United States District Court
District of Connecticut

JANE MILLER	:	
	:	
v.	:	
	:	
THOMAS DUNKERTON, in his official capacity as the Republican Registrar of Voters for the Town of Brookfield, MATTHEW GRIMES, in his official Capacity as the Chairman of the Brookfield Republican Town Committee For the Town of Brookfield; GEORGE WALKER, in his official capacity as a Member of the Brookfield Republican Town Committee; and MARTIN FLYNN, in his official capacity as a member of the Brookfield Republican Town Committee	:	NO.: 3:16-CV-00174 (AWT)

MEMORANDUM IN SUPPORT OF PLAINTIFF'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Pursuant to Federal Rules of Civil Procedure 65(a) and (b), Plaintiff, Jane Miller ("Plaintiff"), submits this Memorandum in support of her motion for the entry of a temporary restraining order and preliminary injunction ordering Defendants Thomas Dunkerton, Matthew Grimes, George Walker, and Martin Flynn (collectively "Defendants") to immediately to restore Plaintiff's name to the rolls of the Brookfield Republican Party enrollment list while the instant case, and any appeals thereof, are pending.

INTRODUCTION

This action arises out of Defendants' decision, as members of the Brookfield Republican Town Committee and the Republican Registrar of Voters, respectively, to wrongfully, and without due process of law, remove Plaintiff's name from the rolls of the Republican Party, infringing upon her right to freedom of association and depriving her of her fundamental right to vote. In addition, this action challenges Defendants' decision as unlawful because it was motivated by gender animus. This discriminatory motivation is shown by the fact that two other male members of the Brookfield Republican Party took virtually the same actions that Defendants claim justified their expulsion of Plaintiff – a woman – from the Republican Party, and yet the Defendants have taken no steps to hold a hearing to even consider the removal of the names of these men from the Republican Party rolls. In addition, the Brookfield Republican Town Committee is dominated by men at a ratio of 4 to 1 over women, indicating a systemic problem with the committee towards women. This discriminatory treatment violates Plaintiff's right to equal protection under the law.

Unless this Court promptly grants this motion for injunctive relief reversing Defendants' action, Plaintiff will be ineligible to vote in the **March 1, 2016** Brookfield, Connecticut Republican town primary and the **April 26, 2016** Republican presidential primary, thereby suffering irreparable harm.

STATEMENT OF FACTS

1. The Defendants

Defendant Thomas Dunkerton is the Republican Registrar of Voters for Brookfield, Connecticut ("Brookfield"). *See* Complaint ("Cmp.") at ¶ 14. Defendant Matthew Grimes is the Chairman of the Brookfield Republican Town Committee. *Id.* at ¶ 15. Defendant George

Walker is a current member and former Vice-Chairman of the Brookfield Republican Town Committee. *Id.* at ¶ 16. Defendant Martin Flynn is a current member and former Chairman of the Brookfield Republican Town Committee. *Id.* at ¶ 17.

2. The Plaintiff and Her Longtime Association With The Republican Party

Plaintiff is a longtime resident of Brookfield and first registered as a Republican in 2003. See Declaration of Jane Miller ("Miller Decl..") filed contemporaneously herewith, at ¶ 2. Between the years of 2004 and 2011, Plaintiff actively campaigned for Republican candidates by, among other things, posting signs, distributing literature, making phone calls, wearing buttons, and donating money. *Id.* at ¶¶ 3-4. Plaintiff was nominated by the Brookfield Republican Party as a candidate for a seat on the Brookfield Board of Education in 2009. *Id.* at ¶ 5. She was elected to this seat and served a full four-year term. *Id.* at ¶ 6.

3. The Brookfield Republican Party's Decision Not To Endorse Plaintiff For Reelection To The Board Of Education

The Brookfield Republican Party chose to endorse a male candidate instead of Plaintiff when Plaintiff sought reelection to the Board of Education in 2013. *Id.* at ¶ 8. The Brookfield Republican Party announced its decision not to endorse Plaintiff at its caucus, which was held on July 23, 2013, the same day as the Brookfield Democratic caucus. *Id.* at ¶ 9. Plaintiff attended the Brookfield Republican Party caucus, and did not attend the Brookfield Democratic caucus. *Id.* at ¶ 9. The Brookfield Republican Town Committee nominated only one woman to run for an elected position at its July 2013 caucus. *Id.* at ¶ 8.

