UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JANE MILLER Plaintiff, vs. THOMAS DUNKERTON, in his official capacity as the Republican Registrar of Voters for the Town of Brookfield, Connecticut; MATTHEW GRIMES, in his official capacity as the Chairman of the Brookfield Republican Town Committee for the Town of Brookfield, Connecticut; GEORGE WALKER, in his official capacity as a member of the Brookfield Republican Town Committee; MARTIN FLYNN; in his official capacity as a member of the Brookfield Republican Town Committee Defendants.	CIVIL A. NO. 3:16-cv-00174-AWT **ORAL ARGUMENT REQUESTED**

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Joseph M Pastore III
Nathan Zezula
Pastore & Dailey LLC
4 High Ridge Park, Third Floor
Stamford, CT 06905
Phone: (203) 658-8454
Fax: (203) 348-0852

Susan Bysiewicz
Pastore & Dailey LLC
115 Glastonbury Blvd., Suite 100
Glastonbury, CT 06033
Phone: 203.658.8467

Attorneys for Plaintiff Jane Miller

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

INTRODUCTION

Defendants Thomas Dunkerton, Matthew Grimes, George Walker, and Martin Flynn ("Defendants") have moved[1] this Court to dismiss plaintiff Jane Miller's ("Plaintiff") Complaint pursuant to FED. R. CIV. P. 12(b)(1) and 12(b)(6), on the grounds (1) that Plaintiff's claims are barred by *res judicata* and collateral estoppel, (2) that various abstention doctrines warrant dismissal, and (3) that Plaintiff fails to state a claim upon which relief can be granted. However, as more fully explained below, the doctrines and theories set forth by Defendants, while creative and technically interesting, are not a basis for dismissing Plaintiff's compliant and thereby denying her the opportunity to conduct discovery and seek justice in this Court. Accordingly, Defendants' motions should be denied.

STATEMENT OF FACTS

1. The Defendants

Defendant Thomas Dunkerton is the Republican Registrar of Voters for Brookfield, Connecticut ("Brookfield"). *See* Complaint ("Compl.") at ¶ 14. Defendant Matthew Grimes is a former member and former Chairman of the Brookfield Republican Town Committee. *Id*. at ¶ 15. Defendant George Walker is a former member and former Vice-Chairman of the Brookfield

[1] Defendants have submitted two separate motions to dismiss. *See* Docket 40 (Def's Dunkerton's and Flynn's Mot. to Dismiss ("Dunkerton/Flynn Motion")); Docket 54 (Def's Grimes' and Walker's Mot. to Dismiss ("Grimes/Walker Motion")). This Opposition is intended to address both of these motions.

Republican Town Committee.[2] *Id*. at ¶ 16. Defendant Martin Flynn is a current member and former Chairman of the Brookfield Republican Town Committee. *Id*. at ¶ 17.

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

Plaintiff is a longtime resident of Brookfield and first registered as a Republican in 2003. *Id*. at ¶ 20. Between the years of 2004 and 2011, Plaintiff actively campaigned for Republican candidates by, among other things, posting signs, distributing literature, making phone calls, wearing buttons, and donating money. *Id*. at ¶¶ 21-22. Plaintiff was nominated by the Brookfield Republican Party as a candidate for a seat on the Brookfield Board of Education in 2009. *Id.* at ¶ 23. She was elected to this seat and served a full four-year term. *Id.* at ¶ 24.

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

The Brookfield Republican Party chose to endorse a male candidate instead of Plaintiff when Plaintiff sought reelection to the Board of Education in 2013. *Id.* at ¶ 26. The Brookfield Republican Party announced its decision not to endorse Plaintiff at its caucus, which was held on July 23, 2013, the same day as the Brookfield Democratic caucus. *Id.* at ¶ 27. Plaintiff attended the Brookfield Republican Party caucus, and did not attend the Brookfield Democratic caucus. *Id*. The Brookfield Republican Town Committee nominated only one woman to run for an elected position at its July 2013 caucus. *Id.* at ¶ 27.

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

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

[2] Both Walker and Grimes lost their seats on the Brookfield Republican Town Committee in the March 2016 town primary.

as an unaffiliated voter on the Democratic slate. *Id.* at ¶¶ 28, 30, 31. Since it was impossible for her to seek election as a member of Republican Party (i.e. the party that refused to endorse or nominate her), on July 24, 2013, Plaintiff changed her party affiliation to "Unaffiliated." *Id.* at ¶ 31.

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

In registering as an "Unaffiliated" voter, Plaintiff made a deliberate decision not to join the Democratic Party or any other party. *Id.* at ¶ 33. Plaintiff reenrolled as a Republican effective December 4, 2013. *Id.* at ¶ 36. Plaintiff's form for reregistration as a Republican was accepted and initialed by Defendant Dunkerton. *Id*. Since the time that she first registered as a Republican, Plaintiff has always supported the principles and values of the Republican Party, even during the brief, less than five month period when she was registered as "Unaffiliated." *Id.* at ¶ 34. The Brookfield Democratic Party did not endorse Plaintiff at their caucus, although they did do so at a later time, and Plaintiff was not elected to the Brookfield Board of Finance as an "Unaffiliated" voter on the Democratic Party slate. *Id.* at ¶¶ 29-30, 32.

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

Upon information and belief, at one or more Brookfield Republican Party meetings in late 2014 or early 2015, party members in attendance discussed the possibility of forcibly disaffiliating Plaintiff from the Republican Party pursuant to C.G.S. §§ 9-60 and 9-61. *Id.* at ¶ 38. The overwhelming majority of attendees, however, voted against such disaffiliation. *Id.* at ¶ 40. Despite the results of the vote or votes at these meetings, though, Defendants later continued to conspire to disaffiliate Plaintiff from the Republican Party. *Id.* at ¶¶ 41, 45. On March 19, 2015, Defendants issued Plaintiff a citation summoning her for a closed hearing to consider Plaintiffs' forcible disaffiliation from the Republican Party pursuant to C.G.S. §§ 9-60 *et seq*. *Id.*

at ¶ 42. This meeting was held at the Brookfield Town Hall on April 9, 2015. *Id.* at ¶¶ 43, 45. The meeting was presided over by Defendants Dunkerton and Grimes, who – on the one hand – accused Plaintiff of not being a good-faith member of the Republican Party and then – on the other hand – sat in judgement of Plaintiff, concluding that their accusations were well-founded and that, as punishment, Plaintiff's name should therefore be removed from the Republican Party rolls. *Id.* at ¶ 45.

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

On or about April 20, 2015, Defendants issued their decision forcibly dis-affiliating Plaintiff from the Republican Party. *Id.* at ¶ 46. In this decision, Defendants claimed that there was "reasonable proof" that Plaintiff was "a candidate for office under the designation of another party" and was "actively affiliated" with the Democratic Party. *Id.* at ¶ 47. Defendants did not find "reasonable proof" of the third act for which Plaintiff was cited, "knowingly being a candidate at any primary or caucus of another party." *Id.* at ¶ 48.

After Plaintiff was disaffiliated from the Republican Party, two male former members of the Brookfield Republican Party also sought to be re-affiliated with the Republican Party after having changed their political affiliation to "Unaffiliated" and after having run successfully for office as Democratic Party candidates. *Id.* at ¶¶ 49-50. The Republican Party re-affiliated both of these men and has not forcibly disaffiliated them or even held a hearing to consider doing so. *Id.* at ¶¶ 51-52.

