to endorse and petition for the same office is desired. Clearly, once a minor party has gained ballot access through the nominating petition process, it should not be allowed to further petition in an attempt to gain additional lines on the ballot.

#### *Candidacy by Petition and Endorsement Prohibited*

Finally, the general assembly specifically prohibits a candidate who has been nominated by a major or minor party from appearing as a candidate on a nominating petition. “Notwithstanding any other provision of the general statutes or any special act, the nomination of a candidate by a major or minor party under this chapter, for any office shall disqualify such candidate from appearing on the ballot by

nominating petition for the same office... ”A single exception exists to this general rule that allows a candidate to appear as both a major or minor party candidate and a petitioning candidate if, “(1) such petition is circulated by an existing minor party with the same party designation at the time of such nomination, and (2) the minor party is otherwise qualified to nominate candidates on the same ballot.” C.G.S. §9-453t.

The only manner in which this exemption becomes effective is when a minor party petitions for an office which it may not endorse a candidate for under the name of the minor party, and that same candidate is endorsed by a separate political party (major or minor) as a crossed endorsed candidate. This exemption was enacted in 2007 to remedy the situation where a minor party could not validly cross endorse a candidate on the ballot without first petitioning to gain minor party status and the right to nominate. Prior to this amendment, a minor party that did not have status to nominate for the office could not cross endorse another candidate on the ballot. This left the minor party unable to cross endorse a candidate who they felt represented their views, beliefs and ideals. The only option the minor party was left with was the absurd situation of petitioning another candidate onto the ballot who would then run against their desired candidate for the sole purpose of gaining initial minor party status. Therefore, although reading this section alone may appear to permit the requested activity, read together with an understanding of the intention of the exemption and with the rest of the statutory sections regarding nominating petitions, it does not.

#### *Other Considerations*

Even if the reasoning set forth above is not persuasive, there are other considerations that must be taken into account regarding this issue such as the conflicts that are developed between the minor party provisions within the general statutes and the nominating petition provisions within the general statutes. Examples of these conflicts are:

(1) *The effect that additional nominating petitions will have on the minor party status of the party involved.* As stated above, there are separate statutory provisions regarding ballot access. Some apply to candidates that are nominated by an already existing minor party and others apply to candidates who are attempting to gain ballot access through the use of nominating petitions. The use of one method in many cases invalidates the use of the other. For instance, once minor party status is achieved, the general statutes require that all minor parties nominate candidates within a prescribed period of time. See generally C.G.S. §9-452.

(2) *The effect that a failure to collect the required amount of signatures would have on minor party status.* Should additional petitions be issued and the candidate is unsuccessful with their second attempt at signature collection, the statutes related to nominating petitions would require that such candidate be restricted from ballot access. However, ballot access for a candidate of an already existing minor party would not depend on the collection of signatures. See generally C.G.S. §§9-452 and 9-453o.

(3) *Does petition status or minor party status dictate placement on ballot?* There are very separate and distinct rules regarding ballot placement and each rule depends upon the method used by the candidate to gain ballot access. Based upon these rules, ballot placement can vary several rows on the ballot. In

the current situation it remains unclear which set of rules would apply to the situation. See generally C.G.S. §§9-249a.

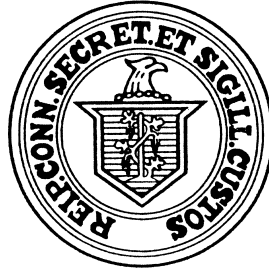
(4) *Do party rules or petitioning statutes govern proper nomination?* Nomination deadlines are different for minor parties and petitioning candidates. Depending upon the method used for ballot access, a different timeline will apply for nomination. See generally C.G.S. §§ 9-452 and 9-453o.

(5) *The provisions for filling a vacancy are different dependent upon which method is used for ballot access?* The individuals needed to appoint a replacement when such a vacancy occurs vary and are different for a minor party than they are for a petition candidate. This could create a situation where two different candidates for the same office are selected, one by the minor party and the other by the party designation committee. See generally C.G.S. §9-460.

### **Conclusion:**

While a nominating petition issued to an existing minor party may not be valid for the purposes of gaining ballot access, the question of whether such petitions can be used for the purpose of acquiring public funding for the finance of campaigns from the CEP is beyond the jurisdiction of this office and, unless further instruction is provided, left to the administration of that program by the SEEC. The CEP will distribute funds to minor parties based on the percentage of votes cast for their candidates at the last preceding election and to nominating petition candidates based on their signature totals. It appears as though an “eligible petitioning party candidate” who obtains a certain number of signatures becomes qualified to receive public funding. Whether or not a candidate of an existing minor party who takes out nominating petitions that are invalid for the purpose of ballot access can become an “eligible petitioning party candidate” and thus eligible for public financing is a matter left to the discretion of the SEEC.

We are mindful that statutes should be construed and applied if at all possible to avoid possible constitutional problems and to permit the maximum amount of protected political activity. See, e.g., McConnel v. FEC, 540 U.S. 93, 180 (2003). For our purposes, therefore, it is sufficient to note that Chapter 153, Part C “Petitioning Parties” is silent on the use of nominating petitions by preexisting minor parties for the purposes of participation in the CEP. Accordingly, if the SEEC authorizes the use of petitions for such a purpose, this office will assist by issuing petitions, counting valid signatures gathered thereon and conveying signature totals to the SEEC. Such petitions will not, however, be considered for purposes of ballot access.



Office of the Secretary of the State  
165 Capitol Avenue  
Hartford, CT 06106

## MEMORANDUM OF OPINION

November 18, 2003

Ms. Nita Cohen and Ms. Judith Raines  
Registrars of Voters  
Town Hall  
110 Myrtle Avenue  
Westport, CT 06880

Dear Ms. Cohen and Ms. Raines:

This letter is in response to your recent correspondence sent by e-mail and received by this office on November 10, 2003, regarding the 75-foot rule provided in Connecticut General Statutes §9-236. We will answer your questions in the order in which they were presented.

1) *Can the 75-foot measurement be determined by the gait of an average-sized person? Or must the Registrars of Voters use a tape measure to determine this distance?*

This office has consistently held that the Moderator of each polling location decides the placement of the 75-foot signs. Therefore, placement of the 75-foot signs is determined solely by any measurements taken by such Moderator. If there is a doubt as to the accuracy of the distance, the Moderator should confirm the distance with a tape measure.

2) *Where must the 75-foot measurement begin – at the building entrance used to access the polling district, etc.?*

Connecticut General Statutes §9-236 states that the 75-foot restriction shall be, “within a radius of seventy-five feet of any outside entrance in use as an entry to any polling place...” Therefore, it would appear that the 75-foot restricted area would be measured from the outside door of the building used as a polling location.



3) *How many 75-foot signs are required to be posted around the polling place?*

The 75-foot signs must be placed 75-feet outside any entrance that voters actually use to enter the building to vote.

4) *Does the 75-foot rule apply within the polling place building?*

Although the 75-foot restriction applies only outside the building, any corridors that the voters use to go from the outside entrance to the room where the voting machines are located, and the room where the voting machines are located, are restricted areas that cannot have any other loitering or legitimate business except as permitted by the registrars. Consequently, it is completely within the discretion of both registrars of voters, jointly, to authorize nonpartisan activities to be conducted within the restricted area, but even if they choose to authorize such activities, they may jointly impose any conditions and restrictions as they deem necessary. If there exists a chance that unauthorized activities may occur or candidates not validly present to vote may pass through the same hallways as electors, the 75-foot restriction must be construed to prevent such activity.

5) *Please confirm that it is not within the jurisdiction of the Registrars of Voters to control conduct outside of the 75-foot zone?*

Connecticut General Statutes §9-236 allows the Registrars of Voters and Moderator at each polling location to control the conduct of electors and candidates within the 75-foot zone. However, any activities that occur outside of the 75-foot zone would be regulated by any local ordinances or laws governing the use of Town property. However, if a situation exists where conduct occurring outside of the 75-foot area interferes with the process of voting (i.e. a sound truck projecting information to voters within the polling place), the Moderator must enforce the 75-foot restriction on this type of activity as well.

