UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JANE MILLER	:	NO.: 3:16-CV-00174 (AWT)
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	:	MARCH 29, 2016

MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(6), the undersigned defendants, Thomas Dunkerton and Martin Flynn, hereby move this Court to dismiss all claims directed toward them in plaintiff's Complaint, dated February 3, 2016 because such claims are barred by the doctrines of res judicata, collateral estoppel, *Younger* abstention, *Colorado River* abstention, and failure as a matter of law, as set forth below (and as more fully set forth and articulated in their supporting Memorandum of Law of even date):

1. All claims against Defendant Dunkerton are barred by the doctrine of res judicata;
2. The claims set forth in Counts One, Two, Three, and Four against Defendants Dunkerton and Flynn are barred by the doctrine of collateral estoppel;

3. All claims are barred by the *Younger* abstention doctrine;
4. All claims are barred by the *Colorado River* abstention doctrine;
5. All claims against Defendant Flynn fail as a matter of law under the *Iqbal* pleading requirements; and
6. Plaintiff's equal protection claim fails as a matter of law under the *Iqbal* pleading requirements.

WHEREFORE, the defendants, Thomas Dunkerton and Martin Flynn, respectfully request that this Court grant the instant motion and dismiss all claims directed towards them as set forth in the plaintiff's Complaint.

DEFENDANTS,
THOMAS DUNKERTON and MARTIN FLYNN

By /s/ Katherine E. Rule

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CERTIFICATION

I hereby certify that on March 29**,** 2016, a copy of foregoing Motion To Dismiss was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by U.S. Mail to as indicate on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

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MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

The defendants, Thomas Dunkerton ("Dunkerton") and Martin Flynn ("Flynn") (collectively "defendants"), respectfully submit this memorandum of law in support of their Motion to Dismiss.

I. BACKGROUND

The five count complaint ("Complaint") in this case was filed on February 3, 2016. Jane Miller ("plaintiff") seeks declaratory and injunctive relief along with damages pursuant to her challenge to the constitutionality of Connecticut General Statues § 9-60, et seq. The plaintiff claims that the defendants, Dunkerton, Flynn, Matthew Grimes ("Grimes"), and George Walker ("Walker") have, pursuant to 42 U.S.C. § 1983, violated her right to freedom of association, her right to vote, her due process rights, and her

equal protection rights. She also claims that Dunkerton and Grimes conspired to violate her civil rights pursuant to 42 U.S.C. § 1985.

This is not the first time plaintiff has litigated these issues. On April 30, 2015, plaintiff filed a complaint in the Superior Court of Connecticut against Dunkerton. (See, Judicial Branch Online Docket)(**Exhibit 1**.) In her complaint, plaintiff alleged that Dunkerton improperly and unlawfully removed her from the enrollment list of the Brookfield Republican Party pursuant to C.G.S. § 9-60, et seq. (See, Plaintiff's Complaint dated April 30, 2015, ¶ 3)(**Exhibit 2**.) A decision was issued by the Court (Truglia, J.) in that case on August 18, 2015. (See, Memorandum of Decision)(**Exhibit 3**.) The Court (Truglia, J.), upon hearing testimony and reviewing evidence from both parties, made numerous findings of fact including that plaintiff joined the Brookfield Republican Party (the "Party") in 2002, and in 2009 she ran successfully for a seat on the Brookfield Board of Education as a Republican. *Id.* at 2.

Prior to this and during her time on the Board of Education, plaintiff was "an active and loyal party member." *Id.* In 2013, plaintiff was informed by the Party that she was not likely to be nominated again for a Board of Education position; she attended the caucus in July 2013 hoping to receive a floor nomination to the Board of Finance, which she did not receive. *Id.* That same day, July 23, 2013, plaintiff filed a SEEC 1 form, registering herself as an unaffiliated candidate for the Board of Finance, certifying that her campaign would be sponsored by the Brookfield Democratic Town Committee. *Id.* at 2-3. The Plaintiff did not attend the Brookfield Democratic nominating caucus, but did learn that she was endorsed to run on the November 5, 2013 ballot on the Democratic line. *Id.* at 3. On July 24, 2013, plaintiff changed her party affiliation from Republican to

unaffiliated. *Id.* During the campaign, plaintiff's name appeared on campaign literature distributed by the Brookfield Democratic Party, and she worked to promote her candidacy and the candidacies of other Democratic nominees by permitting lawn signs to be placed on her property. *Id.* She also distributed Democratic campaign literature at polling places on election day. *Id.* The plaintiff did not prevail in her bid for a seat on the Board of Finance, losing to a Republican candidate. *Id.*

On December 3, 2013, plaintiff filed a party enrollment change form declaring her intention to be re-enrolled in the Brookfield Republican Party, which was allowed. *Id.* In January 2015, plaintiff attended a Republican Town Committee meeting, but in February 2015 she supported a Democratic candidate for state representative and made the maximum financial contribution to his campaign. *Id.* On March 19, 2015, Dunkerton issued a citation to plaintiff requesting her to appear before himself and Grimes and show cause as to why her name should not be erased from the Brookfield Republican Party enrollment list. *Id.* at 3-4.

Following the hearing, Dunkerton and Grimes found "reasonable proof" that plaintiff had been a candidate recently for another party and that she was on the ballot as a Democrat; had she been elected she would have been by law recognized as a Democrat. *Id.* at 4. It was further determined that plaintiff actively worked against the Republican Party and was an ally of the Democratic Party. *Id.* Dunkerton and Grimes determined that one or more of these acts was committed within two years of the March 19, 2015 date when the citation was originally issued; this served as prima facie evidence in support of plaintiff's discretionary erasure from the enrollment list. *Id.* at 5.

Dunkerton sent plaintiff a letter dated April 23, 2015 notifying her of the decision to erase her name from the Party's enrollment list. *Id.* Plaintiff requested that her name be returned to the list, and said request was denied. *Id.*

Plaintiff brought a petition pursuant to C.G.S. § 9-63 on April 30, 2015, appealing her expulsion from the Party to Superior Court. The Court (Truglia, J.) held a hearing on the matter on July 27, 2015, and issued a decision on August 18, 2015. (See, Judicial Branch Online Docket)(**Exhibit 1**.) The Court (Truglia, J.) found that there was "more than sufficient evidence from which the court can conclude that the plaintiff did commit specific acts under § 9-61 which constitute prima facie evidence supporting the defendant's discretionary erasure or exclusion of the plaintiff from the enrollment list." (See, Memorandum of Decision at 7)(**Exhibit 3**.) The Court also addressed plaintiff's various constitutional claims, finding they were all without merit. Thus, the Court denied plaintiff's petition for a writ of mandamus. The plaintiff appealed this decision on September 8, 2015 to the Appellate Court. (See, Judicial Branch Online Docket) (**Exhibit 1**.) On January 12, 2016 the Connecticut Supreme Court transferred that appeal from the Appellate Court to itself, and that matter remains pending. *Id.*

The defendants contend that plaintiff's action before this Court is barred by the doctrines of res judicata and collateral estoppel, the *Younger* abstention doctrine, the *Colorado River* abstention doctrine, and that various claims fail as a matter of law.

II. LAW AND ARGUMENT

A. STANDARDS OF REVIEW FOR MOTION TO DISMISS PURSUANT TO 12(B)(6), RES JUDICATA, AND COLLATERAL ESTOPPEL

"On a motion to dismiss for failure to state a claim under Rule 12(b)(6)…, the Court should 'construe the complaint in the light more favorable to the plaintiff,

accepting the complaint's allegations as true.'" *Patrowicz v. Transamerica HomeFirst, Inc.*, 359 F.Supp. 2d 140, 144 (D. Conn. 2005) (*citing Todd v. Exxon Corp.*, 275 F.3d 191, 197 (2d Cir. 2001)). A motion to dismiss is meant "to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof." *Ryder Energy Distribution Corp. v. Merrill Lynch Commodities, Inc.*, 748 F.2d 774, 779 (2d Cir. 1984). "A court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S.Ct. 2229 (1984) (*citing Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99 (1957)).

"The defense of res judicata or release may be raised on a Rule 12(b)(6) motion to dismiss if 'all relevant facts are shown by the court's own records.'" *Patrowicz,* 359 F. Supp. 2d at 144 (*quoting AmBase Corp. v. City Investing Co. Liquidating Trust*, 326 F.3d 63, 72 (2d Cir. 2003) (affirming dismissal of complaint on res judicata grounds); *see*, *e.g.*, *Waldman v. Village of Kriyas Joel*, 207 F.3d 105, 114 (2d Cir. 2000); *Conopco, Inc. v. Roll Int'l*, 231 F.3d 82, 86 (2d Cir. 2000); *Hackett v. Storey*, No. 3:03CV395 (JBA), 2003 WL 23100328 (D. Conn. Dec. 30, 2003). Furthermore, the court may consider "documents attached to the complaint as exhibits or incorporated in it by reference, to matters of which judicial notice may be taken or to documents either in plaintiffs' possession or of which plaintiffs had knowledge and relied on in bringing suit." *Brass v. Am. Film Techs, Inc.*, 987 F.2d 142, 150 (2d Cir. 1993). The court also "may judicially notice prior pleadings, orders, judgments, and other items appearing in the court records of prior litigation that are related to the case before the Court." *Patrowicz*, 359 F. Supp. 2d at 144 (*citing AmBase Corp.*, 326 F.3d at 72-73).

Similarly, the defense of collateral estoppel may also be raised in a motion to dismiss under Rule 12(b)(6). *See Sullivan v. Hyland*, 647 F. Supp. 143, 152 (D. Conn. 2009) ("even though res judicata and collateral estoppel 'are affirmative defenses,' *Flaherty v. Lang*, 199 F.3d 607, 612 (2d Cir. 1999), they may still be raised on a motion to dismiss under Rule 12(b)(6)); *Weizmann Institute of Science v. Neschis*, 229 F.Supp.2d 234, 247 (S.D.N.Y. 2002) ("It is well-settled that 'collateral estoppel can be raised and considered via a pretrial motion to dismiss'" (*quoting HBP Assocs. v. Marsh*, 893 F.Supp. 271. 276 (S.D.N.Y. 1995))).