8. The C.G.S. § 9-63 Hearing

On April 30, 2015, Plaintiff filed a petition in Connecticut Superior Court pursuant to C.G.S. § 9-63 seeking to avail herself of an "expedited summary appeal procedure"[3] to reverse the decision to remove her name from the rolls of the Brookfield Republican Party. *See* Mandamus Petition, attached to the Declaration of Nathan C. Zezula (the "Zezula Declaration") as Exhibit A.[4] The Zezula Declaration is attached hereto as Exhibit 1. Only Defendant Dunkerton was named in Plaintiff's C.G.S. § 9-63 petition. Judge Anthony D. Truglia, Jr. of the Connecticut Superior Court held a hearing on this matter on July 27, 2015.[5] On August 18, 2015, Judge Truglia issued an opinion refusing to order Defendant Dunkerton to reinstate Plaintiff's name on the Republican Party rolls.[6] Plaintiff's appeal of this opinion is currently pending in the Connecticut Supreme Court.[7]

ARGUMENT

A. STANDARD OF REVIEW

FED. R. CIV. P. 12(b)(6) allows a court to grant a motion to dismiss "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 (1984). To survive such a motion, a plaintiff must plead "only enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 550, 570 (2007). For the purposes of such a motion, the factual allegations of a complaint must be accepted as true, *Zinermon v. Burch*, 494 U.S. 113,

[3] *Miller v. Dunkerton*, DBDCV156017272S, 2015 Conn. Super. LEXIS 2197, at *2 (Conn. Super. Ct. Aug. 18, 2015).
[4] When deciding a Rule 12(b)(6) motion, a court may consider "facts of which the court may take judicial notice. Judicial notice may encompass the status of other lawsuits in other courts and the substance of papers filed in those actions." *Schenk v. Citibank/Citigroup/Citicorp*, 2010 U.S. Dist. LEXIS 130305, at *5 (S.D.N.Y. Dec. 9, 2010).
[5] *Miller*, 2015 Conn. Super. LEXIS 2197, at *4.
[6] *Id.* at *29.
[7] *Miller v. Dunkerton*, Docket No. SC 19621.

118 (1990), and such allegations must be viewed in the light most favorable to the plaintiff, *J.S. v. Attica Cent. Schs.*, 386 F.3d 107, 115 (2d Cir. 2004). Also, the Court must draw all reasonable inferences in favor of the plaintiff. *Thomas v. City of New York*, 143 F.3d 31, 37 (2d Cir. 1998). "The standards of review for a motion to dismiss under Rule 12(b)(1) for lack of subject matter jurisdiction and under 12(b)(6) for failure to state a claim are substantively identical," so courts must also accept factual allegations as true and draw all reasonable inferences in favor of the plaintiff when analyzing a motion to dismiss for lack of subject matter jurisdiction. *Gonzalez v. Option One Mortg. Corp.*, No. 3:12-CV-14702014, U.S. Dist. LEXIS 76789, at *6 (D. Conn. June 3, 2014) (internal quotations omitted).

B. *RES JUDICATA* AND COLLATERAL ESTOPPEL ARE INAPPLICABLE TO THE CLAIMS AND ISSUES IN THIS CASE

Anxious to escape this Court's review of their actions, Defendants argue that, in light of Judge Truglia's decision,[8] this Court should apply the preclusion doctrines of *res judicata* and collateral estoppel to Plaintiff's claims. However, "[w]hen determining the preclusive effect of a state court judgment, a court must apply the preclusion law of the rendering state," *Faraday v. Blanchette*, 596 F. Supp. 2d 508, 514 (D. Conn. 2009), and – as is explained more fully below – Connecticut courts would not apply these preclusion doctrines in a case such as this.

First, neither preclusion doctrine applies if a plaintiff did not have an adequate opportunity to litigate the matter fully in the initial proceeding. *See Wheeler v. Beachcroft, LLC*, 129 A.3d 677, 685 (2016) (to apply *res judicata* "there must have been an adequate opportunity to litigate the matter fully"); *Wiacek Farms, LLC v. City of Shelton*, 30 A.3d 27, 32 (Conn. App. Ct. 2011) (to apply collateral estoppel, "[t]he issue must have been fully and fairly litigated in the

[8] *Miller*, 2015 Conn. Super. LEXIS 2197.

first action"). Here, for several reasons, Plaintiff did not have an adequate opportunity to fully litigate the matters at issue in state court.

It bears noting that a plaintiff seeking a hearing under C.G.S. § 9-63 has only ***10 days*** following the exclusion of her name from the party rolls to bring a petition seeking review by the Superior Court. C.G.S. § 9-63. This is hardly sufficient time for a plaintiff to compile and formulate a comprehensive set of legal grievances against a registrar in addition to her petition for reinstatement to a political party. The Connecticut legislature intended for C.G.S. § 9-63 to provide an "expedited summary appeal procedure,"[9] and this intention would be thwarted if a voter seeking speedy reinstatement to her party was forced to include with her claim for reinstatement every other arguably related claim or else risk losing, through the operation of the preclusion doctrines, the right to argue such matters in a more appropriate forum.

Defendants concede that the time available for Plaintiff to put together a state case for reenrollment in the Republican Party was limited by the fact that her C.G.S. § 9-63 proceeding "was on an expedited track."[10] Indeed, C.G.S. § 9-63 calls for the judge presiding over an expelled party member's claims to "assign the same for a hearing at the earliest practicable date. . . ." Defendants acknowledge that Judge Truglia did just this, scheduling Plaintiff's "evidentiary hearing . . . almost two months after the date she filed her petition."[11]

Incredibly, however, Defendants argue that "[t]wo months is more than sufficient time"[12] to fully adjudicate any claims Plaintiff might have made in state court, making it appropriate – they say – for this Court to use *res judicata* and collateral estoppel to bar Plaintiff from bringing

[9] *Miller*, 2015 Conn. Super. LEXIS 2197, at *2.
[10] Grimes/Walker Mot. at 14.
[11] Grimes/Walker Mot. at 14.
[12] *Id.*

her claims here.[13] In this case, however, Plaintiff brings complex claims under § 1983, requiring significant discovery and detailed research, briefing, and analysis of law. Indeed, in light of the complexity of § 1983 cases, the Eleventh Circuit found that full adjudication of claims under this statutory provision could not be accomplished in even ***four*** months – more time than Plaintiff had to develop her claims and arguments before her state court hearing. *Arthur v. Allen*, 248 Fed. Appx. 128, 132 (11th Cir. 2007) ("four months is not enough time for this [§ 1983] case to be fully adjudicated").

Also, for the purposes of analyzing whether to give preclusive effect to findings from a prior adjudication, the Second Circuit has held that "[a]n opportunity to litigate is neither full nor fair when a litigant is denied discovery, available in the ordinary course, into matters going to the heart of his claim." *Locurto v. Giuliani*, 447 F.3d 159, 171 (2d Cir. 2006). In this case, ***no*** document discovery requests or interrogatories were propounded, and no witnesses were deposed prior to the C.G.S. § 9-63 hearing, since the expedited nature of the C.G.S. § 9-63 proceeding made such discovery virtually impossible.