6) *Please confirm that the 75-foot rule applies even during a power failure.*

There exist no provisions in Connecticut General Statutes that allow for the alteration of a scheduled election or the rules governing such election because of a power failure.

7) *How do we handle a situation where the 75-foot limit falls within a parking lot where traffic runs?*

Connecticut General Statutes §9-236 states, “On the day of any...election, no person shall solicit on behalf of or in opposition to the candidacy of another or himself...within a radius of seventy-five feet of any outside entrance in use as an entry to any polling place...” Therefore, we suggest that the Moderator of each polling location place the 75-foot signs in their appropriate locations and allow your local law enforcement personnel to handle any public interference with the free flow of traffic.

8) *If the Registrars of Voters determine that the 75-foot distance is not as measured by the Moderator, who has the final say?*

This Office has consistently held that the Moderator of each polling location shall determine the proper placement of the 75-foot signs.

9) *What are the legal consequences of violating the 75-foot provision of the General Statutes?*

Connecticut General Statutes §9-236 provides, “Any person who violates any provision of this section or, while the polls are open for voting, removes or injures any such distance marker, shall be fined not more than fifty dollars or imprisoned not more than three months or both.”

10) *What is the purpose behind the 75-foot rule?*

The basic purpose of Section 9-236 is to prohibit any activity that could constitute electioneering within the prohibited area, and also, in the interest of sound and efficient administration, to prohibit any activity that could create confusion or congestion within said area.

I hope that this information was helpful. If you should require assistance in the future, please contact our office.

Sincerely,

Susan Bysiewicz  
Secretary of the State

By: \_\_\_\_\_  
Theodore E. Bromley  
Staff Attorney

(g:corres\teb\2003\westport75)



Office of the Secretary of the State  
165 Capitol Avenue  
Hartford, CT 06106

## MEMORANDUM OF OPINION

October 31, 2005

The Honorable Charlene Barnett  
First Selectman  
Town of Andover  
17 School Street  
Andover, CT 06232

Dear First Selectman Barnett:

This letter is in response to your recent inquiry regarding a vacancy in your local Board of Finance. More specifically, you request an opinion regarding: 1) who has the power to declare a vacancy on such board and 2) what political party affiliation must the replacement individual be in order to be eligible to fill such vacancy on such board.

In your letter you write, "Today, October 28, 2005, we received a resignation from this member." Therefore, as of October 28, 2005, there is a vacancy on your local Board of Finance. However, we would like to make clear that it is the Registrars of Voters in Andover that are empowered by State Statute to determine the electoral status of individuals in the Town of Andover. The case law that you provide in your letter dates back to 1955 and the General Statutes and the authority of the Registrars of Voters have changed since the issuance of that 1955 opinion. More specifically, Connecticut General Statutes §§9-19i and 9-35 detail a procedure that the Registrars of Voters must follow when any individual changes their address with the Department of Motor Vehicles. An individual can lose their electoral status only after the procedures set forth in those sections have been completed.

Finally, you question the minority representational make-up of the board and which political party, if any, may have the opportunity to fill such a vacancy. Connecticut General Statutes §9-167a states, "At such time as the minority representation provisions of this section become applicable... any vacancy... which is to be filled... shall be filled by the appointment of a member of the same political party as that of the vacating member." This section has been consistently interpreted by our office and Connecticut Courts in Chapmen v. Tinker, 25 Conn. Supp. 436 (1964) and Grodus V. Burns, 190 Conn. 39 (1983) to mean that a vacancy must be filled with a member of the political party of the person who vacated only when the board has already achieved maximum majority representation, and then only when the vacating member is of the minority party. In the situation you describe in your letter, neither party on the board is at maximum representation. Therefore, a member of *any* political party may fill the vacancy.

I hope that this information was helpful.

Sincerely,  
SUSAN BYSIEWICZ  
Secretary of the State  
BY  
Theodore E. Bromley  
Staff Attorney



Office of the Secretary of the State  
165 Capitol Avenue  
Hartford, CT 06106

## MEMORANDUM OF OPINION

July 13, 2007

To: All Registrars of Voters and Town Clerks

### **Re: Secretary of the State Opinion Regarding Status of Lever Voting Machines**

My Office has received numerous inquiries regarding the future use of lever voting machines in the State of Connecticut. In response to those inquiries, I am issuing this opinion to clarify some of the misconceptions surrounding the use of lever voting machines in the State of Connecticut.

As the Chief Elections Official for the State of Connecticut and pursuant to the authority vested in my Office by the Connecticut General Statutes §§ 9-3 and 9-238(b), it is the opinion of this Office that lever voting machines are no longer suitable for use in any elections or primaries in the State of Connecticut.

### **STATUTORY AUTHORITY**

Connecticut General Statutes §9-3 provides that the “Secretary of the State, by virtue of the office, shall be the Commissioner of Elections of the state, with such powers and duties relating to the conduct of elections as are prescribed by law and, unless otherwise provided by state statute, the secretary's regulations, declaratory rulings, instructions, and opinions, if in written form, shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under this title...” Therefore, it is pursuant to this authority that I have reviewed all aspects of the lever voting machines and issue this opinion.

Connecticut General Statutes §9-238(b) provides that, “After October 1, 1970, no voting machine manufactured prior to January 1, 1927, shall be used at any election in this state and no voting machine manufactured after said date shall be used in an election, which voting machine, in the opinion of the Secretary of the State, does not conform to the requirements of law or is unsuitable for use in such election.”

## REASONING

As set forth above, the relevant standards under which the Secretary of the State can discontinue the use of a voting machine are (1) the voting machines no longer conform to the requirements of law or (2) the voting machines are unsuitable for use in an election.

### A. The lever voting machines no longer conform to the requirements of law.

The Connecticut General Assembly passed and the Governor signed into law Public Act 07-194, "An Act Concerning the Integrity and Security of the Voting Process." This public act produced two very significant measures, (1) it changed the definition of what constitutes a voting machine in the State of Connecticut, and (2) it created a voting machine audit procedure.

(1) The definition of what constitutes a voting machine was changed by Public Act 07-194. As of the passage of this public act, the term "voting machine" is no longer defined by the general statutes. Instead, the term "voting machine" is replaced by the term "voting tabulator." This new term is associated throughout the general statutes with the casting and counting of paper ballots and was changed to facilitate the use of the new optical scan voting equipment. We are aware of no lever voting machine that casts and counts paper ballots.

(2) The audit procedure created by Public Act 07-194 requires that the paper ballots cast and counted by each voting machine be hand-counted during an audit conducted by local election officials. This audit applies equally to all state and municipal elections and primaries in the State of Connecticut and is not limited to any particular type of technology. We are aware of no lever voting machine that casts and counts paper ballots.

Additionally, the audit requires that the individual paper ballots cast and counted by the voting machine be hand-counted and the totals of both the hand-count and the machine count be compared to ensure the accuracy of the voting machine. We are aware of no lever voting machine that produces a paper record suitable for audit on a voter-by-voter basis.

(3) In addition, existing Connecticut law creates the presumption of a requirement for a paper record when any new electronic voting system is used in the State. Connecticut General Statutes §9-242b specifically requires any direct recording electronic voting machine to produce a voter-verified paper record that can be used after the election for any recount or auditing purpose. Although specific to the direct recording of electronic voting machines, the legislative intent of this section was to provide a permanent paper record of all votes cast on electronic voting machines.

(4) Finally, the Help America Vote Act requires that a "voting system," including any lever voting machine produce a permanent paper record with a manual audit capacity for such system. The voter must be provided with an opportunity to change the ballot or

correct any error on the ballot before the paper record is produced. The United States Election Assistance Commission issued an advisory opinion regarding this requirement and stated, “after careful review of HAVA Section 301(a), the EAC concludes that lever voting systems have significant barriers which make compliance with Section 301(a) difficult and unlikely.” Although the EAC is an administrative agency, the United States Supreme Court has long held that the interpretations of agencies charged with the administration of a statute are given differential treatment by courts when faced with issues of statutory construction. In reaction to this interpretation, the states of New York and Pennsylvania have prohibited the use of lever voting machines in their states.