B. ALL OF PLAINTIFF'S CLAIMS IN THE PRESENT CASE COULD HAVE AND SHOULD HAVE BEEN BROUGHT IN HER PRIOR STATE CASE, AND, THEREFORE, ARE BARRED BY THE DOCTRINE OF RES JUDICATA

Both the Full Faith and Credit Clause of the United States Constitution, U.S. Const. art. IV, § 1, and the corresponding Full Faith and Credit statute, 28 U.S.C. § 1738, require that a federal court accord a state court judgment the same preclusive effect which it would merit under the law of the state from which it originated. *See Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81, 104 S.Ct. 892 (1984); *Kremer Chem. Constr. Corp.*, 456 U.S. 461, 466, 102 S.Ct. 1883 (1982); and *Hoblock v. Albany Co. Bd. of Elec.*, 422 F.3d 77, 93 (2d Cir. 2005).

"Once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case." *Allen v. McCurry*, 449 U.S. 90, 94, 101 S.Ct. 411 (1980) (applying res judicata to a Section 1983 action).[1] "To accord full faith and credit

[1] Recognizing the value of these doctrines to the justice system and to our notion of federalism, the Supreme Court has held that, despite the adjustments of judicial power effectuated by § 1983, in enacting that statute Congress did not intend to contravene the common law preclusion rules of res judicata and collateral estoppel or to repeal the full faith and credit federal courts must accord state court judgments

to a given state-court judgment, the court must at least apply that state's principles of res judicata and collateral estoppel." *Town of Deerfield v. FCC*, 992 F.2d 420, 429 (2d Cir. 1993); *see also Martin v. Town of Westport*, 558 F.Supp.2d 228, (D.Conn. 2008) (holding that Connecticut, rather than federal, principles of res judicata applied to issue of preclusive effect of judgment of Connecticut court). Res judicata applies equally to constitutional claims arising under Section 1983 which could have been argued in an earlier state court proceeding. *See Migra v. Warren City School Dist.*, 465 U.S. 75 at 84-85, 104 S.Ct. 892.

"[U]nder the doctrine of res judicata, or claim preclusion, a former judgment on a claim, if rendered on the merits, is an absolute bar to a subsequent action on the same claim . . . [or any claim based on the same operative facts that] might have been made." *Linden Condominium Ass'n., Inc. v. McKenna*, 247 Conn. 575, 594, 726 A.2d 502 (1999) (Internal quotations marks omitted; emphasis added). In other words, "[a] plaintiff cannot, under the doctrine of res judicata, withhold certain claims from one action and then raise those claims in a later action when an adequate opportunity existed to raise all claims in one action." *Daoust v. McWilliams*, 49 Conn. App. 715, 726, 716 A.2d 922 (1998). Thus, "[t]he appropriate inquiry with respect to [claim] preclusion is whether the party had an adequate opportunity to litigate the matter in the earlier proceeding . . . . " *Sotavento Corp. v. Coastal Pallet Corp.*, 102 Conn. App. 828, 834, 927 A.2d 351 (2007) (Internal quotation marks omitted).

The Connecticut Supreme Court has noted:

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pursuant to 28 U.S.C. § 1738. *See Allen*, 449 U.S. at 97-98, 101 S.Ct. 411 ("Section 1983 creates a new federal cause of action. It says nothing about the preclusive effect of state-court judgments.") For these reasons, federal district courts are obliged to accord due recognition to the preclusive effect of state court judgments that adjudicate federal rights after full and fair consideration, even if the state court's decision may have been erroneous. *See Id.* at 101, 104, 101 S.Ct. 411.

> The doctrine of res judicata holds that an existing final judgment rendered upon the merits without fraud or collusion, by a court of competent jurisdiction, is conclusive of causes of action and of facts or issues thereby litigated as to the parties and their privies in all other actions in the same or any other judicial tribunal of concurrent jurisdiction.... *If the same cause of action is again sued on, the judgment is a bar with respect to any claims relating to the cause of action which were actually made or which might have been made.*

Powell v. Infinity Ins. Co., 282 Conn. 594, 600-01, 922 A.2d 1073 (2007) (Internal quotation marks omitted; emphasis added).

It is a "well established precept that res judicata bars not only subsequent relitigation of a claim previously asserted, *but subsequent relitigation of any claims relating to the same cause of action ... which might have been made.*" *Tuccio Custom Homes, LLC v. Lamonica*, 116 Conn. App. 527, 530, 975 A.2d 1280 (2009) (Per curiam) (Internal quotation marks and citation omitted; emphasis added) (*quoting Isaac v. Truck Service, Inc.*, 253 Conn. 416, 421, 752 A.2d 509 (2000)); *see also, Massey v. Town of Branford*, 119 Conn. App. 453, 464–65, 988 A.2d 370, *cert. denied*, 295 Conn. 921 (2010). "The claim that is extinguished by the judgment in the first action includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose." *Comm'r of Envtl. Prot. v. Conn. Bldg. Wrecking Co.,* 227 Conn. 175, 189-90, 629 A.2d 1116 (1993) (Internal quotation marks and alterations omitted); *see also*, *Weiss v. Weiss*, 297 Conn. 446, 459, 998 A.2d 766 (2010).

"In applying the transactional test, [the Supreme Court] compare[s] the complaint in the second action with the pleadings and the judgment in the earlier action." *New England Estates, LLC v. Branford*, 294 Conn. 817, 843, 988 A.2d 229 (2010) (Internal quotation marks omitted). "[E]ven though a single group of facts may give rise to rights

for several different kinds of relief, it is still a single cause of action." *Weiss*, 297 Conn. at 461-62, 998 A.2d 766 (Internal quotation marks omitted); *see also, Lighthouse Landings, Inc. v. Connecticut Light and Power Co.*, 300 Conn. 325, 349, 15 A.3d 601 (2011).

"Res judicata . . . should be applied as necessary to promote its underlying purposes. These purposes are generally identified as being (1) to promote judicial economy by minimizing repetitive litigation; (2) to prevent inconsistent judgments which undermine the integrity of the judicial system; and (3) to provide repose . . . ." *Efthimiou v. Smith*, 268 Conn. 499, 506, 846 A.2d 222 (2004) (Internal quotation marks omitted); *see also*, *Cumberland Farms, Inc. v. Groton*, 262 Conn. 45, 59, 808 A.2d 1107 (2002) ("The judicial [doctrine] of res judicata ... [is] based on the public policy that a party should not be able to relitigate a matter which it already has had an opportunity to litigate"); *Nielsen v. Nielsen*, 3 Conn. App. 679, 684, 491 A.2d 1112 (1985) ("The public's interest in avoiding unnecessary litigation and conserving scarce judicial resources is too powerful to ignore"); *DeForest & Hotchkiss Co. v. Planning and Zoning Commission*, 152 Conn. 262, 270, 205 A.2d 774 (1964) ("Certainly, the unnecessary use of multiple actions in this day of crowded dockets is not to be encouraged").

Our Supreme Court reaffirmed that the applicable test under Connecticut law to be applied to claims of res judicata is as follows:

> We have adopted a transactional test as a guide to determining whether an action involves the same claim as an earlier action so as to trigger operation of the doctrine of res judicata. [T]he claim [that is] extinguished [by the judgment in the first action] includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose. What factual grouping constitutes a transaction, and what groupings constitute a series, are to be determined pragmatically, giving

> weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage.... In applying the transactional test, we compare the complaint in the second action with the pleadings and the judgment in the earlier action.

New England Estates, LLC, 294 Conn. at 843, 988 A.2d 229 (Internal citation and quotation marks omitted; emphasis added); *see also Powell*, 282 Conn. at 604-5, 922 A.2d 1073.

Our Supreme Court has had the opportunity to further delineate the parameters of the foregoing doctrine. For example, in *Duhaime v. American Reserve Life Ins. Co.*, 200 Conn. 360, 364-65, 511 A.2d 333 (1986), the Court held that res judicata extinguishes claims despite the fact that "the plaintiff is prepared in the second action [1] [t]o present evidence or grounds or theories of the case not presented in the first action, or [2] [t]o seek remedies or forms of relief not demanded in the first action." The "well settled rule" is that:

> [a] judgment is final not only as to every matter which was offered to sustain the claim, but also as to any other admissible matter which might have been offered for that purpose . . . The rule of claim preclusion prevents reassertion of the same claim regardless of what additional or different evidence or legal theories might be advanced in support of it.

Powell, 282 Conn. at 607, 922 A.2d 1073 (Internal quotation marks and citations omitted); *see also*, *Delahunty v. Massachusetts Mutual Life Ins. Co.*, 236 Conn. 582, 589, 674 A.2d 1290 (1996) (holding that for purposes of res judicata, "[a] judgment is final not only as to every matter which was offered to sustain the claim, but also as to any other admissible matter which might have been offered for that purpose . . . .This is true "regardless of what additional or different evidence or legal theories might be advanced in support of it.") (Internal quotation marks omitted; emphasis added).

Plaintiff previously filed an action against Dunkerton as the Republican Registrar of Voters for the Town of Brookfield in Connecticut State Court on April 30, 2015. (See, Judicial Branch Online Docket)(**Exhibit 1**). In that complaint[2], which was brought pursuant to C.G.S. § 9-63, plaintiff alleged the following:

> 3. On April 23, 2015, the name of the Petitioner was improperly and unlawfully removed from the enrollment list of the Brookfield Republican Party by Defendant, purportedly pursuant to General Statutes § 9-60, et seq.
> 4. The aforesaid action of Defendant was improper and unlawful for the following reasons:
>   a. Defendant had conducted a hearing where the evidence presented substantiates a finding which does not support the Defendant's actions.
>   b. The conduct of the proceedings violated Petitioner's right to due process of law.
>   c. The Defendant failed to establish a standard of conduct to qualify as a member of the Brookfield Republic Party and, as a result, the Petitioner has been prejudiced.
>   d. The accepted standard for membership in the Brookfield Republican Party allows active membership in other political parties and encourages members to run for political office on other political party slates while enrolled in the Brookfield Republic Party.
>   e. The action of the Defendant holds Petitioner to a standard not required by others.