It is difficult to imagine how meaningful discovery could have been completed in the time between the commencement of the C.G.S. § 9-63 proceeding and the hearing to adjudicate Plaintiff's claims. For instance, document discovery requests obviously take time to draft and serve, and recipients of such requests are given at least "thirty days after the date of certification of service" just to provide a written response. Practice Book § 13-10. Ordinarily, these responses contain numerous objections that must be resolved in time-consuming negotiation between the parties before discoverable material is actually produced, and it takes even more time to analyze the productions for use in a C.G.S. § 9-63 hearing. For this reason, it would be

[13] Counsel for Defendants, as veteran and well respected members of the Connecticut Bar, are well aware that civil cases in Connecticut State Court often require years of discovery, amendment, and motion practice before claims are fully adjudicated.

inappropriate and unfair to give preclusive effect to the opinion in Plaintiff's C.G.S. § 9-63 proceeding, since the highly accelerated pace of this proceeding denied Plaintiff the opportunity for meaningful discovery necessary to fully and fairly litigate her claims.[14] *Cf. Locurto*, 447 F.3d at 171. On this basis alone, the doctrine of *res judicata* is inappropriate.

Other procedural limitations make a C.G.S. § 9-63 proceeding an inappropriate mechanism for the resolution of issues more complex than a simple assessment of a registrar's compliance with statutory requirements for forcible disaffiliation of a voter from a political party. In addition to the abovementioned procedural requirement for a C.G.S. § 9-63 plaintiff to file a petition within 10 days of her disenrollment and the procedural requirement for a hearing to be scheduled at an accelerated pace, C.G.S. § 9-63 also procedurally limits the parties against whom a petition may be brought to registrars and deputy registrars.[15] This procedural limitation prevented Plaintiff from suing Defendants Grimes, Walker, and Flynn in the C.G.S. § 9-63 action, since they are not registrars or deputy registrars. Connecticut case law is clear that "if the nature of the [original] hearing carries procedural limitations that would not be present at a later hearing, the party might not have a full and fair opportunity to litigate" making the application of *res judicata* to his claims inappropriate. *Gateway, Kelso & Co. v. West Hartford No. 1, LLC*, 15 A.3d 635, 639 (Conn. App. Ct. 2011) (internal quotations omitted).

When an original action takes place in a proceeding designed to resolve only a narrow issue, Connecticut courts have found *res judicata* to be inapplicable in a later proceeding

[14] The inadequacy of the C.G.S. § 9-63 hearing in providing a full and fair opportunity for litigation of Plaintiff's case is particularly noticeable with respect to Plaintiff's claim that Defendant Dunkerton had selectively enforced C.G.S. § 9-61 against her. Judge Truglia rejected this claim on the grounds that Plaintiff had offered "insufficient proof of selective enforcement" and had offered "no specific evidence of discriminatory or retaliatory intent toward her." *Miller*, 2015 Conn. Super. LEXIS 2197, at *20. The fact that Judge Truglia found insufficient evidence in support of these claims is hardly surprising given that Ms. Miller had no opportunity to obtain such evidence in discovery due to the expedited nature of the C.G.S. § 9-63 proceeding.

[15] C.G.S. § 9-63 (petitions must "pray[] for an order directing such registrar or deputy registrar by whom such name was removed . . . to restore such name . . .").

employing procedures adequately designed to provide a full opportunity to litigate the matter. For instance, in *Delahunty v. Massachusetts Mutual Life Insurance Company*, the Connecticut Supreme Court held that *res judicata* would not preclude a party from litigating, in a later proceeding, tort claims based on the conduct of former spouses during the marriage even though these claims could have been litigated in a prior marital dissolution action. 674 A.2d 1290, 1298 (1996). The court recognized that "there are significant differences between a tort action and a dissolution action" and noted the many procedural distinctions between the two actions. *Id.* at 592-93. The court reasoned that "[i]f claim preclusion were applied to a postdissolution tort action, there would be a strong incentive to parties in a dissolution action to raise and litigate every marital grievance that might later form the basis of a possible tort action, for fear of forfeiting the ability to do so later. . . .," which would, the court said, "unduly complicate the dissolution action and consequently unnecessarily delay essential child custody and support determinations." *Id.* at 594, 598; *see also Pollansky v. Pollansky*, 162 Conn. App. 635 (Conn. App. Ct. 2016) (*res judicata* and collateral estoppel inapplicable in later action for unjust enrichment where original action was summary process hearing designed solely to determine possession of real property).

The same principle applies to collateral estoppel, also known as issue preclusion. In *Isaac v. Truck Service*, the Connecticut Supreme Court held that neither *res judicata* nor issue preclusion apply in a personal injury claim on the regular docket even when preceded by a judgment from the small claims docket as to property damage arising from the same car accident. 752 A.2d 509, 513-17 (2000). The court reasoned that applying these doctrines in the later action would work against the policy of "inexpensive, prompt, informal and final adjudication of civil disputes" that the expedited small claims procedures were designed to further. *Id.* at 516.

This approach is in accord with the RESTATEMENT (SECOND) OF JUDGEMENTS Section 28, which explains that preclusion is inappropriate where "[a] new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two courts." RESTATEMENT (SECOND) OF JUDGEMENTS § 28.

C.G.S. § 9-63 is intended only to "provide[] an expedited summary appeal procedure for persons claiming to be aggrieved by a registrar's erasure or exclusion from a party enrollment list,"[16] not to assess more complicated questions of the type raised in this lawsuit related to Defendants' violations of 42 U.S.C. § 1983 and 42 U.S.C. § 1985. Consistent with its purpose, C.G.S. § 9-63 proceedings use procedures affording inadequate opportunities for parties to fully and fairly litigate claims such as those at issue here. For this reason, decisions rendered in such proceedings should carry no preclusive effect, and Plaintiff should be free to pursue her claims in this forum.

This Court should also refuse to apply the preclusion doctrines in this case because the underlying claims and issues here are simply not the same as those that were involved in the C.G.S. § 9-63 proceeding. Defendants fail to observe that Plaintiff raises claims and issues in this matter that were not decided, and could not even have been raised, in the state court proceeding. For instance, Plaintiff alleges that Defendants' actions impermissibly discriminated against her based upon her gender, and pleads that the conduct giving rise to this claim occurred ***after*** the action she brought in state court. *See* Compl. at ¶ 19. This later conduct gives rise to a separate transaction not barred by the earlier state court decision. "[M]aterial operative facts occurring after the decision of an action with respect to the same subject matter may in themselves or taken in conjunction with the antecedent facts, comprise a transaction which may be made the basis of a second action not precluded by the first . . . ." *Sotavento Corp. v. Coastal*

[16] *Miller*, 2015 Conn. Super. LEXIS 2197, at *2.

Pallet Corp., 927 A.2d 351, 357-58 (2007); *see also Wiacek Farms*, 30 A.3d at 32 (to apply collateral estoppel, the issue "must have been actually decided" in the first action).