B. The lever voting machines are unsuitable for use in an election.

(1) With increasing numbers, my office has continued to receive reports of broken or malfunctioning lever voting machines during elections and primaries held in the State of Connecticut. It is clear that these machines are no longer manufactured and replacement parts are becoming increasingly difficult to obtain. The most alarming problems involve situations where lever voting machines failed to record the proper number of votes or failed to record any votes during an election. In one instance, it appears that the lever voting machine may have been malfunctioning for several years.

These errors are precisely what a voting machine with a paper ballot audit trail will prevent. The paper ballot provides local election officials the opportunity to ensure that the voting machine counted all validly cast ballots during an election. Instead of ordering a new election and having a municipality absorb that expense, the actual paper ballots could be used to recreate the election and recover all “lost” votes.

(2) In addition, we find that it would be impracticable to administer and use two different voting systems dependent upon the year in which the election would be held. The administration of elections and primaries includes a responsibility to ensure that voters are not confused and discouraged from participating in the electoral process. Creating an atmosphere where voters would not be aware of the equipment to be used at an election until they enter the polls would be contrary to the goal of increased voter participation.

(3) Further, over the past several years my Office has conducted an extensive review of existing voting technology. To assist us in this endeavor, we solicited assistance from the Computer Science Department of the University of Connecticut and asked them to determine the most secure and reliable technology. After an extensive review of the technology available, optical scan technology was selected as the most secure and reliable.

(4) Finally, because of the problems associated with lever voting machines, my Office will no longer support the use of lever voting machines. Moderators will no longer be certified and trained on the use of the lever voting machines. Voting Machine Mechanics will no longer be certified by our Office regarding the use, maintenance, and set-up of lever voting machines. Lastly, any informational materials and instructional materials

produced by this Office will no longer include information regarding lever voting machines.

**CONCLUSION**

In conclusion and for the reasons set forth above, lever voting machines are no longer suitable for use in any primary or election in the State of Connecticut. The federal Help America Vote Act has provided the state with a unique opportunity to enhance the voting experience of the electors in the State of Connecticut through the use of more reliable and efficient technology. The new optical scan voting technology has been tested and proven reliable as long as proper security measures are taken. It is for these reasons that we must move forward and secure the integrity and security of the voting process in the State of Connecticut.

Sincerely,

Susan Bysiewicz  
Secretary of the State



**James Field Spallone**  
DEPUTY SECRETARY OF THE STATE  
CONNECTICUT

February 6, 2012

Dear Registrars and Town Clerks:

Recently, this office has been asked whether 17-year old residents, who are pre-registered to vote according to law, and are otherwise qualified, may vote in the presidential preference primary on April 24, 2012 as a result of the 2008 amendment to the Constitution of the State of Connecticut.

After review of the State Constitution; General Statutes Sec. 9-431 ( c ), which codified the 2008 amendment; the statutes governing primaries in general and the presidential preference primary; the legislative history of both the amendment and the statute codifying it and relevant case law, the Secretary has concluded that 17-year old persons who are preregistered to vote under applicable law, and have chosen to enroll with a party holding such a primary, may vote in the presidential preference primary on April 24, 2012. A copy of a memorandum, setting forth the legal analysis underlying the Secretary's opinion, is enclosed.

The Secretary of the State is the commissioner of elections, and" ... unless otherwise provided by state statute, the secretary's regulations, declaratory rulings, instructions and opinions, if in written form, shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under this title, except for chapter 155, provided nothing in this section shall be construed to alter the right of appeal provided under the provisions of chapter 54." Connecticut General Statutes Sec. 9-3. This opinion is being issued pursuant to Sec. 9-3.

Should you have any questions, please contact the Legislative and Election Administration Division and 860-509-6100.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "James F. Spallone".

James F. Spallone  
Deputy Secretary of the State

**Attachment:** Memorandum re: May Pre-registered 17-year Olds Vote in the Presidential Preference Primary?





**OFFICE OF THE SECRETARY OF STATE**  
State of Connecticut  
30 Trinity Street  
P.O. Box 150470, Hartford, CT 06115-0470

**DENISE W. MERRILL**  
Secretary of the State

**JAMES FIELD SPALLONE**  
Deputy Secretary of the State

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February 6, 2012

To: Registrars of Voters, Town Clerks and Interested Parties

From: The Office of the Secretary of the State

Re: May Pre-registered 17-year Olds Vote in the Presidential Preference Primary?

## **FACTS**

In 2008 the General Assembly passed House Joint Resolution 21, a resolution amending the state constitution to permit 17-year old persons who were pre-registered according to law to vote in primaries provided they will be 18 on or before the next regular election. The resolution was passed by three-fourths majorities in both chambers. In November, 2008, the voters of the state approved the constitutional amendment and it became law. See Constitution of the State of Connecticut, Article Sixth, Sec. 11.

During the 2009 session of the General Assembly a bill was passed to codify the constitutional amendment. See General Statutes Sec. 9-431 ( c ).

There is a presidential preference primary scheduled for April 24, 2012. Registrars of voters have asked this office whether pre-registered 17-year olds may vote in the presidential preference primary on April 24.

## **ISSUE**

May pre-registered 17-year old persons, who are enrolled in a party holding a primary, vote in the April 24, 2012 presidential preference primary, or any subsequent presidential preference primary, if they will be 18 on or before the general election?

## ANALYSIS

Article Sixth, Sec. 11 of the State Constitution (Codified) provides:

Any citizen who will have attained the age of eighteen years on or before the day of a regular election may apply for admission as an elector at such times and in such manner as may be prescribed by law, and, if qualified, shall become an elector on the day of his or her eighteenth birthday. *Any citizen who has not yet attained the age of eighteen years but who will have attained the age of eighteen years on or before the day of a regular election, who is otherwise qualified to be an elector and who has applied for admission as an elector in such manner as may be prescribed by law, may vote in any primary election, in such manner as may be prescribed by law, held for such regular election.* (Emphasis added.)

The italicized language is the text of the constitutional amendment adopted in 2008.

General Statutes Sec. 9-431 ( c ) provides:

(c) Any citizen who has not yet attained the age of eighteen years but who will have attained the age of eighteen years on or before the day of a regular election, and who: (1) Is otherwise qualified to be an elector, and (2) has applied for admission as an elector, may vote at a primary of a party held for such regular election pursuant to subsections (a) and (b) of this section.

Subsections (a) and (b) concern eligibility to vote in primaries. Subsection (c) codifies the constitutional language, then gives the 17-year olds the standing of other voters who have reached the age of majority. In Connecticut, you must be an enrolled party member to vote in a primary unless the party rules otherwise prescribe.

Chapter 154 of the General Statutes governs presidential preference primaries. Sec.

9-476 concerns the conduct of the primary and provides, in pertinent part:

Except as otherwise provided in this chapter, the provisions of chapter 145 and chapter 153 concerning absentee voting at primaries, conduct of primaries and return and tabulation of the vote at such primaries shall apply as nearly as practicable and in the manner prescribed by the secretary, to a presidential preference primary.

In other words, a presidential primary is to be conducted in the same manner as other primaries described in Title 9 of the General Statutes. Sec. 9-431, cited above, is within Chapter 15 3.

The constitutional provision in question is broad and permissive. It states that qualified persons “ ... may vote in *any* primary election, in such manner as may be prescribed by law, held for such regular election.” Constitution of the State of Connecticut, Article Sixth, Sec. 11. The amendment contemplates voting in any primary, so long as it is held for a “regular election.”

The term “regular election” is not defined in the state constitution. It is, however, defined in Title 9 of the General Statutes and used frequently. General Statutes Sec. 9-1 (o) defines “regular election” as “any state or municipal election.” “State election” is defined by General Statutes Sec. 9-1(s) as “the election held in the state on the first Tuesday after the first Monday in November in the even-numbered years in accordance with the provisions of the Constitution of Connecticut.” State elections include the candidates for federal office, including President of the United States.