(See, Plaintiff's Complaint dated April 30, 2015, ¶¶ 3-4)(**Exhibit 2**.) The plaintiff in her state court case sought a writ of mandamus or an order that would direct Dunkerton to restore her name to the enrollment list of the Party and any other legal and equitable relief deemed just. *Id.* The plaintiff was denied the writ of mandamus by the Court (Truglia, J.), and she appealed that decision to the Appellate Court, which has been transferred to the Connecticut Supreme Court. Such an appeal is not a bar to the

[2] See, 18 C. Wright, A. Miller & E. Cooper, Federal Practice & Procedure § 4406, at 143 (2d ed. 2002)(stating that formal pleadings and other filings are relevant to determining the claims that were advanced in a prior suit).

application either of res judicata or collateral estoppel, and the judgment from the State Court is considered final. *See Sullivan*, 647 F.Supp.2d at 171 (recognizing that "'[t]he Connecticut Supreme Court … has held a trial court judgment to be final, despite a pending appeal, when the issue was the applicability of the rules of res judicata'") (*citing Enfield Federal Savings & Loan Ass'n. v. Bissell*, 184 Conn. 569, 573, 440 A.2d 220 (1981)).

The plaintiff's Complaint before this Court [Doc. 1], similarly alleges that her name was removed from the Party enrollment list on April 23, 2016. (See, Compl. ¶ 61.) She then sets forth various causes of action pursuant to 42 U.S.C. §§ 1983 and 1985 including:

> 69. By forcibly dis-affiliating Plaintiff from the Republican Party, Defendants, acting under the color of state law, knowingly and intentionally deprived Plaintiff of her fundamental right to freedom of association under the First Amendment to the Constitution of the United States, in violated of 42 U.S.C. § 1983.
> …
>
> 72. By forcibly dis-affiliating Plaintiff from the Republican Party, and thereby preventing her from voting in the upcoming Republican Presidential primary election, Defendants, acting under color of state law, knowingly and intentionally deprived Plaintiff of her fundamental right to vote under the First Amendment to the United States Constitution as applied to the State of Connecticut by the Fourteenth Amendment, in violation of 42 U.S.C. § 1983.
> …
>
> 75. Defendants, acting under color of law, acted pursuant to Connecticut General Statutes that are both vague and overbroad on their fact and as applied.
>
> 76. The Defendants use of the unconstitutional statutes to forcibly dis-affiliate the Plaintiff from the Republican Party, and their use of the flawed and unconstitutional processes provided therein, deprived Plaintiff of her fundamental due process rights guaranteed under the Fourteenth Amendment of the Constitution of the United States, in violation of 42 U.S.C. § 1983.

> …
>
> 79. By forcibly dis-affiliating Plaintiff from the Republican Party arbitrarily, and allowing other individuals who have voluntarily dis-affiliated themselves to rejoin the Republican Party without instituting statutory proceedings against them, Defendants, acting under the color of state law, knowingly and intentionally deprived Plaintiff of her fundamental right to Equal Protection under the Fourteenth Amendment to the United States Constitution, in violation of § 42 U.S.C. § 1983.
>
> …
>
> 84. Motivated by their class-based animus, Defendant Grimes and Defendant Dunkerton, willfully, knowingly and with callous indifference entered into an agreement and conspired to act under the color of state law for the purpose of depriving Plaintiff of her fundamental rights to vote and freely associate, and to equal protection of the law, which are protected under the United States Constitution and § 1983.

Id. ¶¶ 69-88. The plaintiff now seeks the following relief:

> WHEREFORE, the Plaintiff prays for a judgment and order:
>
> A. Declaring that the actions of the Defendants, acting under the color of state law – specifically Conn. Gen. Stat. §§ 9-60 through 9-63 – deprived Plaintiff of her fundamental rights to vote and freedom of association, as well as her due process rights under the First and Fourteenth Amendments to the Constitution of the United States in violation of 42 U.S.C. § 1983;
> B. Granting equitable relief by compelling the Republican Registrar of Voters for the Town of Brookfield Connecticut to restore Plaintiff's name to the Republican enrollment list thereby restoring Plaintiff's fundamental rights to vote and to freedom of association under the First and Fourteenth Amendment to the Constitution of the United States;
> C. Awarding Plaintiff her costs and disbursements associated with the filing and maintence of her legal actions to date, including an award of reasonable attorneys' fees pursuant to 42 U.S.C. § 1988;
> D. Awarding compensatory damages in an amount to be determined by the Court, but believed to exceed $1,000,000;
> E. Awarding punitive damages to the extent permitted under law; and
> F. Granting such other and further relief as this Court shall deem just and proper.

Id.

These allegedly new claims have either already been decided in the Connecticut Superior Court ruling issued by Judge Truglia or could and should have been raised at that time as each claim arose from the same operative facts and the same transaction or series of transactions. *See Lighthouse Landings, Inc.*, 300 Conn. at 347-50, 15 A.3d 601. This new Complaint turns, again, on plaintiff's relationship with the Party beginning in 2013 when she was not endorsed for a second term on the Board of Education. (See, Compl. ¶¶ 25-27.) The plaintiff then changed her status to be unaffiliated and ran on the Democratic ticket for a Board of Finance position, which she did not win. *Id.* ¶¶ 28-31. The plaintiff subsequently submitted an application to re-affiliate with the Party, and Dunkerton began the process of citing her under C.G.S § 9-60 in March 2015. *Id.* ¶¶ 41-42. The State Court (Truglia, J.) found that there was "more than sufficient evidence from which the court can conclude that the plaintiff did commit specific acts under § 9-61 which constitute prima facie evidence supporting defendant's discretionary erasure or exclusion of the plaintiff from the enrollment list." (See, Memorandum of Decision at 7)(**Exhibit 3.**)

i. Freedom of Association, Right to Vote, and Due Process

The plaintiff makes claims for deprivation of her right of freedom of association and the right to vote; both of these claims were addressed and decided in the State Court decision. The Court (Truglia, J.) found that there is no fundamental right to belong to a particular party or to be a candidate of a certain party, and that plaintiff has no fundamental right to participate in a party's primary or caucus. *Id.* at. 11-12. Furthermore, the Court noted that the right to vote is fundamental, but exclusion from the Party's enrollment list did not prevent plaintiff from voting in the general election. *Id.*

at 12. The Court found that plaintiff's reliance on *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 107 S. Ct. 544 (1986), was misplaced because that case stands for the proposition that a political party has the right "to expand and define its membership" and such a party has the right to determine its membership qualifications. *Id*. Thus, a determination has already been made as to any violation of the plaintiff's rights of association and to vote.

Similarly, plaintiff raised the issue of due process and the statutory scheme being unconstitutional for vagueness in her State Court action. She argued that the hearing process was "constitutionally flawed because the statutes allow the registrar and the town chairman to sit in judgment on the very charging document that they themselves brought." *Id.* at 10-11. The Court (Truglia, J.) held that the statutory scheme is constitutional and there was no due process violation, noting that the court's role in political disputes should be circumscribed as "[p]olitical parties generally are free to conduct their internal affairs free from judicial supervision," which is a principal grounded in the right of free association. *Id.* at 11. Thus, the claim for violation of due process has already been adjudicated.

Furthermore, the constitutionality of C.G.S. § 9-60 has been addressed by this Court previously, and it is well established that "neither the courts nor the state may substitute its own judgment for that of the party." *Marchitto v. Knapp*, 807 F. Supp. 916, 817 (D. Conn. 1993) (*quoting Democratic Party of United States v. Wisconsin ex rel. LaFollette*, 450 U.S. 107, 122, 101 S. Ct. 1010 (1981)). In *Marchitto*, *the* District Court upheld the application of the same statutes at issue in the instant matter, noting that "a party may limit its membership to those who share the party's interests and support its

principles. *Id.* It follows, therefore, that a political party may deny membership to an individual voter who acts in a manner clearly inconsistent with a party's interests." *Id.* It is the party that holds the right in that "a party's right to freely associate 'necessarily presupposed the freedom to identify the people who constitute the association.'" *Id.* (*quoting Democratic Party of United States*, 450 U.S. at 122, 101 S. Ct. 1010).

ii. Equal Protection Rights

The plaintiff previously raised claims for selective enforcement, being held to a standard not required of others, and the existence of a double standard in her State Court case. Dunkerton and Grimes both testified at the mandamus hearing about other Party members, including Grimes, who committed similar disloyal acts and were not cited, but the Court (Truglia, J.) held that there was not sufficient proof of selective enforcement or arbitrary and capricious discrimination. *Id.* at 8-9. Rather, the decision focused on the fact that the evidence "supports the defendant's contention that he simply exercised his statutory discretion to exclude the plaintiff from the enrollment list for acts indicating that she did not intend to support the party or its candidates." *Id.* at 9.

The plaintiff has brought this same claim again, only this time she argues that she was discriminated against based upon her gender, claiming that the Party endorsed a male candidate over her for the Board of Education position, that only one woman was nominated to run by the Party at the July 2013 caucus, and that only five of the twenty-five Party Committee members are women with only one in an elected position and none holding officer positions. (See, Compl. ¶¶ 26-27, 55-56.) These supposedly new facts were all in existence, and either known to or discoverable by plaintiff, prior to her bringing the State Court action. Thus, any specific argument about gender bias

could have been raised at that time in conjunction with the first selective enforcement argument. *See Duhaime*, 200 Conn. at 364-65, 511 A.2d 333 (holding that res judicata applies even where plaintiff seeks to present evidence or grounds or theories not presented in the first action).