C. THE ABSTENTION DOCTRINES DO NOT APPLY TO THIS CASE

In yet another effort to avoid this Court's scrutiny of their actions, Defendants urge this Court to abstain from exercising its jurisdiction over this matter by invoking two abstention doctrines: *Younger* abstention and *Colorado River* abstention. However, these doctrines are, for good reason, rarely employed by courts. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976); *see also Williams v. Lambert*, 46 F.3d 1275, 1281 (2d Cir. 1995) ("The doctrine of abstention, under which a District Court may decline to exercise or postpone the exercise of its jurisdiction, is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it. Abdication of the obligation to decide cases can be justified under this doctrine only in the exceptional circumstance where the order to the parties to repair to the state court would clearly serve an important countervailing interest."). "In the main, federal courts are obliged to decide cases within the scope of federal jurisdiction. Abstention is not in order simply because a pending state-court proceeding involves the same subject matter." *Sprint Communs., Inc. v. Jacobs*, 134 S. Ct. 584, 588 (2013).

1. *Younger* Abstention

First, the *Younger* Doctrine is not applicable. Defendants quote *Diamond "D" Construction Corp. v. McGowan* for the proposition that "*Younger* abstention is required when three conditions are met: (1) there is 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." 282 F.3d 191, 198 (2d Cir. 2002). After *Diamond "D" Construction Corp.* was decided, the United States Supreme

Court significantly limited the application of this doctrine, however. *See Sprint Communs., Inc. v. Jacobs*, 134 S. Ct. 584, 591 (2013).

"*Younger* originally applied abstention in the criminal context, and while the doctrine has expanded outside the criminal context into civil judicial and administrative proceedings . . . the Supreme Court explained in *Sprint Communications* that abstention is only appropriate in settings bearing some clear procedural relationship to criminal proceedings." *Fund v. City of New York*, 2014 U.S. Dist. LEXIS 68509 (S.D.N.Y. May 19, 2014) (internal citations omitted). Thus, under *Sprint*, *Younger* abstention is only appropriately applied to bar federal court intrusion into three types of state cases: (1) "ongoing state criminal prosecutions" (2) "civil enforcement proceedings" (3) "civil proceedings involving certain orders . . . uniquely in furtherance of the state courts' ability to perform their judicial functions." *Sprint*, 134 S. Ct. at 591. Defendants fail to even acknowledge the existence of these limitations on the application of *Younger* abstention, so they certainly make no attempt to argue that Plaintiff's appeal of the decision in her C.G.S. § 9-63 proceeding falls into any of these categories found to merit *Younger* abstention. For this reason, this Court should reject Defendants' attempt to invoke *Younger* abstention.

Even if *Sprint* had not significantly limited the categories in which *Younger* abstention applies, however, the application of this abstention doctrine would still be inappropriate in this case. First, there is no important state interest implicated in Plaintiff's appeal of the decision rendered following her C.G.S. § 9-63 hearing, and the absence of this important state interest is fatal to Defendants' attempts to invoke this abstention doctrine. *Diamond "D" Construction Corp.*, 282 F.3d at 198. As this Court has previously recognized, "[a] voter's name . . . may be erased from the party's enrollment list on a proper showing that he does not support the party's

principles or candidates[under] Conn. Gen. Stat. §§ 9-60, 9-61[,] ***but in actual practice these statutes are not used***." *Nader v. Schaffer*, 417 F. Supp. 837, 843 (D. Conn. 1976) (emphasis added). Given how rarely C.G.S. § 9-61 is actually invoked to forcibly disaffiliate a voter, then, it seems quite clear that any state interest furthered by the statutory provision is not sufficiently "important" to warrant this Court's abstention here. *Diamond "D" Construction Corp.*, 282 F.3d at 198. Second, as explained more fully in Section B, *supra*, the extremely quick and procedurally limited review accorded to Plaintiff in her C.G.S. § 9-63 proceeding did not provide her with an "adequate opportunity for judicial review of [her] federal constitutional claims," making the application of *Younger* abstention in this proceeding inappropriate. *Diamond "D" Construction Corp.*, 282 F.3d at 198.

2. *Colorado River* Abstention

Next, the *Colorado River* Doctrine is not applicable. As a general matter, "as between state and federal courts, the rule is that the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction." *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976) (internal quotations omitted). Defendants, however, erroneously contend that the exceptional circumstances required for abstention under *Colorado River* exist in this case. No such exceptional circumstances are present, however, to justify this Court's abdication of its "virtually unflagging obligation . . . to exercise the jurisdiction" it has been given. 424 U.S. at 818.

As an initial matter, "a finding that the concurrent proceedings are 'parallel' is a necessary prerequisite to abstention under *Colorado River*." *Dittmer v. County of Suffolk*, 146 F.3d 113, 118 (2d Cir. 1998). "Federal and state proceedings are . . . 'parallel' for purposes of abstention when the . . . proceedings are essentially the same; that is, there is an identity of parties, and the issues and relief sought are the same." *Huntington Hosp. v. New Eng. Ins. Co.*,

04 Civ. 4195, 2005 U.S. Dist. LEXIS 3115, *5-6 (S.D.N.Y. March 1, 2005) (internal quotations omitted). Citing the need for parallel proceedings, courts have refused to apply *Colorado River* abstention where, as here, the "state action does not include any claim of violation of any federal statute, including 42 U.S.C. § 1983," but the federal action does. *Cupe v. Lantz*, 470 F. Supp. 2d 128, 133 (D. Conn. 2007). Also, while Plaintiff and Defendant Dunkerton are parties to both this case and the case pending before the Connecticut Supreme Court, the other Defendants in this matter are not parties to the state case. This undermines Defendants' efforts to invoke *Colorado River* abstention, since "[s]imilarity of parties is not the same as identity of parties." *Larobina v. Comm'r of Transp.*, No. 3:03CV217, 2005 U.S. Dist. LEXIS 44947, at *10 (D. Conn. Oct. 26, 2005) (quoting *Sheerbonnet, Ltd. v. American Express Bank*, 17 F.3d 46, 50 (2d Cir. 1994)) (declining to apply Colorado River abstention where some defendants in federal action were not defendants in state action).

Even if the suit was parallel with Plaintiff's appeal in the Connecticut Supreme Court (it is not), "[t]he 'exceptional circumstances' necessary for abstaining under *Colorado River* requires the balancing of several factors" that do not weigh in favor of Defendants in this case. *Sheerbonnet, Ltd. v. American Express Bank*, 17 F.3d 46, 49 (2d Cir. 1994). "A court must consider 1) whether either court has first assumed jurisdiction over any res or property; 2) the inconvenience of the federal forum; 3) whether a dismissal or stay will avoid piecemeal litigation; 4) the order in which jurisdiction was obtained; 5) whether federal law provides the rule of decision; and 6) the adequacy of the state court proceeding to protect the rights of the party seeking federal jurisdiction." *Larobina*, No. 3:03CV217, 2005 U.S. Dist. LEXIS 44947, at *10. In analyzing these factors, "the balance [should be] heavily weighted in favor of the exercise of jurisdiction." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 16

(1983); *see also Colo. River*, 424 U.S. at 818-19 ("[A] carefully considered judgment taking into account both the obligation to exercise jurisdiction and the combination of factors counselling against that exercise is required. Only the clearest of justifications will warrant dismissal.").