While there is no question that the presidential preference primary is held to help nominate candidates for a “regular election,” the question arises whether voters are selecting a candidate or delegates to a national convention. There is no question that the primary is associated with the allocation of delegates to a national convention. See, i.e., General Statutes Sec. 9-484. However, that process, called a “primary,” and, by reference incorporating our general provisions about the conduct of primaries in Chapter 153, leads inexorably to the regular election in November. Further, from the voters’ perspective, they are helping choose the nominee for the November election. Certainly the manner of campaigning and news media coverage of a presidential preference primary does not lead voters to conclude they are voting for delegates (whose names are not on the ballot), but for a candidate.

The plain language of the presidential preference primary statutory scheme supports a broad interpretation of General Statutes 9-431 ( c ). For example, “primary” is defined as,

“... a presidential preference primary in which any enrolled member of a party is eligible *to vote for a candidate for such party’s nomination for President.*” General Statutes Sec. 9-463 (8)

(Emphasis added.) The section does not define the primary as an opportunity to vote for delegates or delegate allocation. “Candidate” is defined as “any person whose name is placed, or proposed to be placed, as the case may be, on the primary ballot of a party[.]” General Statutes Sec. 9-463 (2). Again, the candidates are not delegates, but rather persons selected by the Secretary of the State for placement on the ballot using the factors set out in General Statutes Sec. 9-464.

Our courts first look to the text of statutes and their relation to other statutes to ascertain their meaning. General Statutes Sec. 1-2z. Here, that should end the analysis of General Statutes Sec. 9-431 ( c ). However, review of the legislative history of 9-431 ( c ) also leads to the conclusion that eligible seventeen years olds can vote in presidential preference primaries. As noted, Sec. 9-431 ( c ) was passed and signed into law in 2009 to codify the new constitutional provision. There was no testimony at the public hearing. On the floor of the House, the proponent, Representative Spallone, remarked:

Thank you, Mr. Speaker. Mr. Speaker, this bill simply puts into our statutes, it codifies the constitutional amendment that was approved by this Assembly last year, and then approved by the voters of the State of Connecticut in the November election that allows seventeen-year olds to vote in primaries, as long as they’ll be eighteen on or before the date of the general election. So this simply amends Section 9-431 and basically tracks the language of the amendment so to ensure the voting rights of these individuals that they will be permitted to vote in our primaries, and I’m sure the Members are largely familiar with the topic from last year’s debate, and I would urge support of this bill. Thank you, Mr. Speaker.

The bill passed the Senate on consent and without debate.

If there is any ambiguity in the relevant section of the State Constitution, it too is resolved by the legislative history. House Joint Resolution 21 was initially debated in the House of Representatives on April 9, 2008. During a colloquy between Representative Cafero and the

proponent of the resolution, Representative Spallone, the following exchange occurred:

REP. CAFERO: (142<sup>nd</sup>)

Thank you. And is it, would you agree, through you, Madam Speaker, that another rationale behind it as Representative Urban indicated, is to engage more people in the process, to not disenfranchise people who might be discouraged of not voting because they don't feel they're part of choosing the candidate in the primary process, to get more people involved in voting. Is that another underlying purpose of this bill? Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Spallone.

REP. SPALLONE: (36<sup>th</sup>)

Through you, Madam Speaker, the answer to that would be yes, by way of a very brief example. If this were in effect today, those who are 17 and would be 18 by November would have been able to participate in the presidential preference on February 5th.

The issue came up again later in the proceedings as the transcript shows:

REP. CAFERO: (142<sup>nd</sup>)

Thank you. And through you, Madam Speaker, an example of one of the concerns, it was a hypothetical. I believe I posed it last year, and I'd like to know if, for the record, I guess, how this would clarify it.<sup>1</sup> And that was, this year for instance we have a presidential election year. We had primaries here in the State of Connecticut in February and our general election, of course, is in November. If this were law today, or this year, it would have allowed a 17-year-old to participate in the February primary with the understanding that they would be 18 years old by November. Is that correct, through you, Madam Speaker?

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Spallone. I apologize.

REP. SPALLONE: (36<sup>th</sup>)

Yes, through you, Madam Speaker, yes.

The issue was also raised during the Senate debate. Senator Kissel, speaking in favor of the resolution, remarked:

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<sup>1</sup> The colloquy that followed concerned how election officials would keep track of and segregate the list of 17-year olds who voted in the primary, like the presidential preference primary, not about the right to vote in such primaries. Rep. Cafero was alluding to concerns' in the prior session about 17-year olds potentially voting in budget referenda, May elections or special elections.

It doesn't take too much imagination or one need not look any further than what is happening the United States of America right now, right now, to understand how exciting it would be to be 17 years old and to be involved in this election that is rolling forward towards us. *I just can't imagine what it would be like knowing that I would be 18 and voting in the presidential election, but not having an ability, most recently, to vote in that primary.* I mean, look at the battle between Hillary Clinton and Barack Obama. I mean, Massachusetts went for Clinton. Rhode Island went heavily for Hillary Clinton, and, yet, Connecticut went for Barack Obama, three states closely together here in southern New England, and that neck-and-neck race throughout the United States. (Emphasis added.)

Senator Freedman, a member of the Government Administration and Elections Committee, spoke of the benefit of harnessing youth interest in the presidential election to encourage participation:

Thank you, Mr. President. I rise in favor of the resolution today. I have had mixed feelings. I've gone back and forth. But I heard some very compelling testimony as part of the public hearing in our committee. I've watched what's happened this year with the whole electoral process, in terms of young people getting involved. And I think Senator Kissel is absolutely right. We've got to build upon that, and this is the perfect time to go forward. *Obviously, it's too late for the 17-year-olds to vote in this year's primary, but, hopefully, down the road, they will continue to pay attention, and become involved.* (Emphasis added.)

The right of qualified 17-year olds to vote in the presidential preference primary was affirmed during the debate in the House, assumed during the debate in the Senate and never questioned during the debate in either chamber.

The public hearing on House Joint Resolution 21 was held by the Government Administration and Elections Committee on February 29, 2008. Review of the transcript of that hearing indicates that it was assumed by all participants that qualified 17-year olds would be able to vote in the presidential preference primary. For example, Mae Flexer, testifying as vice president of political affairs for the Connecticut Young Democrats, said:

This year, our state has seen unprecedented young voter turnout during the presidential primaries. Allowing 17-year-olds to participate in primaries before their first general election can only increase young voter interest and their investment in the election process. There are many people who have been inspired by this year's campaign. In fact, the youth vote has been decisive in the campaign, thus far. By allowing 17-year-olds to vote in primaries, our state would be sending a decisive message supporting youth activism in our electoral process.

It should be noted that the language before the committee during the public hearing was the same

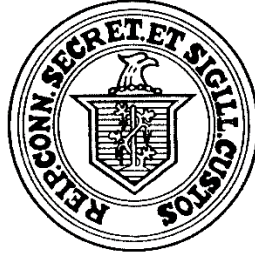
as the language debated on the floor of the House and Senate.

The factors our courts use in considering and construing constitutional provisions are well-settled. They are, as applicable: (1) the text of the operative constitutional provision; (2) holdings and dicta of the Supreme Court and the Appellate Court; (3) persuasive and relevant federal precedent; (4) persuasive sister state decisions; (5) the history of the operative constitutional provision, including the historical constitutional setting and the debates of the framers; and ( 6) contemporary economic and sociological considerations, including relevant public policies. *Bysiewicz v. Dinardo*, 298 Com1. 748, 789-90 (2010). As previously noted, the text is broad, clear and unambiguous, applying the provision to “any” primary for a “regular election.” The history of the provision, including the statements of the floor by legislators and the testimony in the public hearing, demonstrate that the framers of the amendment intended and expected that eligible seventeen year olds be able to vote in presidential preference primaries.