4. Plaintiff's Bid For A Seat On The Brookfield Board Of Finance As An Unaffiliated Voter

Despite failing to secure the endorsement of the Brookfield Republican Party for reelection to her position on the Board of Education, Plaintiff wanted to continue serving her community as a public official, so she sought a seat on the Brookfield Board of Finance, running

as an unaffiliated voter on the Democratic slate. *Id.* at ¶¶ 10, 13. Since it was impossible for her to seek election as a member of Republican Party (i.e. the party that refused to endorse or nominate her), on July 24, 2013, Plaintiff changed her party affiliation to "Unaffiliated." *Id.* at ¶¶ 13, 15.

5. Plaintiff's Unbroken Support For The Principles Of The Republican Party And Her Deliberate Decision Not To Join The Democratic Party

In registering as an "Unaffiliated" voter, Plaintiff made a deliberate decision not to join the Democratic Party or any other party. *Id.* at ¶ 15. Plaintiff reenrolled as a Republican effective December 4, 2013. *Id.* at ¶¶ 17, 18. Plaintiff's form for reregistration as a Republican was accepted and initialed by Defendant Dunkerton. *Id.* at ¶ 18. Since the time that she first registered as a Republican, Plaintiff has always supported the principles and values of the Republican Party, even during the brief six month period when she was registered as "Unaffiliated." *Id.* at ¶ 16. The Brookfield Democratic Party did not endorse Plaintiff at their caucus, although they did do so at a later time, and Plaintiff was not elected to the Brookfield Board of Finance as an "Unaffiliated" voter on the Democratic Party slate. *Id.* at ¶¶ 11-12, 14.

6. Defendants' Conspiracy To Forcibly Disaffiliate Plaintiff From The Republican Party

At the Brookfield Republican Party meeting in January 2015, party members in attendance discussed the possibility of forcibly disaffiliating Plaintiff from the Republican Party pursuant to C.G.S. §§ 9-60 and 9-61. *Id.* at ¶ 20. The attendees, however, voted unanimously against such disaffiliation. *Id.* at ¶¶ 21-22. Despite the results of the vote at this meeting, though, Defendants later continued to conspire to disaffiliate Plaintiff from the Republican Party. *Id.* at ¶ 23. On March 19, 2015, Defendants issued Plaintiff a citation summoning her for a closed hearing to consider Plaintiffs' forcible disaffiliation from the Republican Party pursuant to C.G.S. §§ 9-60 *et seq*. *Id.* at ¶ 24. This meeting was held at the Brookfield Town Hall on April

9, 2015. *Id.* at ¶ 25. The meeting was presided over by Defendants, who – on the one hand – accused Plaintiff of not being a good-faith member of the Republican Party and then – on the other hand – sat in judgment of Plaintiff, concluding that their accusations were well-founded and that, as punishment, Plaintiff's name should therefore be removed from the Republican Party rolls. *Id.* at ¶ 27.

7. Defendants' Discriminatory Decision To Forcibly Disaffiliate Plaintiff, A Woman, From The Republican Party But Not To Disaffiliate Two Similarly Situated Men

On or about April 20, 2015, Defendants issued their decision forcibly dis-affiliating Plaintiff from the Republican Party. *Id.* at ¶ 28. In this decision, Defendants claimed that there was "reasonable proof" that Plaintiff was "a candidate for office under the designation of another party" and was "actively affiliated" with the Democratic Party. *Id.* at ¶ 29. Defendants did not find "reasonable proof" of the third act for which Plaintiff was cited, "knowingly being a candidate at any primary or caucus of another party." *Id.* at ¶ 30.

After Plaintiff was disaffiliated from the Republican Party, two male former members of the Brookfield Republican Party also sought to be re-affiliated with the Republican Party after having changed their political affiliation to "Unaffiliated" and after having run for office as Democratic Party candidates. *Id.* at ¶ 31-33. The Republican Party re-affiliated both of these men and has not forcibly disaffiliated them or even held a hearing to consider doing so. *Id.* at ¶ 34.

ARGUMENT

Injunctive relief is appropriate if the party seeking it can "demonstrate (1) irreparable harm absent injunctive relief; (2) either a likelihood of success on the merits, or a serious question going to the merits to make them a fair ground for trial, with a balance of hardships tipping decidedly in the plaintiff's favor; and (3) that the public's interest weighs in favor of

granting an injunction." *Red Earth LLC v. United States*, 657 F.3d 138, 143 (2d Cir. 2011) (internal quotations and citations omitted).