Defendants concede that the first two *Colorado River* abstention factors do not support their argument for abstention in this case.[17] *See Cupe*, 470 F. Supp. at 133 ("The neutrality of these factors in fact favors retention."). Other factors also cut against Defendants. For instance, "federal law provides the rule of decision" in this case, since the action alleges violations of federal laws (i.e. 42 U.S.C. § 1983 and 42 U.S.C. § 1985). Additionally, for reasons more fully described in Section B, *supra*, the state court proceeding is inadequate to fully protect Plaintiff's rights, since the Superior Court decision currently under review by the Connecticut Supreme Court was issued following an extremely quick summary review in a C.G.S. § 9-63 proceeding governed by procedures that sharply limited Plaintiff's ability to prove her case. "As to the avoidance of piecemeal litigation, the Supreme Court has held that mere potential for conflict in the results of adjudications, does not, without more, warrant staying exercise of federal jurisdiction." *Cupe*, 470 F. Supp. at 133 (quoting *Colo. River*, 424 U.S. at 816). Where, as here, "there are federal claims which will go unheard if only the state court action is maintained" the third *Colorado River* factor "weighs only slightly in favor of abstention" even if "there exists a risk of inconsistent outcomes." *Id.* For these reasons, the *Colorado River* factors cut against abstention in this case, especially when taking account of the rule that "the balance [should be] heavily weighted in favor of the exercise of jurisdiction." *Moses H. Cone*, 460 U.S. at 16.[18]

[17] Grimes/Walker Mot. at 10 n.4; Dunkerton/Flynn Mot. at 25 n.3.

[18] Defendants' contention that Plaintiff has engaged in forum shopping is without merit. Defendants attempt to support this contention by pointing to the fact that Plaintiff has obtained two extensions of time to file her appellate brief in state court. *See* Grimes/Walker Mot. at 11. In fact, however, these extensions were made necessary by factors having nothing to do with any desire on the part of Plaintiff to delay a decision in state court. One extension was necessary to allow time for the state trial court to send the original judgment file to the state appellate clerk as is required for appeals in Connecticut state court. *See* Connecticut Practice Book § 63-4. The other extension was

D. PLAINTIFF HAS STATED CLAIMS FOR WHICH RELIEF MAY BE GRANTED

Defendants make several arguments suggesting that Plaintiff has failed to state a claim. For the reasons described below, these arguments fail.

1. Defendants Are Subject To Suit Under 42 U.S.C. § 1983

Defendants Walker and Grimes argue that they are not subject to suit under 42 U.S.C. § 1983 because they did not operate as state actors in connection with removal of Plaintiff's name from the Brookfield Republican Party rolls.[19] This argument is without merit as to Defendant Grimes.[20]

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

---

close in time to the period in which Plaintiff transitioned to new legal counsel, and was necessary to allow her new attorneys to become familiar with the facts of her case. *See* Zezula Declaration at ¶¶ 3-5.

[19] Defendants Dunkerton and Flynn do not make this argument in their motion to dismiss.

[20] Plaintiff initially included Defendants Walker and Flynn as defendants in her Complaint because of Defendant Dunkerton's testimony during the C.G.S. § 9-63 hearing that he conferred with these two in connection with the removal of her name from the Republican Party rolls. See transcript excerpt attached to the Zezula Declaration as Exhibit B, at 25:16 - 26:3. Plaintiff intends to voluntarily dismiss Defendants Walker and Flynn from this action shortly and to proceed solely against Defendants Dunkerton and Grimes. Plaintiff intends to do so not because she is not confident that discovery will confirm that Walker and Flynn were a part of the conspiracy, but because Plaintiff desires to focus her argument, and the Court's attention, on the most egregious actors in Grimes and Dunkerton. For this reason, analysis in this Opposition is applicable solely with respect to remaining Defendants Dunkerton and Grimes.

Defendant Grimes claims that the first element of this cause of action – action under color of state law – is not met in this case. With respect to this element, "[i]n cases under § 1983, 'under color' of law has consistently been treated as the same thing as the 'state action' required under the Fourteenth Amendment." *United States v. Price*, 383 U.S. 787, 794 n.7 (1966). The Supreme Court has held that if "privilege of membership in a [political] party . . . is also the essential qualification for voting in a primary to select nominees for a general election, the State makes the action of the [political] party the action of the State." *Smith v. Allwright*, 321 U.S. 649, 664-65 (1944) (overturning Texas law authorizing Democratic Party to use white primaries). Consequently, if "a private political party acts pursuant to its statutory authority in influencing state and local primary elections, it is subject to private suit under § 1983 if its actions contravene the U.S. Constitution." *Thompson v. Rizzitelli*, No. 3:10cv71, 2011 U.S. Dist. LEXIS 33060, at *11 (D. Conn. March 29, 2011).

Defendant Grimes attempts to escape liability under § 1983 by arguing that his involvement in disaffiliating Plaintiff from the Republican Party began only after Defendant Dunkerton issued Plaintiff a citation. He offers no authority, however, to support the proposition that party officials purporting to act on behalf of their political party to influence and dictate who may participate in primary elections do not operate as state actors if their involvement is preceded by the actions of elected officials. The simple fact is that, in voting with Defendant Dunkerton to strip Plaintiff of her Republican Party membership, Defendant Grimes – purporting to act on behalf of the Republican Party – used his statutory authority under C.G.S. § 9-60 and C.G.S. § 9-61 to strip Plaintiff of her ability to participate in Republican primaries. But for his actions, Plaintiff would not have been forcibly disaffiliated. His conduct, thus, constituted state

action, making him subject to suit under § 1983. *Thompson*, No. 3:10cv71, 2011 U.S. Dist. LEXIS 33060, at *11.

2. Plaintiff States An Equal Protection Claim

Defendants also mistakenly argue that Plaintiff failed to state a claim for equal protection based on selective enforcement. The Second Circuit "recognize[s] a selective enforcement claim where a plaintiff proves that (1) the [plaintiff], compared with others similarly situated, was selectively treated; and (2) that such selective treatment was based on impermissible considerations such as race, religion, intent to inhibit or punish the exercise of constitutional rights, or malicious or bad faith intent to injure a person." *Brown v. City of Syracuse*, 673 F.3d 141, 151-52 (2d Cir. 2012). "As a woman [Plaintiff] is clearly a member of a protected class." *Britell v. Dep't of Corr.*, CV 930351853S, 1997 Conn. Super. LEXIS 2451, at *38 (Conn. Super. Ct. Sept. 8, 1997).

Defendants mistake the level of similarity a plaintiff is required to show between herself and comparators in order to establish an equal protection claim premised, as Plaintiff's claims are here, on selective enforcement on the basis of membership in a protected class. Defendants argue that Plaintiff must demonstrate "an extremely high degree of similarity."[21] This is the standard applicable to "class of one" claims, however, which do not involve "discrimination based on membership in a specific protected class." *Neilson v. D'Angelis*, 409 F.3d 100, 104 (2d Cir. 2005), *overruled on other grounds by Appel v. Spiridon*, 531 F.3d 138, 140 (2d Cir. 2008).[22] The level of similarity required for selective enforcement claims based upon class discrimination

[21] Grimes/Walker Mot. at 18.
[22] *Cutie v. Sheehan*, No. 1:11-cv-66 (MAD/RFT), 2014 U.S. Dist. LEXIS 134898, at *32 n.9 (N.D.N.Y. Sept. 25, 2014) ("The Second Circuit's discussion in *Neilson* regarding the level of similarity necessary to support a class-of-one equal protection claim has not been overruled.").

is lower.[23] For the purposes of claims alleging discrimination based upon membership in a protected class, "[s]imilarly situated does not mean identical, but rather a reasonably close resemblance of the facts and circumstances of plaintiff's and comparator's cases, to the extent that an objectively identifiable basis for comparability exists." *Walker v. City of New York*, No. 05-CV-1283, 2010 U.S. Dist. LEXIS 132801, at *7 (E.D.N.Y Dec. 15, 2010) (internal quotations omitted).