To the extent the constitutional provision and statutes are ambiguous with respect to whether a presidential preference primary is a primary held for a “regular election,” such ambiguity must be resolved in favor of the voters. As the Connecticut Supreme Court wrote in *Butts v. Bysiewicz*, 298 Conn. 665, 675 (2010), “**Ambiguities in election laws are construed to allow the greatest scope for public participation in the electoral process**, to allow candidates to get on the ballot, to allow parties to put their candidates on the ballot, and most importantly to allow voters a choice on Election Day . . . “ (Emphasis added; internal citations omitted; quotation marks omitted.)

## CONCLUSION

The texts of Article Sixth, Section 11 of the State Constitution and General Statutes Sec. 9-431 ( c ) and the legislative history of both provisions lead to the conclusion that seventeen year olds who are pre-registered to vote according to law, and who are enrolled with a party holding a primary, according to law, may vote in the presidential preference primary on April 24, 2012.



Office of the Secretary of the State  
165 Capitol Avenue  
Hartford, CT 06106

## MEMORANDUM OF OPINION

January 18, 2013

Attorney Michael J. Brandi  
Executive Director and General Counsel  
State Elections Enforcement Commission  
20 Trinity Street  
Hartford, CT 06106

Dear Attorney Brandi:

This letter is in response to your request for a legal opinion pursuant to Connecticut General Statutes §9-3 regarding town committee primary petitions. More specifically, you request a legal opinion as to whether, under General Statutes §9-409, a petitioning town committee slate who seeks to replace a candidate or candidates on its previously-issued petitions may replace such candidate(s) under certain specific conditions or, alternatively, must such slate substitute an entirely new statement, re-signed by the entire slate of candidates.

The pertinent facts of this matter are that a slate of candidates for a town committee election submitted to the registrar of voters a statement signed by each candidate that such candidate consents to be a candidate for a town committee primary. The statement contained a number of town committee candidates sufficient to exceed the 25% threshold under General Statutes §9-411. The registrar followed the prescriptions of General Statutes §9-409 and typed a petition containing the names and addresses of each of the candidates and remitted it to the candidates. Subsequent to the events described above, but before such slate of candidates sought signatures on the petitions, the slate discovered that one of the candidates did not live in the district for which she had submitted as a candidate. As such, a replacement candidate was recruited. A new statement was submitted to the registrar and signed by only the new candidate. The registrar typed a new petition form containing the names and addresses of all of the candidates that signed the original statement, substituting the name and address of the new candidate for the candidate who lived out of district.



Connecticut General Statutes §9-409 states, “Any person who requests a petition form shall give his name and address and the name, address and office or position sought of each candidate for whom the petition is being obtained, and shall file a statement signed by each such candidate that he consents to be a candidate for such office or position.”

It is clear that the General Statutes require that a primary petition for town committee members must contain certain requisite information and that part of that requirement is that all candidates sign a statement of consent. Beyond this basic requirement is whether these statements of consent for town committee primary candidates must appear in a single document or can they appear in multiple documents.

With regard to this issue, whether all candidates for a town committee primary must sign the same statement of consent sheet, we look to the text of the statute. “When interpreting a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature....To do so, we first consult the text of the statute itself and its relationship to other statutes. If after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.” Butts v. Bysiewicz, 298 Conn. 665 (2010).

The statute requires that the individual requesting petitions “file a statement signed by each such candidate that he consents to be a candidate for such office or position.” The statute does not specifically state that such consent must be made on a single sheet, nor does it prescribe a form upon which such consent is to be made. We find the absence of such language instructive. If the statute were to require that all candidates sign a statement of consent on the same form, then no change could be made to the candidates without all candidates signing a second statement of consent, including those candidates who already signed their consent on the original filing. Further, if multiple changes were made, such a reading would require each candidate to sign an untold number of statements. In essence, this would require such candidates to reaffirm their consent to become a candidate. A situation whereby an individual was required to reaffirm their desire to become a candidate would be unusual at the very least. Under ordinary circumstances, once an individual has filed to become a candidate, there is a presumption that such individual wishes to remain a candidate unless a proper withdrawal has been filed. In fact, we have been unable to find any other instance in Title 9 where an individual is required to reaffirm their interest in serving as a candidate. Finally, we do not see any public purpose that would be served by such a reading. The individuals involved have signed statements consenting to become candidates and have provided all requisite information, second, third, or fourth statements do not provide additional assistance. Of course, if an individual wishes to withdraw as a candidate and cease involvement in the petition, such a withdrawal is easily made.

Consequently, after a review of the plain language of Connecticut General Statutes § 9-409, we find no requirement that all petition candidates sign the same consent sheet.

If you require additional assistance, please contact our office at (860) 509-6100.

Sincerely,  
DENISE MERRILL  
By  
Theodore E Bromley  
Staff Attorney



Secretary of the State  
165 Capitol Avenue  
Hartford, CT 06106

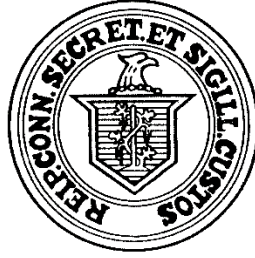
## **-NOTICE-**

### **IMPORTANT CHANGES MADE TO NOMINATING PETITION LAW**

#### **IMPACT ON MINOR PARTY CROSS-ENDORSEMENT ABILITY**

Public Act No. 13-180, effective immediately, instituted several important changes to the Connecticut General Statutes concerning the nominating petition process and the ability of a minor party to cross-endorse candidates. Below you will find an outline of the changes that pertain to petitioning and existing minor parties in both state and municipal elections.

1. **Petitioning minor party in a state election.** A candidate for a major or minor party for any office in a state election may also appear on the ballot for the same office by nominating petition if (1) a minor party circulates a nominating petition using the same party designation, (2) the minor party is otherwise qualified to nominate candidates on the same ballot, and (3) a candidate of the existing minor party received at least 15,000 votes for the office of Governor, Secretary of the State, State Treasurer, State Comptroller, or Attorney General in the previous state election for any such office.
2. **Petitioning minor party in a municipal election.** A candidate for a major or minor party for any office in a municipal election may also appear on the ballot for the same office by nominating petition if (1) a minor party circulates a nominating petition using the same party designation, (2) the minor party is otherwise qualified to nominate candidates on the same ballot, and (3) a candidate of the existing minor party received at least 15,000 votes for the office of Governor, Secretary of the State, State Treasurer, State Comptroller, or Attorney General in the previous state election for any such office.
3. **Existing minor party in a state election.** A candidate for any office to be voted on in a state election may appear on the ballot as a candidate for more than one major or minor party for the same office provided a candidate from the minor party received at least 15,000 votes in the previous state election for the office of Governor, Secretary of the State, State Treasurer, State Comptroller, or Attorney General.
4. **Existing minor party in a municipal election.** A candidate for any office to be voted on in a municipal election may appear on the ballot as a candidate for more than one major or minor party for the same office.



Office of the Secretary of the State  
165 Capitol Avenue  
Hartford, CT 06106

## MEMORANDUM OF OPINION

August 7, 2016

Attorney Michael J. Brandi  
Executive Director and General Counsel  
State Elections Enforcement Commission  
20 Trinity Street  
Hartford, CT 06106

Dear Attorney Brandi:

You have requested an opinion from this office pursuant to Connecticut General Statutes §9-3 regarding the residency requirement of an endorsed candidate for General Assembly. This opinion is issued pursuant to Connecticut General Statutes §9-3 which states, "(a) The Secretary of the State, by virtue of the office, shall be the Commissioner of Elections of the state, with such powers and duties relating to the conduct of elections as are prescribed by law and, unless otherwise provided by state statute, the Secretary's regulations, declaratory rulings, instructions and opinions, if in written form,..., shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under this title, except for chapters 155 to 158, inclusive, and shall be executed, carried out or implemented, as the case may be, provided nothing in this section shall be construed to alter the right of appeal provided under the provisions of chapter 54..."

You have inquired as to the validity of the endorsement of Mr. Thomas Burke, a candidate for the 107<sup>th</sup> Assembly District, based upon the following facts as presented by your agency: (1) On or about May 23, 2016, Mr. Burke was endorsed for the 107<sup>th</sup> Assembly District by a majority of the delegates at a district convention for the Democratic Party. (2) On or about June 1, 2016, the certificate of endorsement was timely filed with our office. (3) You assert that Mr. Burke's name has never appeared upon the enrollment list of the Democratic Party within the 107<sup>th</sup> Assembly District.