In this case, all of the conditions for the issuance of injunctive relief exist. First, the evidence overwhelmingly supports the conclusion that Plaintiff is likely to succeed on the merits of all her claims. At the very least, there are sufficiently serious questions going to the merits that make them fair ground for trial. Second, it is readily apparent that Plaintiff will suffer irreparable harm in the absence of prompt injunctive relief, since without such relief, Plaintiff will lose her only chance to exercise her right to cast a ballot for the candidates of her choosing in the Republican primaries scheduled for this March and April. Moreover, this extreme and irreparable harm facing Plaintiff would overwhelmingly outweigh any potential injury Defendants could possibly suggest might befall them as a result of this Court temporarily restoring to a single person her rights as a citizen to vote and to associate with the political party of her choosing. Finally, the public interest weighs heavily in favor of issuing injunctive relief to permit Plaintiff to rejoin the Republican Party and to cast her ballot in the upcoming Republican primaries.

I. PLAINTIFF WILL LIKELY PREVAIL ON THE MERITS OF HER CLAIMS[1]

For the reasons expounded upon below, Plaintiff, in all likelihood, will succeed on all of her claims.

[1] A similar action was previously brought in Connecticut State court (the "State Action"). However, this federal case has causes of actions that differ from the State Action. Most notably the State Action did not allege a violation of Ms. Miller's Equal Protection rights, as this cause of action is based on events occurring after the State Action was filed. The State Action has now been taken up by the Connecticut Supreme Court, although the appeal will not be decided until well after the upcoming primaries.

A. Plaintiff is likely to succeed on her claim that Defendants violated 42 U.S.C. § 1983

The first four counts of Plaintiff's Complaint allege Defendants' violation of 42 U.S.C. § 1983 ("§ 1983"). This statutory provision accords a civil right of action to victims injured by any "person who, under color of any statute . . . of any State . . . subjects . . . any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983. The Second Circuit has explained that "[a] § 1983 claim has two essential elements: (1) the defendant acted under color of state law; and (2) as a result of the defendant's actions, the plaintiff suffered a denial of her federal statutory rights, or her constitutional rights or privileges." *Annis v. County of Westchester*, 136 F.3d 239, 245 (2d Cir. 1998).

With respect to the first element, "[i]n cases under § 1983, 'under color' of law has consistently been treated as the same thing as the 'state action' required under the Fourteenth Amendment." *United States v. Price*, 383 U.S. 787, 794 n.7 (1966). The Supreme Court has held that if "privilege of membership in a [political] party . . . is also the essential qualification for voting in a primary to select nominees for a general election, the State makes the action of the [political] party the action of the State." *Smith v. Allwright*, 321 U.S. 649, 664-65 (1944) (overturning Texas law authorizing Democratic Party to use white primaries). Consequently, if "a private political party acts pursuant to its statutory authority in influencing state and local primary elections, it is subject to private suit under § 1983 if its actions contravene the U.S. Constitution." *Thompson v. Rizzitelli*, No. 3:10cv71, 2011 U.S. Dist. LEXIS 33060, at *11 (D. Conn. March 29, 2011).

In this case, Defendants – acting on behalf of the Republican Party – used their statutory authority under C.G.S. § 9–60 *et seq.* to influence Plaintiff's ability to participate in Republican

primary elections. If, as a result of this, Plaintiff was deprived of her constitutional rights, Defendants would be liable to Plaintiff under § 1983. For the reasons explained below, Plaintiff is likely to succeed in showing that Defendants violated several of her constitutionally protected rights.

a. Freedom of Association

The Supreme Court has recognized "that freedom to associate with others for the common advancement of political beliefs and ideas is . . . activity protected by the First and Fourteenth Amendments" to the United States Constitution. *Kusper v. Pontikes*, 414 U.S. 51, 56-57 (1973). "The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom." *Id.* at 57.

In this case, the express purpose of Defendants' actions was to deprive Plaintiff of her right to associate with the party of her choice, the Republican Party. In light of this, Plaintiff can likely succeed in showing Defendants' actions deprived her of a constitutional right to free association, giving rise to Defendants' liability under § 1983.

b. Right to vote

The Supreme Court has held that "the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections." *Reynolds v. Sims*, 377 U S 533, 554 (1964). It has also recognized that the constitutional right to vote extends not just to general elections but also to primaries. *United States v. Classic*, 313 U.S. 299, 318 (1941) ("the right of the elector to have his ballot counted at the primary is . . . included in the right protected by Article I, § 2" of the United States Constitution).