Plaintiff's equal protection claims are clearly sufficient to survive dismissal under Rule 12(b)(6), especially when viewed under the correct standard. In this case, Plaintiff alleges that Defendants selectively enforced C.G.S. § 9-60 and C.G.S. § 9-61 against her to exclude her from the Republican Party on the basis of her gender, and she alleges that Defendants have not enforced these provisions against similarly situated men.[24] Plaintiff's allegation that these men – like Plaintiff – had also previously "voluntarily disaffiliated themselves"[25] from the Republican Party, shows "a reasonably close resemblance of the facts and circumstances of [P]laintiff's and comparator's cases,"[26] which suffices to establish that Plaintiff and the comparators are similarly situated for the purposes of Plaintiff's gender-based equal protection claim.[27]

[23] *Id.* at 106 ("Where a plaintiff in a class of one equal protection case relies on similarity alone, a more stringent standard must be applied than is applied in a racial discrimination case."); *Lami v. Stahl*, No. 3:05CV1416 (MRK), 2007 U.S. Dist. LEXIS 55421, at *13 (D. Conn. July 31, 2007) ("Because [the plaintiff] is not asserting a gender-based discrimination claim but is instead relying on similarity alone to support her Equal Protection claim, she faces an even more stringent standard in proving that she is similarly situated to her comparators than would be true had she claimed gender discrimination."); *Cutie v. Sheehan*, No. 1:11-cv-66 (MAD/RFT), 2011 U.S. Dist. LEXIS 114889, at *20 n.6 (N.D.N.Y. Oct. 5, 2011) ("Although the Supreme Court used the words 'similarly situated' to describe the standard for a 'class of one' claim, it is not the same standard of "similarity" as used in a protected-class discrimination claim.").

[24] Compl. at ¶¶ 78-81.

[25] *Id.* at ¶ 79.

[26] *Walker*, No. 05-CV-1283, 2010 U.S. Dist. LEXIS 132801, at *7.

[27] It should also noted that while the similarly situated men disaffiliated, ran for office, and then re-affiliated after the election, there is one striking difference between the Plaintiff and the similarly situated men—while the Plaintiff lost her election to the Republican candidate, the men won their elections and beat Republican candidates, thereby harming the Republican party. If anything, there was more reason to pursue C.G.S. § 9-60 and C.G.S. § 9-61 action against these men.

Defendants attempt to excuse their lack of action against these similarly situated men by claiming that, because the constitutionality of C.G.S. § 9-60 *et seq.* has been challenged, they are not required to enforce it against others.[28] First, Defendants have not cited, nor can they cite, any authority which excuses Defendants from enforcing a statute because it has been challenged in Court. Indeed, if the rule was that local, state, and federal government have license to cease enforcing a statute as soon as a constitutional challenge is filed, the wheels of government would cease to spin entirely. We are a litigious society, and legal challenges are common and can take years to resolve.

Second, it should be noted that the Defendants seem to have no issue with their fanatic and continuous enforcement of C.G.S. § 9-60 *et seq.* against the Plaintiff, despite the pending constitutional challenge. On April 27, 2016 Plaintiff was forced to file yet another state-court mandamus action, captioned *Miller v. Dunkeron*, DBD-CV16-6019696-S, after she was denied entry into the Republican Party by Defendants yet again, even after the two-year limitation found in C.G.S. § 9-63 for the alleged bad acts that led to her initial disaffiliation expired in November of 2015.[29] These ongoing actions against Plaintiff, and lack of action against the similarly situated men are the epitome of a violation of equal protection based on selective enforcement.

3. Plaintiff States A Claim For A Violation Of Her Right To Vote, Her Right To Free Association, and Her Right to Due Process

Defendants support the argument that their actions did not violate Plaintiff's right to vote by echoing the Connecticut Superior Court's erroneous conclusion that no authority supports the proposition that there is a fundamental right to vote in caucuses and primary elections.[30] However, a review of the relevant precedent leaves no doubt that American courts recognize a

[28] Dunkerton/Flynn Mot. at 27.
[29] A copy of the new mandamus petition is attached as Exhibit C to the Zezula Declaration.
[30] Grimes/Walker Mot. at 17.

fundamental, constitutionally protected right to vote in primaries. The Supreme Court has held that the "right of participation [in a primary] is protected just as is the right to vote at the [general] election" under circumstances where "a state . . . changes the mode of choice [of candidates] from a single step, a general election, to two, of which the first is the choice at a primary of those candidates from whom, as a second step, the [winner] is to be chosen at the election." *United States v. Classic*, 313 U.S. 299, 316-18 (1941); *see also Smith v. Allwright*, 321 U.S. 649, 661-62 (1944) ("It may now be taken as a postulate that the right to vote in . . . a primary for the nomination of candidates without discrimination by the State, like the right to vote in a general election, is a right secured by the Constitution."); *Tashjian*, 479 U.S. at 227 (goal of Seventeenth Amendment to United States Constitution to secure to the people the right to elect United States Senators "applicable to every stage in the selection process," including primaries).

Defendants also argue that the Brookfield Republican Party's associational right to define the contours of its membership outweighs Plaintiff's right to vote in Republican Party primaries and caucuses.[31] For at least two reasons, this argument is also flawed.

First, there is no basis to conclude here that the Republican Party has even expressed an interest in defining its membership to exclude Plaintiff, since the decision to disaffiliate Plaintiff from the Republican Party, and thereby bar her from voting in party primaries, was made by only two party officials – Defendants Dunkerton and Grimes – and they, on their own, are not in a position to assert the associational rights of the party as a whole. Courts recognize that an expressed opinion of a single member of a political party, or even a handful of party members, concerning party membership and primary voting rights is not itself an expression of the preference of the party as a whole, even if the persons expressing the opinion are party officials.

[31] Grimes/Walker Mot. at 17.

Maslow v. Bd. of Elections, 658 F.3d 291, 297 (2d Cir. 2011) (party candidates "are not the exclusive representatives of the political parties as a whole and cannot unilaterally exercise the parties' associational rights" to decide who can participate in party nomination process); *Mazzucco v. Verderame*, NO. CV 96-0382136-S, 1996 Conn. Super. LEXIS 752, at *5-6 (Conn. Super. Ct. Mar. 22, 1996) (court unconvinced that preference of party to disaffiliate voter can be discerned solely from opinion of party Town Chairman, since such preference must be "ascertained from a Town Committee meeting at a minimum and a caucus at a maximum"). Also, the other members of the Brookfield Republican Town Committee expressed no objection to associating with Plaintiff, further underscoring that the decision to remove Plaintiff's name from the party rolls did not reflect the associational preference of the party as a whole. When asked whether the group approved of Ms. Miller's forcible disaffiliation under C.G.S. §§ 9-60 and 9-61, the members of the Brookfield Republican Town Committee informed Defendant Dunkerton "this is entirely [your] decision, it is not ours." *See* the transcript excerpt attached as Exhibit D to the Zezula Declaration, at 108:27-109:6.