As such, you have questioned if Mr. Burke was properly endorsed because he did not meet the eligibility criteria enumerated in Connecticut General Statutes §9-400(b). You have stated that while Mr. Burke

received more than 15% of the votes at the convention and while his certificate of endorsement was properly filed with our office, it appears Mr. Burke was not eligible for endorsement in the 107<sup>th</sup> Assembly District because his name did not appear upon the last-completed enrollment list of the party within the district that he sought to represent.

It is clear from the facts presented as well as from the certificate of endorsement filed with our office that Mr. Burke was the endorsed candidate of the Democratic Party for the 107<sup>th</sup> Assembly District. As such, his endorsement would be controlled by Connecticut General Statutes §9-388 which states, in relevant part:

Whenever a convention of a political party is held for the endorsement of candidates for nomination to state or district office, each candidate endorsed at such convention shall file with the Secretary of the State a certificate, signed by him, stating that he was endorsed by such convention, his name as he authorizes it to appear on the ballot, his full residence address and the title and district, if applicable, of the office for which he was endorsed. Such certificate shall be attested by either (1) the chairman or presiding officer, or (2) the secretary of such convention and shall be received by the Secretary of the State not later than four o'clock p.m. on the fourteenth day after the close of such convention. Such certificate shall either be mailed to the Secretary of the State by certified mail, return receipt requested, or delivered in person, in which case a receipt indicating the date and time of delivery shall be provided by the Secretary of the State to the person making delivery. If a certificate of a party's endorsement for a particular state or district office is not received by the Secretary of the State by such time, such certificate shall be invalid and such party, for purposes of section 9-416 and section 9-416a shall be deemed to have made no endorsement of any candidate for such office. If applicable, the chairman of a party's state convention shall, forthwith upon the close of such convention, file with the Secretary of the State the names and full residence addresses of persons selected by such convention as the nominees of such party for electors of President and Vice-President of the United States in accordance with the provisions of section 9-175.

It is clear that this statutory section refers to the endorsement of a candidate for state or district office which is the type of office at issue here. This statutory section is also separate and distinct from Connecticut General Statutes §9-400 which details the process and eligibility requirements of a candidate who desires to challenge the endorsed candidate selected pursuant to CGS §9-388. Connecticut General Statutes §9-400(b) states, in relevant part:

(b) A candidacy for nomination by a political party to a district office may be filed by or on behalf of any person whose name appears upon the last-completed enrollment list of such party within the district the person seeks to represent that is in the office of the Secretary of the State at the end of the last day prior to the convention for the party from which the person seeks nomination and who has either (1) received at least fifteen per cent of the votes of the convention delegates present and voting on any roll-call vote taken on the endorsement or proposed endorsement of a candidate for such district office, whether or not the party-endorsed candidate for such office received a unanimous vote on the last ballot, or (2) circulated a petition and obtained the signatures of at least two per cent of the enrolled members of such party in the district for the district office of representative in Congress, and at least five per cent of the enrolled members of such party in the district for the district offices of state senator, state representative and judge of probate, in accordance with the provisions of sections 9-404a to 9-404c, inclusive. Candidacies

described in subdivision (1) of this subsection shall be filed by submitting to the Secretary of the State not later than four o'clock p.m. on the fourteenth day following the close of the district convention, a certificate, signed by such candidate and attested by either (A) the chairman or presiding officer, or (B) the secretary of the convention, that such candidate received at least fifteen per cent of such votes, and that the candidate consents to be a candidate in a primary of such party for such district office. Such certificate shall specify the candidate's name as the candidate authorizes it to appear on the ballot, the candidate's full residence address and the title and district of the office for which the candidacy is being filed. Candidacies described in subdivision (2) of this subsection shall be filed by submitting said petition not later than four o'clock p.m. on the sixty-third day preceding the day of the primary for such office to the registrar of voters of the towns in which the respective petition pages were circulated. Each registrar shall file each page of such petition with the Secretary in accordance with the provisions of section 9-404c. A petition may only be filed by or on behalf of a candidate for the district office of state senator, state representative or judge of probate who is not certified as the party-endorsed candidate pursuant to section 9-388 or as receiving at least fifteen per cent of the convention vote for such office pursuant to this subsection. A petition filed by or on behalf of a candidate for the district office of representative in Congress shall be invalid if said candidate is certified as the party-endorsed candidate pursuant to section 9-388 or as receiving at least fifteen per cent of the convention vote for such office pursuant to this subsection. Except as provided in section 9-416a, upon the expiration of the time period for party endorsement and circulation and tabulation of petitions and signatures, if any, if one or more candidacies for such district office have been filed pursuant to the provisions of this section, the Secretary of the State shall notify all town clerks within the district, in accordance with the provisions of section 9-433, that a primary for such district office shall be held in each municipality and each part of a municipality within the district in accordance with the provisions of section 9-415.

More specifically, the General Assembly references Connecticut General Statutes §9-388 within §9-400(b) and treats this section and the action taken pursuant to such section as separate processes. "A petition may only be filed by or on behalf of a candidate for the district office of state senator, state representative or judge of probate who is not certified as the party-endorsed candidate pursuant to section 9-388 or as receiving at least fifteen per cent of the convention vote for such office pursuant to this subsection." If these statutory sections were intended to be read together, there would be no reason to differentiate between a candidate who was endorsed pursuant to Connecticut General Statutes §9-388 and those who achieve the necessary threshold for a primary challenge pursuant to Connecticut General Statutes §9-400(b). In fact, using the logic that these two statutory sections must be read together would result in making Connecticut General Statutes §9-388 completely unnecessary. Certainly, an endorsed candidate could be viewed to have achieved at least 15% of the roll call of delegates at a convention thereby falling within the qualifications as outlined by Connecticut General Statutes §9-400. However, the General Assembly chose to create a separate statutory section and to create separate qualifications within the two separate statutory sections.

This separate treatment is also evidenced by other statutes as well as recent judicial decisions. Connecticut General Statutes §§9-416 and 9-416a both make reference to and differentiate between an endorsed candidate selected pursuant to Connecticut General Statutes §9-388 and those who qualify for the ballot pursuant to Connecticut General Statutes §9-400.

Connecticut General Statutes §9-416 states, in relevant part (*emphasis added*):

If (1) at a state or district convention *no person other than a party-endorsed candidate* has received at least fifteen per cent of the votes of the delegates present and voting on any roll-call vote taken on the endorsement or proposed endorsement of a candidate for a state or district office, and (2) within the time specified in section 9-400, *no candidacy for nomination by a political party to a state or district office has been filed by or on behalf of a person other than a party-endorsed candidate in conformity with the provisions of section 9-400*, no primary shall be held by such party for such office and the party-endorsed candidate for such office shall be deemed to have been lawfully chosen as the nominee of such party for such office.

Additionally, Connecticut General Statutes §9-416a states, in relevant part (*emphasis added*):

*If a party has made no endorsement of a candidate for a particular state or district office, and if within the time specified in section 9-400, a candidacy for such party's nomination to such office is filed in conformity with the provisions of said section by not more than one person, no primary shall be held by such party for such office and the person filing such candidacy shall be deemed to have been lawfully chosen as the nominee of such party for such office.*

Also, in the recent judicial decision by Judge Bellis in the matter of Gomes v. Secretary of the State, FBT-CV16-6057678, Superior Court at Bridgeport (2016), the court makes clear that for purposes of ballot access, Connecticut General Statutes §§9-388 and 9-400 are treated separately and the provisions of one statute cannot be read to be included in the other. “The Court has carefully analyzed the election law in question, including Connecticut General Statutes Section 9-400. The Court believes that the meaning of the statutory language is plain and unambiguous. Unlike 9-388 for endorsed candidate forms which was amended in 2016 to add negative language, 9-400 for 15 percent forms does not contain the negative language that, quote, such certificate shall be invalid, end quote, and such party, quote, shall be deemed to have made no endorsement, end quote, if not timely filed.” Gomes v. Secretary of the State at page 10, Lines 1-11. Although the issue in this case was whether the language that invalidates a late filed certificate of endorsement located in Connecticut General Statutes §9-388 can be used to invalidate a late filed 15% certificate filed pursuant to Connecticut General Statutes §9-400, the reasoning and unwillingness of the court to extend requirements located in one section of the statutes to another related but separate statutory section must be recognized.