The plaintiff does attempt to offer two new comparators in her Complaint, but it is clear based on the pleadings and the decision from State Court that this is inconsequential. As an initial matter, plaintiff registered to run on the Democratic ticket and received that endorsement while she was *still a member of the Republican Party*; she did not change her affiliation from Republican to unaffiliated until after the Democratic endorsement. (See, Memorandum of Decision at 3)(**Exhibit 3**.) In her Complaint, plaintiff claims that the two comparators changed their affiliation to unaffiliated and then ran for office on the Democratic ticket. (Compl. ¶ 50.) The plaintiff claims these two men were "quickly reentered upon the rolls of the Republican party," but she was given the same prompt readmission when she re-enrolled in the Party in December 2013. (See, Compl. ¶¶ 35-36, 51.) The plaintiff was cited in March 2015, over a year after reenrollment. *Id.* ¶ 42. These two men reenrolled in December 2015 and have not yet been cited by the Registrar. *Id.* ¶¶ 52-53. Thus far there has been no discrepancy in the treatment of plaintiff and these two other Party members. Had plaintiff been immediately cited upon her reenrollment to the Party perhaps this comparison would carry more weight. Furthermore, the Court's (Truglia, J.) finding that the defendant exercised his statutory discretion in regards to § 6-90 holds true for this evidence and relitigation would be improper. (See, Memorandum of Decision at 9)(**Exhibit 3**.)

iii. Conspiracy to Violate Civil Rights

Finally, plaintiff claims there was a conspiracy between Grimes and Dunkerton to violate her civil rights. This claim was not raised before the State Court; however, it could and properly should have been raised at that time. While Grimes was not a named defendant in the State Court action, he did testify at the mandamus hearing and any actions on the part of either Grimes or Dunkerton occurred prior to plaintiff bringing her State Court action. Any alleged conspiracy arises from the same operative facts that were at issue before Judge Truglia. Res judicata prevents such "new" claims from being raised in a different tribunal. *See Tuccio Custom Homes, LLC*, 116 Conn. App. at 530, 975 A.2d 1280 (holding that res judicata bars "subsequent relitigation of any claims relating to the same cause of action … which might have been made"). "The claim that is extinguished by the judgment in the first action includes *all rights* of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose." *Comm'r of Envtl. Prot.,* 227 Conn. at 189-90, 629 A.2d 1116 (Emphasis added). Thus, plaintiff's conspiracy claim is barred by res judicata.

C. ALL OF PLAINTIFF'S CLAIMS AGAINST DUNKERTON AND FLYNN ARE IDENTICAL TO THE ISSUES RAISED IN HER PRIOR STATE CASE, AND, THEREFORE, ARE BARRED BY THE DOCTRINE OF COLLATERAL ESTOPPEL

As with res judicata, in determining the preclusive effect of a state court judgment for purposes of collateral estoppel, "a court must apply the preclusion law of the rendering state." *Faraday v. Blanchette*, 596 F.Supp.2d 508, 514 (D. Conn. 2009) (*citing Kulak v. City of New York*, 88 F.3d 63, 71 (2d Cir. 19960). Thus, Connecticut law

regarding collateral estoppel "dictates the preclusive effect of" the Superior Court of Connecticut decision. (See, Judicial Branch Online Docket)(**Exhibit 1**.)

"Issue preclusion arises when an issue is actually litigated and determined by a valid and final judgment, and that determination is essential to the judgment.... Collateral estoppel express[es] no more than the fundamental principle that once a matter has been fully and fairly litigated, and finally decided, it comes to rest." *Gladysz v. Planning & Zoning Commission*, 256 Conn. 249, 260, 773 A.2d 300 (2001)(internal citations omitted). A party may assert the doctrine where (1) the issue has been fully and fairly litigated; (2) the issue has actually been decided; and (3) the decision must have been necessary to the judgement. *See Wiacek Farms, LLC v. City of Shelton*, 132 Conn. App. 163, 169, 30 A.3d 27 (2011).

An issue has been fully and fairly litigated if the party against whom claim preclusion is asserted had a "full and fair opportunity" to litigate that issue in the prior proceeding. *Aetna Cas. & Sur. Co. v. Jones*, 220 Conn. 285, 306, 596 A.2d 414 (1991). "An issue is actually litigated if it is properly raised in the pleadings or otherwise, submitted for determination, and in fact determined." *State v. Joyner*, 255 Conn. 477, 490, 774 A.2d 927 (internal quotation marks omitted). "An issue is necessarily determined if, in the absence of a determination of the issue, the judgment could not have been validly rendered." *Id.* (internal quotation marks omitted).

To allow a party who has fully and fairly litigated an issue at a prior trial to avoid the force of a ruling against him simply because he later finds himself faced by a different opponent is inappropriate and unnecessary. *See Aetna Cas. & Sur. Co.*, 220 Conn. at 302, 596 A.2d 414. Historically, the doctrine of collateral estoppel, or issue

preclusion, required mutuality of the parties....” *Carnemolla v. Walsh*, 75 Conn. App. 319, 328, 815 A.2d 1251 (2003) (internal citations omitted). Connecticut Courts have recognized, however, that “[t]he mutuality requirement has ... been widely abandoned as an ironclad rule.... [and] no longer operate[s] automatically to bar use of [the doctrine of] collateral estoppel ... but ... circumstances may exist in which lack of mutuality would render application of [the doctrine] unfair.” *Torres v. Waterbury*, 249 Conn, 110, 135-36, 733 A.2d 817 (1999) (internal quotation marks and citations omitted.) Connecticut has abandoned the rule of mutuality, meaning that even parties that were not actually adverse to one another in the prior proceeding may nonetheless assert collateral estoppel. *See id.*

Collateral estoppel, thus, “‘may be invoked against a party to a prior adverse proceeding or against those in privity with that party.’” *Young v. Metropolitan Property and Cas. Ins. Co.*, 60 Conn. App. 107, 114, 758 A.2d 452 (2000) (*quoting State v. Fritz*, 204 Conn. 156, 172, 527 A.2d 1157 (1987)). “While it is commonly recognized that privity is difficult to define, the concept exists to ensure that the interests of the party against whom collateral estoppel is being asserted have been adequately represented because of his purported privity with a party at the initial proceeding.” *Id.* There is no definition for privity that can be applied and followed automatically in every case; “rather it is a matter of substance. In determining whether privity exists, we employ an analysis that focuses on the functional relationships of the parties…. [I]t is, in essence, a shorthand statement for the principal that collateral estoppel should be applied only when there exists such an identification in interest of one person with another as to represent the same legal rights so as to justify preclusion.” *Id.* (*citing Joe’s Pizza v.*

Aetna Life & Casualty Co., 236 Conn. 863, 868, 675 A.2d 441 (1996); *Mazziotti v. Allstate Ins. Co.*, 20 Conn. 799, 813-14, 695 A.2d 1010 (1997)).

In this matter, Dunkerton was a defendant in the prior case, and Flynn is in privity with Dunkerton. In her Complaint, plaintiff does not make clear any specific actions by Flynn that were not tied to the actions taken by Dunkerton. Dunkerton, as the registrar, was the party with the authority under C.G.S. § 9-60 to cite plaintiff, and all the claims previously litigated and raised again before this Court arose from and are related to those actions. The fact that those issues were already litigated as to Dunkerton makes relitigation against Flynn inappropriate pursuant to collateral estoppel. The Constitutional claims raised are also all related to the same facts from the State Court case, and the resolution of these claims are *not* related to anything specific Flynn might have done; rather the decision was, and would be in this case, based on the statute, plaintiff's actions, and the applicable case law. In other words, the determinations made in State Court regarding each of these claims will be subject to the same analysis in the instant matter. The plaintiff's only new claim in this action is conspiracy, which is only as against Grimes and Dunkerton, and, as discussed above, is barred by res judicata as to Dunkerton. The rest of plaintiff's claims are precluded based on her State Court case.

The State Court (Truliga, J.) already determined that there was more than sufficient evidence to "conclude that the plaintiff did commit specific acts under § 9-61 which constitute prima facie evidence supporting the defendant's discretionary erasure or exclusion of the plaintiff from the enrollment list." (See, Memorandum of Decision at 7)(**Exhibit 3**.) Thus, the issue of the whether there was any violation of the statute has already been litigated, and the Court (Truglia, J.) found no wrongdoing.

Similarly, as discussed above, the Court (Truglia, J.) already addressed plaintiff's claims of due process, deprivation of her rights to vote and of association, and equal protection violations. In addressing plaintiff's right to vote, freedom of association, and due process claims, the Court (Truliga, J.) held that she never lost her right to vote in the general election and there is no fundamental right to vote in a party's primary or caucus. *Id.* at 11-12. Furthermore, a political party has the right to define and restrict its membership. *Id.* at 12. The same facts and analysis applies to these claims in the instant matter as to Flynn and Dunkerton. The same is true with plaintiff's due process and unconstitutionally vague claims. Those have already been addressed and the analysis is not related to what any defendant did or did not do, but rather the analysis and any liability turns on the statutory scheme itself and the rights of political parties. *Id.* at 10-11.

Finally, plaintiff's equal protection claim has also already been adjudicated and is not properly before this Court. As laid out above, plaintiff raised the issues of selective enforcement and a double standard before the State Court, and those claims were found to be without merit, as actions were taken pursuant to the statutory scheme and there was insufficient proof to overcome the discretionary nature of the statute. *Id.* at 8-9. As such, the claims against Dunkerton and Flynn that were already adjudicated in State Court are barred by collateral estoppel.

D. PLAINTIFF'S CLAIMS AGAINST DUNKERTON AND FLYNN ARE BARRED BY THE *YOUNGER* DOCTRINE OF ABSTENTION

The *Younger* abstention doctrine "generally requires federal courts to abstain from taking jurisdiction over federal constitutional claims that involve or call into question ongoing state proceedings." *Diamond "D" Const. Corp. v. McGowan*, 282 F.3d 191, 198

(2d Cir. 2002) (*citing Younger v. Harris*, 401 U.S. 37, 43-44, 91 S.Ct. 746 (1971)). This doctrine was developed in criminal context, but now applies equally to civil proceedings. *See Ohio Civil Rights Comm'n v. Dayton Christian Schs., Inc.*, 477 U.S. 619, 627, 106 S.Ct. 2718 (1986). The *Younger* abstention doctrine is founded on the principal that "a state proceeding provides an adequate forum for the vindication of federal constitutional rights." *Cullen v. Fliegner*, 18 F.3d 96, 103 (2d Cir. 1994) (internal citation omitted). The doctrine is required where "(1) there in an ongoing state proceeding; (2) an important state interest is implicated in that proceeding; and (3) the state proceeding affords the federal plaintiff an adequate opportunity for judicial review of the federal constitutional claims." *Diamond "D" Const. Corp.*, 282 F.3d at 191.

Here, all three requirements are met, and the *Younger* abstention doctrine must be followed. First, it is undisputed that the State case is ongoing given that plaintiff has filed an appeal with the Connecticut Supreme Court. (See, Judicial Branch Online Docket)(**Exhibit 1**.) Second, the crux of these two actions is the validity and application of Connecticut statutes as they affect Connecticut political parities. Thus, there is an important state interest implicated. Third, it is clear based on the plaintiff's first complaint and the State Court decision that federal claims were raised and heard and continue to be heard on appeal, including her due process claims, her right to vote claims, and her freedom of association claim. (See, Memorandum of Decision)(**Exhibit 3**); (See, Plaintiff's Complaint dated February 3, 2016)(**Exhibit 2**.) The plaintiff's instant federal action is, therefore, barred by the *Younger* abstention doctrine.