Second, even if the Republican Party had expressed an associational interest in forcibly disaffiliating Plaintiff (it has not), the Constitution of the United States does not permit the party to bar her for extended periods of time from joining the party of her choice and participating in its primaries.[32] The cases that Defendants cite, with only one exception, do not suggest otherwise.

For instance, no person who wanted to cast a vote in a party primary was prevented from doing so by the court's ruling in *Democratic Party of United States v. Wisconsin*, 450 U.S. 107

[32] *See, e.g.*, *Smith v. Allwright*, 321 U.S. 649, 662 (1944) (invalidating law barring blacks from participation in primary elections); *Dunn v. Blumstein*, 405 U.S. 330, 360 (1972) (invalidating one year residency requirement for voter registration); *Kusper v. Pontikes*, 414 U.S. 51, 59-60 (1973) (invalidating law barring voting in primary of one party until 23 months after last voting in primary of different party, since law "prevented voters from participating in the party primary of their choice").

(1981). Indeed, the Court took no issue with the open nature of the Wisconsin Democratic Party primary, which permitted persons to vote without declaring their party affiliation. *Id.* at 109, 120. The Court simply held that the national Democratic Party could not be forced to seat delegates selected in a manner contrary to its rules. *Id.* at 125.

Likewise, nothing in *Roberts v. United States Jaycees* supports the notion that political parties may preclude voters for extended periods of time from associating with the party of their choice or voting in its primaries. 468 U.S. 609 (1984). If anything, this case actually underscores the notion that the rights of an organization to define its membership must give way when they are in conflict with other important interests. *Id.* at 623 ("state interest in eradicating discrimination against female citizens" justifies infringement on right of Jaycees club to define its membership to exclude female voting members). Here, Plaintiff's fundamental right to vote and freely associate should overcome any interest on the part of the Brookfield Republican Party in precluding her from rejoining its membership and voting rolls.

Marchitto v. Knapp is the only case put forth by Defendants that even remotely supports the notion that political parties may bar voters for extended periods of time from becoming members and voting in their primaries. 807 F. Supp. 916 (D. Conn. 1992). *Marchitto* wrongly ruled that C.G.S. § 9-60 was constitutional. *Id.* at 918. This magistrate opinion is out of step with the majority of other cases, however, which have ruled versions (in some cases more recent versions than addressed by Marchitto in 1992) of Connecticut's forcible disaffiliation statutory regime unconstitutional.[33]

[33] *See Mandanici v. Fischer*, No. 21 36 18 (Conn. Super. Ct. February 22, 1984) (10 Conn. Law Trib. July 2, 1984, p.18); *Fand v. Legnard*, NO. 31 60 63,1994 Conn. Super. LEXIS 2722, at *33 (Conn. Super. Ct. Oct. 31, 1994); *Mazzucco v. Verderame*, NO. CV 96-0382136-S, 1996 Conn. Super. LEXIS 752, at *11 (Conn. Super. Ct. Mar. 22, 1996).

Defendants also suggest, without citing any authority, that they did not deny Plaintiff due process because she was provided two hearings, one before Defendants Dunkerton and Grimes and one before Judge Truglia, in connection with the decision to forcibly disaffiliate her from the Republican Party.[34] Plaintiff alleged, however, that the initial hearing before Defendants Dunkerton and Grimes failed to provide due process because "it was presided over by the very individuals who accused [her],"[35] and for the reasons described more fully in Section B, *supra*, the C.G.S. § 9-63 proceeding did not afford Plaintiff a meaningful opportunity to challenge Defendants' actions. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (due process requires notice and opportunity to be heard "at a ***meaningful time*** and in a ***meaningful manner***") (emphasis added). For this reason, Plaintiff has stated a claim for violation of her due process rights.

4. Plaintiff States A § 1985 Conspiracy Claim

Defendants argue that Plaintiff's allegations of a conspiracy to violate her civil rights should be dismissed because her predicate civil rights claims are supposedly meritless and because her allegations of conspiracy between the Defendants are supposedly too vague and too conclusory to survive under Rule 12(b)(6). As explained more fully in Sections A1-3, *supra*, however, Plaintiff's allegations regarding the predicate civil rights claims are more than sufficient to survive a motion to dismiss.

Moreover, the allegations in the Complaint regarding the conspiracy provide "when the conspiracy occurred, how it occurred, its scope and/or its particular results," which are the type of factual details courts require when analyzing the sufficiency of a 42 U.S.C. § 1985 claim.[36] The Complaint describes when the conspiracy occurred. Compl. at ¶ 42 (Defendants met "at or

[34] Grimes/Walker Mot. at 17.
[35] Compl. at ¶ 45.
[36] *Narumanchi v. Bd. of Trs.*, No. H-86-51 (PCD), 1986 U.S. Dist. LEXIS 19512, at *11 (D. Conn. Oct. 2, 1986).

in conjunction with" a January 2015 Brookfield Republican Party meeting "for the specific purpose of determining how best to forcibly disaffiliate Ms. Miller and thereby violate her constitutional rights"). The Complaint describes how the conspiracy occurred. *Id.* at ¶ 45. (Defendants Dunkerton and Grimes executed the plan they made in connection with the January 2015 meeting by presiding over an April 9, 2015 "show-trial" to "strip Ms. Miller of her Constitutional rights without due process of the law."). The Complaint describes the results of the conspiracy. *Id.* at ¶ 46 ("On or about April 20, 2015 Defendants issued [a] decision . . ." removing Plaintiff from the Republican Party."). Accordingly, the Complaint's allegations of conspiracy in violation of 42 U.S.C. § 1985 are not conclusory or vague, and are more than sufficient to survive a motion to dismiss.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendants' motions to dismiss the Complaint, and provide any other relief that this Court deems just and equitable.

Respectfully submitted,

By: *Nathan C. Zezula*
Joseph M Pastore III
Nathan Zezula
Pastore & Dailey LLC
4 High Ridge Park, Third Floor
Stamford, CT 06905
Phone: (203) 658-8454
Fax: (203) 348-0852
jpastore@psdlaw.net
nzezula@psdlaw.net
****
Susan Bysiewicz
Pastore & Dailey LLC
115 Glastonbury Blvd., Suite 100
Glastonbury, CT 06033
Phone: 203.658.8467
sbysiewicz@psdlaw.net

Attorneys for Plaintiff

EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JANE MILLER Plaintiff, vs. THOMAS DUNKERTON, in his official capacity as the Republican Registrar of Voters for the Town of Brookfield, Connecticut; MATTHEW GRIMES, in his official capacity as the Chairman of the Brookfield Republican Town Committee for the Town of Brookfield, Connecticut; GEORGE WALKER, in his official capacity as a member of the Brookfield Republican Town Committee; MARTIN FLYNN; in his official capacity as a member of the Brookfield Republican Town Committee Defendants.	CIVIL A. NO. 3:16-cv-00174-AWT

DECLARATION OF NATHAN ZEZULA

1. I, NATHAN ZEZULA, am over the age of eighteen years, believe in the obligations of an oath, and have first-hand knowledge of the below facts.