Finally, this is not the first time that the General Assembly has chosen to treat similar offices in a different manner. Prior to 2003, Connecticut General Statutes treated single town state representatives differently than multi-town state representative offices. Primary petitions were available for single town races but not for multi-town races. Similarly, prior to 2016, Connecticut General Statutes allowed nominating petition candidates and minor party candidates who did not live within the district for which they sought nomination to seek office but at the same time required some major party candidates, particularly those seeking nomination pursuant to Connecticut General Statutes 9-400, to reside within the district.

Therefore, it is the opinion of this office that candidates endorsed pursuant to Connecticut General Statutes §§9-388 are not subject to the same residency and other requirements that are contained within Connecticut General Statutes §9-400.

Secretary of the State  
Elections Division Services  
165 Capitol Avenue  
Hartford, Connecticut 06106

Guidelines for Circulators of Petitions to Initiate Local Referenda

The following guidelines are based on the provisions of Section 7-9 of the General Statutes of Connecticut. Each circulator should familiarize himself or herself with the requirements of this law, and any questions should be directed to the Town Clerk.

1. Each signature on a petition must be the personal signature of the signer.
2. The circulator must know the signer or the signer must satisfactorily identify himself or herself to the circulator.
3. No individual may, under any circumstances or degree of relationship, sign a petition for another individual or sign or write the name of another individual on the petition.
4. Each signature on a petition must have been obtained within 6 months before the petition is filed.
5. Each page of the petition must contain statements that include all of the above points. The circulator must sign a statement, under penalties of false statement, that all of the statements are true. This means that the circulator may be subject to prosecution for violating the criminal law if the statements are not true.

ballot or circular to another person within a radius of seventy-five feet of any outside entrance in use as an entry to any polling place or in any corridor, passageway or other approach leading from any such outside entrance to such polling place or in any room opening upon any such corridor, passageway or approach.

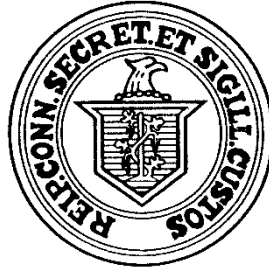
Connecticut faced the issue of what qualifies as prohibited clothing under C.G.S. §9-236(a) when candidate Linda McMahon ran for Senate and the question emerged whether voters wearing WWE clothing would be barred from entering the neutral zone. McMahon, by virtue of her involvement and her husband's position as head of the company, was clearly associated with the WWE label and name and this raised concerns that C.G.S. §9-236(a) was triggered. However, the Secretary of the State clarified that the statute is not triggered unless the clothing displays the name or image of the candidate or the campaign name or logo and the court found that the WWE logo did not fall under the prohibitions of C.G.S. §9-236(a) See, <https://www.nbcconnecticut.com/news/local/judge-wear-wwe-gear-to-polls-if-you-like/1873642/>

In approaching the November 3<sup>rd</sup>, 2020 general election, the question has been raised as to whether candidate slogans that may be closely related to a particular candidate triggers C.G.S. §9-236(a) and requires the individual to either remove the clothing or conceal it to enter the 75 foot zone. It is the opinion of this office such slogans do not trigger C.G.S. §9-236(a) as they does not solicit on behalf of a candidate or against another, nor does it display a candidate's name or photo.

This opinion is consistent with the holding of *Minnesota Voters Alliance v. Mansky*, 585 U.S. \_\_\_\_ (2018) in which the Supreme Court struck down a Minnesota law similar to C.G.S. §9-236(a) prohibiting the wearing of a "political badge, political button, or other political insignia" inside polling places. The law was challenged by voters including one who was twice denied entry to the polls because of his "Please I.D. Me" button and Tea Party Patriots shirt with the words "Don't Tread on Me" and was forced to record his vote with an election judge. *Id.* at 6. The Court found the statute was too vague because it failed to define the term "political" and accordingly was a violation of free speech as applied. *Id.* at 13. The Court reasoned "that if a State wishes to set its polling places apart as areas free of partisan discord, it must employ a more discernible approach than the one Minnesota has offered here." *Id.* at 19.

If voters appear at the polls on November 3<sup>rd</sup>, 2020 wearing clothing which displays a slogan rather than the candidate's name or photo, they should be allowed to vote as this does not trigger C.G.S. §9-236(a) . Only voters who are wearing clothing, hats, buttons or any paraphernalia which display either a candidate's name or photo or which advocates an issue on the ballot should be asked to remove the item in question before entering the polling location.





Office of the Secretary of the State  
165 Capitol Avenue  
Hartford, CT 06106

To: All Registrars of Voters

From: Legislation and Elections Administration Division

Date: March 9, 2017

Re: Calculation of Required Signatures for Primary Petitions

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This memorandum is intended to address the issue of the calculation of the required signature total for primary petitions. More specifically, this memorandum will address the timing and creation of the enrollment list created for use during the endorsement period for municipal office and the calculation of the required number of signatures for primary petitions for municipal office.

It is important to be clear that this memorandum is intended to address the calculation of the required number of signatures for primary petitions for municipal office. Primary petitions for statewide and district offices are issued by the Secretary of the State.

Connecticut General Statutes §9-400(c) defines the time and basis for the calculation of the required number of signatures for statewide and district offices as follows:

“For the purposes of this section, the number of enrolled members of a party shall be determined by the latest enrollment records in the office of the Secretary of the State prior to the earliest date that primary petitions were available. The names of electors on the inactive registry list compiled under section 9-35 shall not be counted for purposes of computing the number of petition signatures required under this section, as provided in section 9-35c.”

Connecticut General Statutes §9-406 contains similar language with regard to the calculation of signature requirements for municipal primary petitions. Connecticut General Statutes §9-406 states that the signature requirement for a municipal primary petition is:

“Five percent of the electors whose names appear upon the last-completed enrollment list of such party in such municipality or in such political subdivision... For the purpose of computing five per cent of the last-completed enrollment list, the registrar shall use the last printed enrollment list and the printed updated list, if any, of a political party certified and last completed by the

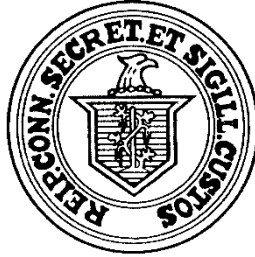
registrars of voters prior to the date the first primary petition was issued, excluding there from the names of individuals who have ceased to be electors.”

Our office has interpreted this language to mean that a municipality must generate an enrollment list of eligible party members at the beginning of the relevant endorsement period to be used at any caucus, town committee meeting or local convention for the endorsement of candidates for municipal office. This is because, it is the conduct of the caucus, town committee meeting or local convention that triggers the availability of primary petitions for municipal office.<sup>1</sup> In addition, any town that does not use a caucus, town committee meeting or local convention to endorse candidates but rather uses a “direct primary” or primary petition process as the sole manner by which candidates are endorsed must also generate an enrollment list at the beginning of the relevant endorsement period because Connecticut General Statutes §9-406 expressly requires an enrollment list to be generated prior to the date the first primary petition is issued.

The reasoning of the legislature with regard to this requirement is clear, to ensure that all candidates running for the same municipal office have the same primary petition signature requirement without regard to when each candidate applies for the primary petition.

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<sup>1</sup> **Sec. 9-409. Availability and issuance of primary petition forms for candidacies for nomination to municipal office or election as town committee members.** Petition forms for candidacies for nomination to municipal office or for election as members of town committees shall be available from the registrar beginning on the day following the making of the party’s endorsement of a candidate or candidates for such office or position, or beginning on the day following the final day for the making of such endorsement under the provisions of section 9-391, whichever comes first....