E. PLAINTIFF'S CLAIMS ARE BARRED PURSUANT TO THE *COLORADO RIVER* ABSTENTION DOCTRINE

Where a case is pending in state court and the plaintiff brings a substantially similar action in federal court, plaintiff's claims are barred by the *Colorado River* abstention doctrine. *See Cupe v. Lantz*, 470 F.Supp.2d 128, 132 (D. Conn. 2007). "To determine whether abstention under *Colorado River* is appropriate, a district court is required to weigh six factors, with the balance heavily weighted in favor of the exercise of jurisdiction." *Village of Westfield v. Welch's*, 170 F.3d 116, 121 (2d Cir. 1999) (internal citations omitted). The factors include: (1) the assumption of jurisdiction by either court over any res or property; (2) the inconvenience of the federal forum; (3) the avoidance of piecemeal litigation; (4) the order in which jurisdiction was obtained; (5) whether the state or federal law supplies the rule of decision; and (6) whether the state court proceeding will adequately protect the rights of the party seeking to invoke federal jurisdiction." *Cupe*, 470 F. Supp. 2d at 132 (*citing Village of Westfield*, 170 F.3d at 121).

None of these factors "is necessarily decisive, … and the weight to be given to any one factor may vary greatly from case to case, depending on the particular setting of the case." *Id.* at 132-33. Additionally, for the doctrine to apply the two proceedings must be parallel, meaning that "substantially the same parties are contemporaneously litigating substantially the same issue in another forum." *Village of Westfield*, 170 F.3d at 121 (*citing Day v. Union Mines Inc.*, 862 F.2d 652, 655 (7th Cir. 1988)).

The plaintiff's state case is "parallel" to this one because it involves the same underlying conduct, the same underlying arguments, and substantially the same

parties—plaintiff and Dunkerton are named parties in each case. Moreover, the relevant factors weigh in favor of abstention.[3]

With respect to the need to avoid piecemeal litigation, one of the most important factors in the *Colorado River* analysis, allowing plaintiff to simultaneously litigate her case in the state and federal courts would risk the potential for inconsistent or even conflicting judgments. Abstention, on the other hand, would avoid the potential embarrassment of such contradictory results. *See Dunne v. Doyle*, 3:13-cv-01075 (VLB), 2014 WL 3735287, at *11 (D. Conn. July 28, 2014) (recognizing that abstention is appropriate where the court could be asked to re-decide motions, waste judicial resources on duplicative litigation, and risking conflicting outcomes in the state and federal forums).

The order in which the actions were filed also weighs decidedly in favor of abstention. "This factor does not turn exclusively on the sequence in which the cases were filed, 'but rather in terms of how much progress has been made in the two actions.'" *Village of Westfield*, 170 F.3d at 121. The plaintiff already obtained a final judgment from the Superior Court, and her state case is currently pending in the Connecticut Supreme Court. Conversely, her federal action is in the earliest stages of litigation. Indeed, the parties have not exchanged any discovery requests or even conducted a Rule 26(f) conference yet.

As to whether state or federal law will provide the rule of decision, the defendants recognize that plaintiff's claims arise under federal law. Nonetheless, all of the alleged conduct occurred pursuant to a state statute that implicates Connecticut's public policy. The Court should abstain from this case and permit the Connecticut Supreme Court to

[3] The first two *Colorado River* factors are not relevant to the Court's inquiry in this case.

render its decision. As for the protection of plaintiff's federal rights, the Connecticut judiciary is capable of hearing and deciding her federal claims and protecting her federal rights.

Lastly, instead of pursuing emergency relief from the Superior Court's decision in the Connecticut Supreme Court, plaintiff has instead delayed the Supreme Court's decision while simultaneously pressing immediate relief in this Court. There can be no debate that exercising jurisdiction in this case would encourage the type of forum shopping federal courts generally prohibit. On these bases, plaintiff's Complaint is foreclosed by the *Colorado River* abstention doctrine and should be dismissed.

F. PLAINTIFF'S CLAIMS AGAINST FLYNN FAIL AS A MATTER OF LAW

Pursuant to *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937 (2009), a pleading must be facially plausible to survive a motion to dismiss. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (Internal citations omitted.) "[M]ere conclusory statements … do not suffice." *Id.*

Here, plaintiff has failed to provide the Court with anything more than conclusory statements regarding Flynn. The plaintiff specifically references Flynn in her "Facts" section only once to claim that Flynn acted with the other defendants to strip plaintiff of her rights. (Compl. ¶ 45.) This single conclusion fails as a matter of law to state a claim against Flynn, and all counts against him should be dismissed.

G. PLAINTIFF'S CLAIM OF EQUAL PROTECTION FAILS AS A MATTER OF LAW

A claim for equal protection based on selective enforcement requires that plaintiff establish that "(1) the person, compared with others similarly situated, was selectively

treated, and (2) the selective treatment was motivated by an intention to discriminate on the basis of impermissible considerations, such as race or religion, to punish or inhibit the exercise of constitutional rights, or by a malicious or bad faith intent to injure the person." *Brown v. City of Syracuse*, 673 F.3d 141, 151-52 (2d Cir. 2012).

Here, plaintiff has made only conclusory allegations that male individuals were allowed to rejoin the Republican Party and that she as a woman was denied this right and treated differently. *See Ashcroft*, 556 U.S. at 678, 129 S.Ct. 1937. These allegations ignore the fact that plaintiff was also allowed to rejoin the Republican Party; she was subsequently cited some fifteen months later. (See, Compl. ¶¶ 35-36; 42.) The two alleged comparators rejoined the party in December 2015 and have not yet been cited. *Id* at. ¶ 51. Additionally, the constitutionality of C.G.S. § 9-60 was not being challenged at the time plaintiff was cited and removed from the Republican Party. There has not been any discrepancy in treatment of plaintiff and these two male individuals. Thus, plaintiff's equal protection claim fails as a matter of law where she cannot demonstrate that there has been selective enforcement.

III. CONCLUSION

Based upon the foregoing, the Defendants, Thomas Dunkerton and Martin Flynn, request that the Court grants their Motion to Dismiss as to each of the claims against them.

DEFENDANTS,
THOMAS DUNKERTON and MARTIN FLYNN

By /s/ Katherine E. Rule

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CERTIFICATION

I hereby certify that on March 29**,** 2016, a copy of foregoing Memorandum Of Law In Support Of Defendants' Motion To Dismiss was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by U.S. Mail to as indicate on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

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DBD-CV15-6017272-S MILLER, JANE v. DUNKERTON, THOMAS

Prefix/Suffix: [none] **Case Type:** M20 **File Date:** 04/30/2015 **Return Date:** 04/30/2015

Case Detail | Notices | History | Processing | Scheduled Court Dates | Help Manual

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Case Information

Case Type: M20 - Misc - Mandamus
Court Location: Danbury
List Type: No List Type
Trial List Claim:
Referral Judge or Magistrate:
Last Action Date: 09/08/2015 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date: 08/18/2015
Disposition: JUDGMENT WITHOUT TRIAL FOR DEFENDANT
Judge or Magistrate: HON ANTHONY TRUGLIA

Party & Appearance Information

Party	No Fee Party	Category
P-01 JANE MILLER		Plaintiff
Attorney: COHEN & WOLF PC (100137) 158 DEER HILL AVENUE DANBURY, CT 06810 — File Date: 04/30/2015		
D-01 THOMAS DUNKERTON		Defendant
Attorney: CHIPMAN MAZZUCCO LAND & PENNAROLA LLC (410654) 39 OLD RIDGEBURY ROAD SUITE D-2 DANBURY, CT 06810 — File Date: 05/04/2015		

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Motions / Pleadings / Documents / Case Status

Entry No	File Date	Filed By	Description	Arguable
	05/04/2015	D	APPEARANCE Appearance	
	09/29/2015		ADMINISTRATIVE DOCUMENT Letter from Appellate Court	
	01/12/2016		ADMINISTRATIVE DOCUMENT tRANSFER FROM APPELLATE COURT TO SUPREME COURT	
100.30	04/30/2015	P	SUMMONS	No
100.31	04/30/2015	P	COMPLAINT	No
100.32	04/30/2015	P	PRE-SERVICE ORDER FOR HEARING AND NOTICE	No

100.33	05/05/2015	C	ORDER HEARING AND NOTICE	No
101.00	05/01/2015	P	RETURN OF SERVICE	No
102.00	05/19/2015	P	RETURN OF SERVICE re: NOTICE OF HEARING	No
103.00	06/05/2015	D	ANSWER Answer to Conn. Gen. Stat. 9-63 Petition of Jane Miller	No
104.00	07/23/2015	P	TRIAL MANAGEMENT REPORT	No
105.00	07/24/2015	D	TRIAL MANAGEMENT REPORT Respondent's Trial Management Report	No
106.00	07/27/2015	C	LIST OF EXHIBITS (JD-CL-28/JD-CL-28a)	No
107.00	08/10/2015	D	BRIEF Respondent's Post-Hearing Legal Brief	No
108.00	08/10/2015	P	BRIEF Posttrial Brief of the Petitioner	No
109.00	08/18/2015	C	ORDER *RESULT:* Order 8/18/2015 HON ANTHONY TRUGLIA	No
109.05	08/18/2015	C	MEMORANDUM OF DECISION *RESULT:* Order 8/18/2015 HON ANTHONY TRUGLIA	No
109.10	08/18/2015	C	JUDGMENT WITHOUT TRIAL FOR DEFENDANT *RESULT:* HON ANTHONY TRUGLIA	No
110.00	09/08/2015	P	APPEAL TO APPELLATE COURT	No

Scheduled Court Dates as of 02/19/2016				
DBD-CV15-6017272-S - MILLER, JANE v. DUNKERTON, THOMAS				
#	Date	Time	Event Description	Status
No Events Scheduled				

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RETURN DATE: MAY 5, 2015	:	SUPERIOR COURT
JANE MILLER	:	JUDICIAL DISTRICT OF DANBURY
VS.	:	AT DANBURY
THOMAS DUNKERTON	:	APRIL 30, 2015

PETITION (GENERAL STATUTES § 9-63)

The undersigned hereby submits this Petition, and represents as follows:

1. Jane Miller (hereinafter "Petitioner"), is a resident of Brookfield, Connecticut, and was a member of the Republican Party of the Town of Brookfield (hereinafter "Brookfield Republican Party") and is a dedicated supporter of Republican principles.