In Connecticut, citizens cannot vote in the Republican Party's primary unless they are on the Republican Party's enrollment list. *See* C.G.S. § 9-431. In light of this, persons, such as Plaintiff, forcibly disaffiliated from the Republican Party cannot vote in the Republican Party

primary. Thus, Plaintiff is likely to succeed in showing that Defendants' actions in removing her from the Republican Party rolls violated her constitutionally protected right to vote, making Defendants liable to her under § 1983.

c. Right to due process

The Fourteenth Amendment of the United States Constitution prohibits states from "depriv[ing] any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1. "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

Here, Plaintiff will likely succeed in showing that C.G.S § 9-60 *et seq.*, the statutory provisions Defendants used to forcibly disaffiliate Plaintiff from the Republican Party, are vague. For instance, the standard required by C.G.S. § 9-61 for establishing that a voter should have his name removed from the rolls of a party is "reasonable proof" that she committed one of an enumerated list of acts thought to show party disloyalty. The meaning of "reasonable proof" is undefined in the statute, and the standard is unusual, however. Unlike traditional standards such as "preponderance of the evidence" or "beyond a reasonable doubt," there is scant authority upon which a voter could rely to ascertain the meaning of this standard. C.G.S. § 9-61 also lists "active affiliation" with another political party as one of the grounds upon which a decision to disaffiliate a voter from a party may be based, but the statute fails to define for voters what "active affiliation" actually means. In light of these, and many other, undefined terms in C.G.S. § 9-60 *et seq.*, Plaintiff will likely be successful in showing that the statutory regime is vague, and that Defendants' enforcement of these provisions against her violated her rights to due process.

d. Right to equal protection

The Fourteenth Amendment to the United States Constitution also prohibits a state from "deny[ing] to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1. "[S]tate-sponsored gender discrimination violates equal protection unless it serves important governmental objectives and . . . the discriminatory means employed are substantially related to the achievement of those objectives." *United States v. Morrison*, 529 U.S. 598, 620 (2000).

In this case, Defendants forcibly disaffiliated Plaintiff, a woman, from the Republican Party, while taking no action against two male members of the Republican Party whose conduct was substantially similar to the conduct upon which Defendants based their decision to remove Plaintiff from the Republican Party rolls. In light of this, Plaintiff will likely succeed in showing that Defendants' actions constituted gender discrimination. Defendants will be not likely be successful in proffering important governmental objectives that required Plaintiff to be forcibly disaffiliated from the Republican Party while similarly situated male Republican Party members did not suffer the same punishment.

B. Plaintiff is likely to succeed on her claim that Defendants violated 42 U.S.C. § 1985

The final count of Plaintiff's Complaint alleges that Defendants violated 42 U.S.C. § 1985 ("§ 1985"), and Plaintiff is likely to succeed on this claim as well. The Second Circuit has explained that a "conspiracy claim under Section 1985(3) has four elements: (1) a conspiracy, (2) for the purpose of depriving any person or class of persons of the equal protection of the laws or of equal privileges and immunities under the laws, (3) an act in furtherance of the conspiracy,

and (4) whereby a person is injured in his person or property or deprived of a right or privilege of a citizen." *Turkmen v. Hasty*, 789 F.3d 218, 262 (2015).

In this case, Defendants met and conspired to deprive Plaintiff of her right to associate with the Republican Party and to vote in Republican Party primaries. Two male Republican Party members suffered no negative consequences for engaging in conduct substantially similar to that which gave rise to Defendants' decision to disaffiliate Plaintiff from the Party. In light of this, Plaintiff will likely be successful in showing that the purpose of Defendants' conspiracy was to deprive Plaintiff of her associational and voting rights on the basis of her gender in violation of her right to equal protection of the laws. Defendants took action in furtherance of this conspiracy by removing Plaintiff's name from the Republican Party rolls. Given all this, it seems likely that Plaintiff will succeed in establishing Defendants' liability under § 1985.

II. PLAINTIFF WILL SUFFER IRREPARABLE HARM IF DEFENDANTS ARE NOT ORDERED TO REINSTATE HER NAME ON THE REPUBLICAN PARTY ROLLS

To establish that she will suffer irreparable harm, Plaintiff "must demonstrate that absent a preliminary injunction [she] will suffer an injury that is neither remote nor speculative, but actual and imminent, and one that cannot be remedied if [the] court waits until the end of trial to resolve the harm." *Freedom Holdings, Inc. v. Spitzer*, 408 F.3d 112, 114 (2d Cir. 2005) (internal citations and quotations omitted).