Office of the Secretary of the State  
165 Capitol Avenue  
Hartford, CT 06106

## MEMORANDUM OF OPINION

April 28, 2017

Attorney Michael J. Brandi  
Executive Director and General Counsel  
State Elections Enforcement Commission  
20 Trinity Street  
Hartford, CT 06106

**Re: Request for a Legal Opinion concerning the Minority Representation Rules in General Statutes §9-167a**

Dear Attorney Brandi:

This letter is in response to your recent request for a legal opinion from our office regarding the minority representation rules in general statutes §9-167a. More specifically, you have requested our legal opinion as to the requirements within general statutes §9-167a when there is a party switch of an elected official, mid-term, causing an excess majority and thereafter a vacancy occurs on such board by a member of the said majority.

This opinion is issued pursuant to Connecticut General Statutes §9-3 which states, "(a)The Secretary of the State, by virtue of the office, shall be the Commissioner of Elections of the state, with such powers and duties relating to the conduct of elections as are prescribed by law and, unless otherwise provided by state statute, the secretary's regulations, declaratory rulings, instructions and opinions, if in written form, and any order issued under subsection (b) of this section, shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under this title, except for chapters 155 to 158, inclusive, and shall be executed, carried out or implemented, as the case may be, provided nothing in this section shall be construed to alter the right of appeal provided under the provisions of chapter 54. Any such written instruction or opinion shall be labeled as an instruction or opinion issued pursuant to this section, as applicable, and any such instruction or opinion shall cite any authority that is discussed in such instruction or opinion...."

The relevant facts as presented in your request are as follows:

- A municipal board of education contains nine elected members. At the time of the general election, six seated members were from Party A, two from Party B, and one from Party C.
- After the board is seated, the member from Party C files a new voter registration card switching her affiliation to Party A, creating a board with seven members from Party A and two members from Party B.
- Five months after the aforementioned party switch, a member from Party A resigns, creating a vacancy.
- The board votes to fill the vacancy with an individual from Party A, resulting again in a board with seven members from Party A and two members from Party B.

Based upon the above-referenced facts, we will address your questions in the order in which they were presented.

1) Did the party switch create any legal issues concerning the minority representation rules in general statutes §9-167a?

In order to answer this question, we must first look at the statutory language itself. General statutes §9-167a provides in part:

“...the maximum number of members of any board...who may be members of the same political party, shall be as specified in the following table:

COLUMN I	COLUMN II
Total Membership	Maximum from One Party
9.....	6

...(b) Prior to any...appointment to any such body...the appointing authority...shall determine the maximum number of members of any political party who may be...appointed to such body at such...appointment. Such maximum number shall be determined for each political party in the following manner: [subtract]...the number of members of one political party who are members of such body at the time of the...appointment...from the...number specified in column II...

(e) Nothing in this section shall be construed to repeal, modify or prohibit the enactment of any...charter which provides for a greater degree of minority representation than is provided by this section...

(g) For the purposes of this section, a person shall be deemed to be a member of the political party on whose enrollment list his name appears on the date of his appointment to...any office specified...provided any person who has applied for...transfer of his name from an enrollment list shall be considered a member of the party from whose list he has so applied for...transfer for a period of three months from the date of the filing of such application...”

It has long been the opinion of this office, pursuant to general statutes §§9-3 and 9-167a(a), (b), and (g) that if a member of an elected board applies to transfer his party enrollment during his term of office, he may remain a member of the board until the end of his term. Although the transfer of party enrollment does not affect the status of the member already on the board, it may affect the filling of future vacancies that occur more than three months after the filing of the application for transfer. In addition, we must also direct your attention to the enclosed minority representation outline which this office has distributed since 1989 in which we state: “If you change party during your term, you are not removed from the board, but when the next vacancy on the board occurs and is filled, your party affiliation on the day it is filled is taken into consideration in filling the vacancy.”

When a member of a board files an application for transfer of party enrollment under general statutes §9-59, for purposes of minority representation under general statutes §9-167a(g), such person is counted as a member of his new party three months after filing his application for transfer of party enrollment. Consequently, under general statutes §9-167a(b), in the facts presented, if one of the seven members of Party A resigns, the appointing authority may not appoint a member of Party A to fill the vacancy. The vacancy occurred five months after the transfer of party enrollment and therefore the elected member who switched parties would be considered a member of his new party for purposes of general statutes §9-167a(g).

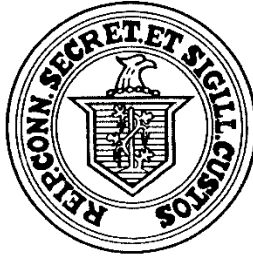
Moreover, under general statutes §9-167a(e) a home rule charter provision may not provide for a lesser degree of minority representation than is provided by general statutes §9-167a. As such, even if a home rule charter provision were to require a vacancy to be filled by a member of the same party as the vacating member, such provision could not require a board to seat members in excess of the statutorily authorized maximum number of party members allowed pursuant to general statutes §9-167a.

- 2) Did the vacancy appointment of a member of Party A create any legal issues concerning the minority representation rules in general statutes §9-167a?
  - a. If yes, what is the status of the newly appointed member?
    - i. What, if any, options exist to remove this member – if necessary- or is the appointment simply null and void and the member has no rights to the seat?

As stated in our response to question (1) above, it would be the opinion of this office that if a member of an elected board applies to transfer his party enrollment during his term of office, he may remain a member of the board until the end of his term. Although the transfer of party enrollment does not affect the status of the member already on the board, it may affect the filling of future vacancies that occur more than three months after the filing of the application for transfer. Consequently, under general statutes §9-167a(b), in the facts presented, if one of the seven members of Party A resigns, the appointing authority may not appoint a member of Party A to fill the vacancy. As such, any appoint made of a Party A member would have violated the express provisions of general statutes §9-167a. Therefore, it would be the opinion of this office that such an appointment would be “null and void” and any such appointee would simply have no right to hold the seat to which they were appointed.

Sincerely,

Theodore E Bromley  
Staff Attorney  
Office of the Secretary of the State



Office of the Secretary of the State  
165 Capitol Avenue  
Hartford, CT 06106

## MEMORANDUM OF OPINION

To: All Town Clerks and Registrars of Voters

From: Office of the Secretary of the State

Date: September 28<sup>th</sup>, 2020

Re: Political Clothing

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We are writing this opinion to ensure that all eligible voters are able to participate in the upcoming November 3<sup>rd</sup>, 2020 general election. More specifically, we are clarifying questions regarding the wearing of certain political clothing to the polls on November 3<sup>rd</sup>, 2020, including but not limited to- apparel such as hats or shirts with slogans that may be closely related to a particular candidate.

This opinion is limited to the November 3<sup>rd</sup>, 2020 general election and is issued pursuant to Connecticut General Statutes §9-3 which states, "(a)The Secretary of the State, by virtue of the office, shall be the Commissioner of Elections of the state, with such powers and duties relating to the conduct of elections as are prescribed by law and, unless otherwise provided by state statute, the secretary's regulations, declaratory rulings, instructions and opinions, if in written form, and any order issued under subsection (b) of this section, shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under this title, except for chapters 155 to 158, inclusive, and shall be executed, carried out or implemented, as the case may be, provided nothing in this section shall be construed to alter the right of appeal provided under the provisions of chapter 54. Any such written instruction or opinion shall be labeled as an instruction or opinion issued pursuant to this section, as applicable, and any such instruction or opinion shall cite any authority that is discussed in such instruction or opinion...."

In the State of Connecticut, Connecticut General Statutes §9-236 requires a 75 foot zone of neutrality surrounding a polling location. C.G.S. §9-236(a) specifically prohibits any materials which "solicit" stating:

- (a) On the day of any primary, referendum or election, no person shall solicit on behalf of or in opposition to the candidacy of another or himself or on behalf of or in opposition to any question being submitted at the election or referendum, or loiter or peddle or offer any advertising matter,