2. Thomas Dunkerton (hereinafter "Defendant") is the Republican Registrar of Voters for Town of Brookfield, Connecticut.

3. On April 23, 2015, the name of the Petitioner was improperly and unlawfully removed from the enrollment list of the Brookfield Republican Party by Defendant, purportedly pursuant to General Statutes § 9-60 et seq.

4. The aforesaid action of Defendant was improper and unlawful for the following reasons:

   a. Defendant had conducted a hearing where the evidence presented substantiates a finding which does not support the Defendant's actions.

EXHIBIT 2

b. The conduct of the proceedings violated Petitioner's right to due process of law.

c. The Defendant failed to establish a standard of conduct to qualify as a member of the Brookfield Republican Party and, as a result, the Petitioner has been prejudiced.

d. The accepted standard for membership in the Brookfield Republican Party allows active membership in other political parties and encourages members to run for political office on other political party slates while enrolled in the Brookfield Republican Party.

e. The action of the Defendant holds Petitioner to a standard not required by others.

5. As a result of Defendant's actions, Petitioner is aggrieved.

6. Petitioner's name was improperly and unlawfully removed from the enrollment list of the Brookfield Republican Party,

EXHIBIT 2

PRAYER FOR RELIEF

WHEREFORE, the Petitioner claims:

1. A writ of mandamus or order directing the Defendant, Thomas Dunkerton, to restore the name of the Petitioner, Jane Miller, to the enrollment list of the Brookfield Republican Party.
2. Such other legal and equitable relief as the court deems just.

THE PETITIONER

By: _____

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158 Deer Hill Ave
Danbury, CT 06810
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Fax: (203) 791-8149
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Juris No. 100137

EXHIBIT 2

DOCKET NO.: DBD-CV-15-6017272-S	)	SUPERIOR COURT
JANE MILLER	)	JUDICIAL DISTRICT OF
	)	DANBURY
v.	)	AT DANBURY
THOMAS DUNKERTON	)	AUGUST 18, 2015

MEMORANDUM OF DECISION
RE: PLAINTIFF'S PETITION PURSUANT TO GENERAL STATUTES § 9-63

Before the court is a petition filed by the plaintiff, Jane Miller, a resident of the town of Brookfield, Connecticut, to have her name restored to the list of Republican electors in Brookfield. The plaintiff alleges that the defendant, Thomas Dunkerton, the Republican Registrar of Voters for the town of Brookfield, on or about April 23, 2015, unlawfully and improperly erased her name from the town's list of Republican electors. The defendant has filed an answer to the plaintiff's petition admitting that he removed her name from the enrollment list of the Brookfield Republican Party, but denying any improper actions on his behalf. The plaintiff petitions this court from the decision of the defendant and seeks a writ of mandamus compelling the defendant to restore her name to the enrollment list.

The plaintiff brings this petition on the following specific grounds. First, that the defendant "conducted a hearing where the evidence presented substantiates a finding which does not support the Defendant's actions." Second, that the "conduct of the hearing violated the Petitioner's right to due process of law." Third, that "the Defendant failed to establish a standard of conduct to qualify as a member of the Brookfield Republican Party and, as a result, the Petitioner has been prejudiced." Fourth, that "the accepted standard for membership in the Brookfield Republican Party allows active membership in other political parties and encourages members to run for political office on other political slates while enrolled in the Brookfield Republican Party." Fifth, that the "action of the Defendant holds Petitioner to a standard not required by others." Finally sixth, that General Statutes § 9-60 is unconstitutional both on its face and as applied by the defendant.

General Statutes § 9-63[1] provides an expedited summary appeal procedure for persons claiming

[1] General Statutes § 9-63 provides in relevant part: "Any elector whose name has been removed from an enrollment list in the manner provided in sections 9-60 and 9-61, and any elector whose application to have his name

CH: Colin Wolf
Chipman, Maiocco
Rptr RJS 8/18/15

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to be aggrieved by a registrar's erasure or exclusion from a party enrollment list. Pursuant to § 9-63, the court held an evidentiary hearing on the petition on July 27, 2015, in which both parties appeared.

Having heard the testimony of the parties and reviewed the evidence presented in support of their respective positions, the court makes the following de novo findings:

1. The plaintiff in this action is a resident of Brookfield, Connecticut. She moved to Brookfield in 1992 and, in 2002, registered as a member of the Brookfield Republican Party.

2. In 2009 municipal elections, she ran successfully for a seat on the Brookfield Board of Education as a Republican. Prior to that election, the plaintiff was a loyal party member and worked actively on behalf of Republican candidates for election. While serving as an incumbent Republican member on the Board of Education, she remained an active and loyal party member.

3. In June of 2013, the plaintiff spoke with members of the Brookfield Republican Party's vacancy committee regarding the upcoming November 2013 election. The committee interviewed the plaintiff for one of the Republican vacancies on the Board of Education for that year, but chose not to give her a nomination. The plaintiff was informed on July 17, 2013 that she would likely not be nominated at the party caucus to be held later that month to stand for election to the Board of Education in November of 2013. The plaintiff attended the caucus on July 23, 2013, notwithstanding, hoping to receive a floor nomination to the Board of Finance from supporters.

4. Earlier that same day, July 23, 2013, the plaintiff filed a form SEEC 1 registering herself as an unaffiliated candidate for the Board of Finance for the 2013 election (Defendant's Ex. B), and certifying

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placed upon an enrollment list has been refused, and who is aggrieved thereby, may, within ten days after such removal or refusal, bring a petition before any judge of the superior court, setting forth that the name of the petitioner has been unjustly or improperly removed from such list or excluded therefrom, as the case may be, and praying for an order directing such registrar . . . by whom such name was removed or excluded to restore such name or place the same upon such list. . . . Such petition shall be returnable not more than six days from the date thereof, and to the same shall be attached a citation commanding such registrar . . . in the name of the state to appear and show cause why such name should not be restored to such list or placed thereon. A true copy of such petition shall be served upon such registrar or deputy registrar at least four days before the return day thereof, and the judge before whom such petition is returnable shall assign the same for a hearing at the earliest practicable date; and if, upon due hearing thereof, he finds that the petitioner is entitled to relief, such judge shall issue an order directing such registrar or deputy registrar to forthwith restore the name of such elector to the list from which it was removed or to place the name of such elector upon the list applied for, as the case may be; and any registrar . . . who fails to obey such order shall be deemed guilty of contempt and may be fined not more than one hundred dollars."

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under penalties of false statement that her campaign would be sponsored by the Brookfield Democratic Town Committee.

5. The Brookfield Democratic Party also held its nominating caucus on July 23, 2013. The plaintiff did not attend the Democratic caucus, but had been advised previously by members of the Democratic Party that she might receive the party's endorsement to run for the Board of Finance. The plaintiff learned either later that night or the following morning that she had been endorsed to run on the November 2013 ballot on the Democratic line (Defendant's Ex. A). On the following day, July 24, 2013, the plaintiff changed her party affiliation from Republican to unaffiliated (Plaintiff's Ex. 3, p. 2).

6. The plaintiff's name appeared on the November 5, 2013 ballot on the Democratic line (Defendant's Ex. E) for the Town of Brookfield Board of Finance. The plaintiff's name also appeared on campaign literature distributed by the Brookfield Democratic Party for the 2013 election (Defendant's Exhibits C & D). The plaintiff worked to promote her candidacy and the candidacies of the other Democratic nominees in the November 2013 election by, among other things, allowing Democratic Party lawn signs to be placed on her property and by distributing Democratic campaign literature outside polling places on election day (Plaintiff's Ex. 4).

7. The plaintiff did not prevail in her bid for a seat on the Board of Finance, losing instead to the Republican candidates.

8. On December 3, 2013, the plaintiff filed a party enrollment change form declaring her intention to be re-enrolled in the voter list of the Brookfield Republican Party (Plaintiff's Ex. 3, p. 1).

9. In January of 2015, the plaintiff attended a Republican Town Committee meeting.

10. In February of 2015, the plaintiff supported a Democratic candidate for state representative in a special election and also made the maximum financial contribution to his campaign allowed by law (Plaintiff's Ex. 4).

11. By letter dated March 19, 2015, and in accordance with General Statutes § 9-60,[2] the

[2] General Statutes § 9-60 provides in relevant part: "Whenever the registrar of voters of any political party, . . . , is of the opinion that any person on the enrollment list, or any person applying to be placed upon the enrollment list, of the political party which such registrar represents . . . is not affiliated with, or in good faith a member of, that political party and does not intend to support its principles or candidates, such registrar . . . shall cite such person to appear before him and the chairman of the town committee of such political party . . . to show cause why his name

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defendant issued a citation to the plaintiff requesting her to appear before the Republican Registrar of Voters and the Brookfield Republican Town Committee Chairman, Matthew Grimes, Jr., to show cause as to why her name should not be erased from the Brookfield Republican Party enrollment list.

12. The plaintiff, through her counsel, objected to the manner of service of the citation. After consultation with defendant's counsel, however, the parties agreed to waive "any potential service of process issues," and re-scheduled the hearing for the evening of April 9, 2015 (Plaintiff's Ex. 4).

13. The plaintiff, represented by counsel, appeared at the hearing and spoke in opposition to the defendant's intention to erase her from the Republican Party enrollment list. Other persons also appeared at the hearing and spoke in support of, and in opposition to, the defendant's citation (Plaintiff's Ex. 1).