The fundamental purpose of Section 1983 is to protect the civil rights, which include voting rights, of the Citizens of the United States. *Mitchum v. Foster*, 407 U.S. 225, 243 (1972); *Owen v. City of Independence*, 445 U.S. 622, 636 (1980). Because violations of civil rights cannot be properly compensated with money damages, the federal courts have been authorized by Congress to effectuate this fundamental purpose by awarding injunctive relief against these violations of Section 1983.

In this case, the next Republican primary is less than two weeks away. If this Court declines to grant the injunctive relief Plaintiff is seeking, she will suffer imminent and actual harm arising from her inability to cast a ballot for the candidate of her choosing in this upcoming election. Following this primary election day, there will be no course of action available to the Court to adequately remedy Plaintiff's loss of her voting rights. For these reasons, injunctive relief is appropriate in this case.

III. THE PUBLIC INTEREST WEIGHS IN FAVOR OF GRANTING INJUNCTIVE RELIEF

To obtain injunctive relief, a party must show that "that the public's interest weighs in favor of granting an injunction." *Red Earth LLC*, 657 F.3d at 143 (internal quotations and citations omitted).

In a representative democracy such as ours, the public is best served by judicial decisions which most fully give effect to the ideal that the policies of our government officials should reflect the will of the voters who elected them into office. Statutory provisions, such as those at issue here, which place arbitrary and unreasonable barriers in the way of voters expressing their preferences through the ballot box, thus, work against the public interest by distorting election results.

"Our system of government is based on the consent of the governed, and such consent is only illusory when voters are prevented by artificial restrictions for significant periods of time from changing political parties even though events or the actions of elected representatives may have convinced the voter that a change in party allegiance is warranted." *Gordon v. Exec. Comm. of Democratic Party*, 335 F. Supp. 166, 169 (D.S.C. 1971). The perversion of the popular will resulting from such restrictive laws is all the more injurious to the public when such laws are applied, as they were here, to discriminate against a specific class of voters (i.e. women)

and to deprive citizens of their voting rights without affording them due process of law. In light of this, it is in the public interest for this Court to issue the requested injunction so that Plaintiff can vote in the upcoming Republican primaries while the constitutionality of C.G.S. §§ 9-60 *et seq.* and the lawfulness of its application in this particular case is more fully litigated.

IV. THE BALANCE OF HARM WEIGHS IN FAVOR OF INJUNCTIVE RELIEF

In considering the appropriateness of injunctive relief, a court should balance the possible harm to plaintiff from denying the injunction against the possible harm to the defendant from granting it. *See, e.g., Amoco Productions Co. v. Vill. Of Gambell, Alaska*, 480 U.S. 531 (1987). For the reasons stated, the Plaintiff will clearly suffer irreparable harm if she is prevented from exercising her constitutional rights, including, but not limited to, her right to vote and her right to associate. Once the chance to exercise her right to vote in these primaries has passed, no court can order that her vote be counted. The requested injunctive relief will merely preserve the status quo, until such a time as the Court can rule on the constitutionality of the statute, and whether the statue was applied constitutionally with respect to Ms. Miller.

In contrast, the Defendants will suffer no harm, either monetarily or to their constitutional rights. In the event that the Plaintiff does not prevail, Defendants will not be harmed by allowing Ms. Miller to cast her vote in the upcoming primary elections. Any argument by the Defendants that the proposed injunctive relief would infringe on their right to associate is belied by the facts. It is the Defendants, and not the Republican Party and its members that have a problem with Ms. Miller. It is the Defendants' personal animus and bias against the Ms. Miller that has motivated their unconstitutional application of a facially unconstitutional statute to effect a dis-affiliation of Ms. Miller, not the desire of the members of the Brookfield Republican Party to freely associate.

If, as we allege, the statutory scheme is unconstitutional, the defendants cannot be harmed by the avoidance of this constitutional injury. *See Coalition for Economic Equity v. Wilson*, 122 F.3d 692 (9th Cir. 1997), *cert denied*, 522 U.S. 963 (1997).

CONCLUSION

For the abovementioned reasons, the Court should grant Plaintiff's motion for the entry of a temporary restraining order and issue a preliminary injunction ordering the Defendants to immediately restore Plaintiff's name to the Republican Party enrollment list while the instant case, and any appeals thereof, are pending.

Respectfully submitted,

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