14. At the conclusion of the hearing, the defendant and Grimes found "reasonable proof" that the plaintiff had recently been "a candidate for office under the designation of another party." The defendant and Grimes found specifically that the plaintiff's name "was on the ballot exclusively as a Democrat and, had she been elected to office, Connecticut Law would have recognized her as a Democrat in that office." The defendant and Grimes also found that the plaintiff had "actively worked against the Republican Party's efforts," and that she had "been an ally of the Democratic Party." Citing General Statutes §§ 9-61[3] and 9-167a(g),[4] the defendant and Grimes concluded that the plaintiff

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should not be erased or excluded from such enrollment list. Such citation shall be in writing and shall state the time when and place where such person shall appear, and shall be served upon or left at the usual place of abode of such person at least two days before the time fixed for such hearing upon such citation, which time shall not be less than one week before the next succeeding caucus or primary of such political party. . . . If, at any such hearing, it appears to such registrar and such chairman . . . that it is not the bona fide intention of such person to affiliate with, or that such person is not affiliating with, such political party and does not intend to support the principles or candidates of such party, his name may thereupon be erased or excluded from the enrollment list of such party.

[3] General Statutes § 9-61 provides: "Enrollment in any other political party or organization, active affiliation with any other political party or organization, knowingly being a candidate at any primary or caucus of any other party or political organization, or being a candidate for office under the designation of another party or organization, within a period of two years prior to the date of the notice as provided in section 9-60 shall be prima facie evidence that any elector committing any such act is not affiliated with, or in good faith a member of, and does not intend to support the principles or candidates of the party upon the enrollment list of which his name appears or in which his application for enrollment is pending; and, upon reasonable proof of the commission of any one of such acts, the name of any such elector may be stricken or excluded from such list and such erasure or exclusion shall be effective for a period of two years from the date of any such act."

[4] General Statutes § 9-167a (g) provides in relevant part: "For the purposes of this section, . . . any person whose candidacy for election to an office is solely as the candidate of a party other than the party with which he is enrolled shall be deemed to be a member of the party of which he is such candidate."

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committed one or more of the acts within two years of the March 19, 2015 date in which the citation was originally issued, which served as prima facie evidence supporting the defendant's discretionary erasure or exclusion of the plaintiff from the enrollment list (Plaintiff's Ex. 4).

15. By letter dated April 23, 2015, the defendant notified the plaintiff of the decision to erase her name from the Brookfield Republican Party's enrollment list.

16. The plaintiff requested that her name be restored to the list, but her request was refused.

The court rules as follows on each of the grounds asserted in the plaintiff's petition for a writ of mandamus and other relief:

I. The plaintiff is aggrieved by the defendant's decision to remove her list from the enrollment list and by his refusal to honor her request to restore her name to the list. The plaintiff's petition, therefore, is properly before this court.

II. The evidence presented at the hearings held on April 23, 2015, and July 27, 2015 supports the finding that the plaintiff stood for office as a candidate for the Democratic Party in November of 2013. The evidence also supports the finding that the plaintiff actively affiliated herself with the Democratic Party within two years prior to the issuance of the March 19, 2015 citation.

In support of her petition, the plaintiff relies on two Connecticut Supreme Court cases, *In re Gilhuly's Petition*, 124 Conn. 271, 199 A. 436 (1938), and *Kiernan* v. *Borst*, 144 Conn. 1, 126 A.2d 569 (1956). *Gilhuly* and *Kiernan* both make clear that a trial court, when hearing a petition pursuant to § 9-63, hears the matter de novo, rather than acting as an appellate court with limited review. In *Gilhuly*, the Court held that "[§] 703 in effect provides for a special statutory proceeding in the nature of mandamus. In functioning thereunder a judge is exercising a judicial as distinguished from an administrative or executive power. This power is not dependent, however, upon his being engaged in an appellate review of the proceedings had before the registrar, but is exemplified in his original determination of what is the plaintiff's legal right to enrollment and whether this right has been violated." Id., 277.

The court in *Gilhuly* continued: "These statutes give rise to an unequivocal right in a qualified elector to be enrolled on the party list of his expressed choice upon his statement that he is not a member of or connected with any other political party. They further give him such right to have his name continued on that list as long as he chooses, unless and until it is no longer his intention to affiliate with such party and to support its principles and candidates. This right is neither dependent upon nor subject

to the will of the registrar and town committee chairman. Whether an elector shall be enrolled upon the party list rests no more within their discretion than does the determination of whether a hunter's license shall be granted under section 3110 of the General Statutes rests in that of the town clerk to whom application is made. The statute prescribes certain definite prerequisites to the granting of the request in each case, and requires compliance upon the official's part when these exist. The further provision in certain of the statutes quoted, that under specified circumstances the registrar and town committee chairman are to determine whether the prerequisites do exist, is not effective to enlarge their administrative duty into one involving an exercise of discretion and judgment." Id., 279-80.

In other words, the question before this court is whether the plaintiff meets the "prerequisites" for enrollment on a party list. If the court finds the answer to be in the affirmative, then the registrar has no discretion in the matter, and a writ of mandamus is appropriate to compel the registrar to honor the elector's wish and restore his or her name to the enrollment list. If the court finds the opposite, however, then a writ of mandamus is inappropriate in that instance because the registrar has discretion under § 9-60 to erase or exclude that person when, in the registrar's judgment, the person "is not affiliated with, or in good faith a member of, that political party and does not intend to support its principles or candidates."

"A writ of mandamus is an extraordinary remedy, available in limited circumstances for limited purposes. . . . It is fundamental that the issuance of the writ rests in the discretion of the court, not an arbitrary discretion exercised as a result of caprice but a sound discretion exercised in accordance with recognized principles of law." (Internal quotation marks omitted.) *Morris* v. *Congdon*, 277 Conn. 565, 569, 893 A.2d 413 (2006). "[I]n deciding the propriety of a writ of mandamus, the trial court exercises discretion rooted in the principles of equity . . . [M]andamus neither gives nor defines rights which one does not already have. It enforces, it commands, performance of a duty. It acts at the instance of one having a complete and immediate legal right; it cannot and it does not act upon a doubtful or a contested right . . . A party seeking a writ of mandamus must establish: (1) that the plaintiff has a clear legal right to the performance of a duty by the defendant; (2) that the defendant has no discretion with respect to the performance of that duty; and (3) that the plaintiff has no adequate remedy at law." (Citations omitted; internal quotation marks omitted.) *Stewart* v. *Watertown*, 303 Conn. 699, 711-12, 38 A.3d 72 (2012).

In *Kiernan*, the plaintiff successfully challenged the local Republican party registrar's decision to remove his name from the enrollment list. The plaintiff had been removed from the party enrollment list

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after he promoted the candidacy of a Democratic nominee in a local election, and participated afterward in the Democratic Party's victory parade. The plaintiff sought to have his name restored, and the local Republican Party Registrar of Voters refused the request. After a hearing on the plaintiff's petition, the trial judge found that "[t]he plaintiff had the bona fide intention of affiliating with the Republican party. He was not affiliated with the Democratic party. He was supporting the principles and candidates of the Republican party and is entitled to have his name restored to the enrollment list of that party." *Kiernan* v. *Borst*, supra, 144 Conn. 3. On appeal the court held that these conclusions were warranted based on the facts found, and upheld the trial court's reversal of the registrar's action. Id., 6.

In contrast to the present case, however, the court in *Kiernan* noted that "the plaintiff had not committed any of the specific acts which under § 562d[5] would have created a presumption that he was not affiliated with the Republican party. He had not enrolled in another party. He had not been actively affiliated with any other party. The most he had done was to advocate the election of a single candidate of another party. He had not been a candidate for nomination by another party or a candidate on another party's ticket. It was therefore open to the trial judge to decide on all the evidence whether the plaintiff in good faith intended to affiliate with the Republican party." *Kiernan* v. *Borst*, supra, 144 Conn. 5-6.

In the present case, there is more than sufficient evidence from which the court can conclude that the plaintiff did commit specific acts under § 9-61 which constitute prima facie evidence supporting the defendant's discretionary erasure or exclusion of the plaintiff from the enrollment list. The plaintiff, by her own admission, did stand as a candidate for office under the designation of the Democratic Party in the November 2013 election, and actively affiliated with the Democratic Party within two years prior to the March 19, 2015 notice and citation. In the case of *Miner* v. *Marsh*, 102 Conn. 600, 129 A. 547 (1925), for example, a case involving a recount, the court held that "those [persons] appearing upon the Independent Republican ticket automatically separated themselves from the original Republican organization, each one of them by knowingly becoming 'a candidate for office . . . of another party or organization,' different from that to which each had formerly belonged." Id., 10. The evidence is clear in the present case that the plaintiff affiliated herself with the Democratic Party and stood for office on the local Democratic ticket two years before the March 19, 2015 letter, and is not in good faith a member of

[5] The predecessor statute to § 9-61.

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the Brookfield Republican Party.

III. The court finds that the proceedings initiated against the plaintiff in accordance with § 9-60 et seq. did not violate her procedural rights to due process of law. The plaintiff clearly received advanced notice of the hearing, specific notice of the charges levied, and received an opportunity to be heard on the matter. The plaintiff was also represented by counsel at the hearing. Any possible defects in the citation itself or service of the citation were knowingly and voluntarily waived by the plaintiff and cannot form the basis of a collateral attack after conclusion of the hearing.

IV. At any hearing for a petition for relief under § 9-63, the burden of proof rests on the plaintiff to prove that his "unequivocal right . . to be enrolled on the party list of his expressed choice" has been violated. *In re Gilhuly's Petition*, supra, 124 Conn. 282. With respect to the third and fifth grounds asserted by the plaintiff in support of her petition, the court finds that insufficient evidence was produced from which the court can conclude that the defendant's actions were unlawful and improper. In the first instance, § 9-60 does not impose upon the defendant a burden of proof to establish by a preponderance of the evidence a specific "standard of conduct" before exercising his discretion to remove an elector from a party's enrollment list. Section 9-61 sets forth actions which a registrar can rely on in making the determination of whether a party member is not affiliated with the party or "does not intend to support the principles or candidates of the party," which are precisely the standards which the defendant and Grimes relied upon in rendering the decision.

V. With respect to the fifth ground asserted, i.e., that the defendant's actions hold the plaintiff to a standard not required of others, the plaintiff argues that she is a victim of selective enforcement in that she is being unfairly targeted by the defendant, and perhaps by the Brookfield Republican Town Committee, in retaliation for running on the Democratic ballot line and supporting the Democratic ticket in November of 2013. Part of the evidence presented in support of this contention was the defendant's concession on cross-examination that to the best of his knowledge, the plaintiff is the only person in recent memory to be the subject of a discretionary erasure. In the court's opinion, the defendant's failure to cite other persons in recent years for similar actions, without more, is insufficient evidence of unfair and discriminatory treatment or of malicious intent toward the plaintiff.

The other evidence offered in support of this contention is testimony elicited from the defendant and Grimes that other members of the Brookfield Republican Party have committed similar acts of

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disloyalty to the party in recent years, and none of them have been erased from the party's enrollment list. The plaintiff offered evidence that Grimes himself in recent years had founded a separate, competing political party, A Brookfield Party, and was still listed as its agent at the time of the hearing. These actions notwithstanding, Grimes has never been the subject of a discretionary erasure. The plaintiff also offered evidence that two other persons ran against Republican nominees in the 2009 and 2013 municipal elections, either as unaffiliated candidates or as a member of A Brookfield Party, but have not been erased or excluded from the Republican Party.

In the court's opinion, the foregoing examples are insufficient proof of selective enforcement or arbitrary and capricious discrimination against the plaintiff. The mere fact that the defendant chose not to proceed, in accordance with § 9-60, against the two other individuals indicated does not lead ineluctably to the conclusion that the defendant acted with invidious intent toward the plaintiff. The plaintiff presented no specific evidence of discriminatory or retaliatory intent toward her. Furthermore, the court finds insufficient evidence of a pattern of illegal and improper conduct from which the court can draw an inference that the process is constitutionally flawed. The evidence on this point supports the defendant's contention that he simply exercised his statutory discretion to exclude the plaintiff from the enrollment list for acts indicating that she did not intend to support the party or its candidates.

The plaintiff further argues that the defendant applied a double standard to her, in that other Republican party members have received cross-endorsements in recent years and none have been cited pursuant to § 9-60. In response, the defendant argues that standing for election as a member of a different party is not the same as receiving a cross-endorsement, and this court agrees.[6] The plaintiff did not receive a cross-endorsement while standing for office as a Republican; the evidence clearly demonstrates she ran for office exclusively on the Democratic Party ballot line in 2013 against the Republican party nominees.

VI. The court considers next the question of the constitutionality of §§ 9-60 through 9-63. The plaintiff argues that the court should find that the statutory framework for discretionary removal of an

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[6] The defendant cites a portion of the minority representation statute, § 9-167a (g), in support of this position. Subsection (g), however, by its very terms applies to cross-endorsements for determining minority representation. The court does not reach the question of whether the statute also applies to cross-endorsements in the context of discretionary erasure from voter enrollment lists.

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elector from a party's enrollment list is unconstitutional on a number of grounds. Reduced to their essential elements, the plaintiff's arguments are as follows: (1) the statutory scheme for discretionary erasure or exclusion is unconstitutionally vague; (2) the statutes impermissibly burden the plaintiff's first amendment right of association; and (3) the statutes impermissibly burden the plaintiff's fundamental right to vote by preventing her from participating in the Republican primary.

With respect to the first argument, the plaintiff argues that §§ 9-60 and 9-61 are unconstitutional and void for vagueness under the first and fourteenth amendments to the United States constitution,[7] and Article First, §8, of the Connecticut constitution.[8] The plaintiff argues that her "First Amendment right to freedom of association is implicated by her removal from the party of her choice via § 9-61. Accordingly, the statute is subject to more exacting scrutiny." In support of this contention, the plaintiff cites *State* v. *Linares*, 232 Conn. 345, 655 A.2d 737 (1995), which stated that "[p]erhaps the most important factor affecting the clarity that the Constitution demands of a law is whether it threatens to inhibit the exercise of constitutionally protected rights. If, for example, the law interferes with the right of free speech or of association, a more stringent vagueness test should apply." (Internal quotation marks omitted.) Id., 355. The plaintiff argues that § 9-60 vests a party's local registrar and town chairman with the power to erase or exclude from their party's list any person who, in their opinion, has demonstrated that he or she "is not affiliated with, or in good faith a member of, that political party and does not intend to support its principles or candidates." This, according to the plaintiff, is an impermissibly vague standard that leaves "the ultimate determination of whether an individual intends to support the principles of a party, as well as the definition of those principles, . . . to the unfettered and biased discretion of the registrar - the very person who would have generated the citation in the first place . . . and the party committee chair, who is rarely a neutral party with respect to his views on the principles of

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[7] The first amendment to the United States constitution provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The fourteenth amendment, §1, provides in relevant part: " No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

[8] Article First, § 8 of the Connecticut constitution provides in relevant part: "No person shall be . . . deprived of life, liberty or property without due process of law."

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the party at issue." In other words, the hearing process of §§ 9-62 and 9-63 is constitutionally flawed because the statutes allow the registrar and the town chairman to sit in judgment on the very charging document that they themselves brought. In the plaintiff's case, "[r]espondent Dunkerton acted as both prosecutor and judge. His role in the hearing process was to determine the veracity of the very facts alleged in the citation. The other hearing officer, Grimes, was far from a neutral party, and was not obligated to adhere to any guidelines, other than those dictated by his own agenda, as to what constituted the principles of the Brookfield Republican Party." The plaintiff maintains that such an arrangement is inherently unfair and can only lead to examples of arbitrary and discriminatory enforcement. In short, the plaintiff argues that she has a fundamental right to belong to the Brookfield Republican Party and that any restrictions on that right must receive the same **strict scrutiny** applied to other laws that burden fundamental rights - that is, they must be the least restrictive means to achieve a compelling state interest.

The court respectfully disagrees with this analysis. First, it is important to note that courts have a "narrowly circumscribed role in political disputes" such as the one presently before this court. *Flewellyn* v. *Hempstead*, 47 Conn. App. 348, 350, 703 A.2d 1177 (1997). "Political parties generally are free to conduct their internal affairs free from judicial supervision. . . . This common law principle of judicial restraint, rooted in the constitutionally protected right of free association, serves the public interest by allowing the political process to operate without undue interference. . . . Because the nomination and endorsement of candidates for elective office are among the primary functions of political parties, [j]udicial intervention in [the selection of candidates] traditionally has been approached with great caution and restraint." (Citations omitted; internal quotation marks omitted.) Id. The constitutionally-protected right of association asserted by the plaintiff, in other words, applies equally to the defendant.

Second, strict scrutiny is not the proper standard to apply. See, e.g., *Mazzucco* v. *Verderame*, Superior Court, judicial district of New Haven, Docket No. CV-96-0382136-S (March 22, 1996, *Booth, J.*) ("When a state election law provision imposes only reasonable, nondiscriminatory restrictions upon the first and fourteenth amendment rights of voters, the state's important regulatory interests are generally sufficient to justify the restrictions. . . . The court acknowledges that strict judicial scrutiny is no longer the proper standard."). The plaintiff does not have a fundamental and unlimited right to belong to the political party of her choice. Nor does she have an unlimited right to be a candidate of a certain party. *Campbell* v. *Bysiewicz*, 242 F. Supp. 2d 164, 171 (2003). The court certainly agrees that voting in

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general is a fundamental right, but the plaintiff's exclusion from the Brookfield Republican Party's enrollment list does not disenfranchise her from voting in the general election. It precludes her from participating in the Republican Party primaries and caucuses. The court is not aware of, nor does the plaintiff cite to, any authority for the proposition that participation in a party primary or caucus is a fundamental right. In fact, there is authority which supports the opposite. See, e.g., *Timmons* v. *Twin Cities Area New Party*, 520 U.S. 351, 357-58, 358, 117 S.Ct. 1364, 137 L.Ed.2d 589 (1997) (Upholding state law prohibiting a candidate from appearing on the ballot as the candidate of more than one party reasoning that "[t]he First Amendment protects the rights of citizens to associate and to form political parties for the advancement of common political goals and ideas," but that states "may, and inevitably must, enact reasonable regulations for parties, elections, and ballots to reduce election- and campaign-related disorder."). "Regulations imposing severe burdens on [candidates' and parties'] rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review." Id., 358.

In this regard, the plaintiff's reliance on *Tashjian* v. *Republican Party of Connecticut*, 479 U.S. 208, 107 S.Ct. 544, 93 L.Ed.2d 514 (1986), is misplaced. The holding in *Tashjian* affirmed a lower court ruling that Connecticut's closed primary statute impermissibly interfered with a political party's right to define its associational boundaries. In 1955, Connecticut passed a "closed primary" law which prevented anyone from participating in a party primary who was not registered as a member of that party. The state Republican Party sought to allow independent and unaffiliated voters to participate in the party primaries. In 1984, the Connecticut state Republican Party adopted a party rule allowing independent and unaffiliated voters to participate in their primaries. Tashjian, then the Secretary of State of Connecticut, brought suit against the state Republican Party to enforce compliance with the closed primary law and prevent participation in primaries and party caucuses by voters registered as unaffiliated. The Supreme Court ruled in favor of the state Republican Party, concluding that "§ 9-431 impermissibly burdens the rights of the Party and its members protected by the First and Fourteenth Amendments." Id., 225. But the rights at issue in *Tashjian* were the rights *of the party* to expand and define its membership, not the rights of a non-member seeking to vote in a party primary. In fact, the Supreme Court in *Tashjian* directly addressed this issue and expressly recognized the right of a political party to determine its own membership qualifications. The Court held that "[i]t is this element of potential interference with the

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rights of the Party's members which distinguishes the present case from others in which we have considered claims by nonmembers of a party seeking to vote in that party's primary despite the party's opposition. In this latter class of cases, the nonmember's desire to participate in the party's affairs is overborne by the countervailing and legitimate right of the party to determine its own membership qualifications. . . . Similarly, the Court has upheld the right of national political parties to refuse to seat at their conventions delegates chosen in state selection processes which did not conform to party rules. . . . These situations are analytically distinct from the present case, in which the Party and its members seek to provide enhanced opportunities for participation by willing nonmembers. Under these circumstances, there is no conflict between the associational interests of members and nonmembers." (Citations omitted.) Id., 215 n. 6.

The court finds that the plaintiff has not carried her burden by a preponderance of the evidence that the defendant's actions in erasing her name from the enrollment list of the Brookfield Republican Party were unlawful and improper, and that she has a clear right to be restored to the party's enrollment list. The court finds sufficient evidence that the plaintiff is not in good faith a member of the Brookfield Republican Party. Her petition for a writ of mandamus is, therefore, respectfully denied.

By the Court

Anthony D. Truglia, Jr., J.

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