2. I am an attorney associated with the firm of Pastore & Dailey LLC (Pastore & Dailey) and represent the Plaintiff in the above-captioned matter.

3. Pastore & Dailey was retained by the Plaintiff to file an appellate brief in the Connecticut State Supreme Court ("Supreme Court"), under the caption *Miller v. Dunkerton*, Docket No. SC 19621, on February 12, 2016.

4. On February 1, 2016, Plaintiff's then counsel, Cohen and Wolf, P.C., filed a

motion for an extension of the deadline to file the Supreme Court appellate brief. This filing is reflected on the Supreme Court docket and was made before Pastore & Dailey was retained. I understand that this motion was filed in order to facilitate the transition of counsel between Cohen and Wolf, P.C. and Pastore & Dailey.

5. On March 15, 2016, Pastore & Dailey was forced to file for a further two-week extension, as the trial court had not yet executed the Judgment File and posted same to the docket. I was informed by the Supreme Court clerk that without this document, Pastore & Dailey could not file the appellate brief. I was then told by the clerk to file for a short extension in order to give the trial court time to execute the Judgment File.

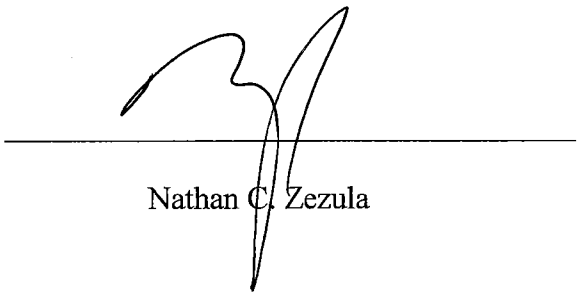
6. Attached hereto as **Exhibit A** is a true and correct copy of the Mandamus Petition filed, with the Connecticut Superior Court on April 30, 2015.

7. Attached hereto as **Exhibit B** is a true and correct excerpt of a certified copy of the transcript of the mandamus hearing held on July 27, 2015 in the matter of *Miller v. Dunkerton*, docket no. 15-6017272S in the Connecticut Superior Court, District of Danbury. The excerpt is pages 25 and 26 of the transcript.

8. Attached hereto as **Exhibit C** is a true and correct copy of the Mandamus Petition filed, with the Connecticut Superior Court on April 27, 2016.

9. Attached hereto as **Exhibit D** is a true and correct excerpt of a certified copy of the transcript of the mandamus hearing held on July 27, 2015 in the matter of *Miller v. Dunkerton*, docket no. 15-6017272S in the Connecticut Superior Court, District of Danbury. The excerpt is page 108-109 of the transcript.

Executed on May 13, 2016.



Nathan C. Zezula

EXHIBIT A

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.

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,

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: _____

Neil Marcus
Cohen and Wolf, P.C.
158 Deer Hill Ave
Danbury, CT 06810
Tel: (203) 792-2771
Fax: (203) 791-8149
nmarcus@cohenandwolf.com
Juris No. 100137

EXHIBIT B

NO.: DBDCV156017272S	:	SUPERIOR COURT
JANE MILLER	:	JUDICIAL DISTRICT OF DANBURY
v.	:	AT DANBURY, CONNECTICUT
THOMAS DUNKERTON	:	JULY 27, 2015

BEFORE THE HONORABLE ANTHONY D. TRUGLIA, JR. JUDGE

A P P E A R A N C E S:

Representing the Plaintiff:

ATTORNEY NEIL MARCUS
Cohen and Wolf, PC
158 Deer Hill Avenue
Danbury, Connecticut 06810

Representing the Defendant:

ATTORNEY WARD J. MAZZUCCO
And
ATTORNEY KEVIN G. PALUMBERI
Chipman, Mazzucco, Land & Pennarola, LLC
39 Old Ridgebury Road
Danbury, Connecticut 06810

Recorded By:
Donna Savarese

Transcribed By:
Donna Savarese
Court Recording Monitor
146 White Street
Danbury, Connecticut 06810

THE COURT: I'll allow you to proceed.

ATTY. MARCUS: Yeah.

THE COURT: Go ahead.

BY ATTY. MARCUS:

A All right. I -- I'll go back to my -- my original statement that -- that I -- I became aware of a violation of the statute, at least, what I perceived to be a violation, under the four prongs of the statute and I proceeded with an investigation and it's taken me that long, up until March, when -- when I issued the citation to complete my work and get everything going.

Q So, you started in December of 2013, is what you're saying?

A Well, I perceived that something was not right, again, so, yes, I did, that's -- that's when I started.

Q Did -- But, were you -- But, did anybody file a complaint about Ms. Miller's being a member of the republican party that she wasn't qualified --

A Can --

Q (Continuing) -- that you shouldn't have let her in?

A Can you define "file"?

Q File, call you up on the telephone or write you a letter?

A I had several conversations, with different people about this matter, yes.

Q And, when did they start?

A Um, at the time of -- in December.

Q Okay. And, who -- who did you discuss this with?

A Um, I -- I believe, it was George Walker, who was the selectman at that time and I think, Mr. Flynn also, Marty Flynn, that's --

Q Okay.

A (Continuing) -- all I can recall, at this time.

Q Did Mr. Grimes, the chairman of the republican party, ask you to investigate her qualifications to be a member?

A He -- No, he didn't ask me, although, I did discuss it, what -- he was another person that I discussed it with, he was a member of RTC and I did discuss it with him also, but he didn't ask me to proceed, no.

Q Okay. So, no one asked you to take this on, you did it yourself?

A That's correct.

Q Okay. And, um, looking at -- and it didn't say -- it just coincidentally took you a year and four months to do it?

A Yes.

Q Looking at the decision, which has been marked as the Exhibit 4, is that -- is Exhibit 4, in fact, your decision, is that what it really is a decision, a written decision?

A Yes, it is.

Q Okay. Is there some reason you didn't sign it?

A No, I don't know of a reason, I didn't.

Q The decision states, on the top there, that you're a hearing officer and it talks about the hearing officers, could you explain who the hearing officers were?

A Myself and party chairman, Matt Grimes.

NO.: DBDCV1560172728	:	SUPERIOR COURT
JANE MILLER	:	JUDICIAL DISTRICT OF DANBURY
v.	:	AT DANBURY, CONNECTICUT
THOMAS DUNKERTON	:	JULY 27, 2015

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Danbury, Danbury, Connecticut, before the Honorable Anthony D. Truglia, Judge, on the 27th day of July 2015.

Dated this 22nd day of August 2015 in Danbury, Connecticut.

Donna Savarese
Court Recording Monitor

EXHIBIT C

RETURN DATE: MAY 3, 2016	:	SUPERIOR COURT
JANE MILLER	:	JUDICIAL DISTRICT OF DANBURY
VS.	:	AT DANBURY
THOMAS DUNKERTON	:	APRIL 27, 2016

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 the Town of Brookfield, Connecticut.

3. On or about March 4, 2016, the Petitioner applied to become a member of the Brookfield Republican Party.

4. On April 19, 2016, the name of the Petitioner was improperly and unlawfully excluded from the enrollment list of the Brookfield Republican Party by Defendant.

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

   a. Defendant conducted a hearing where the evidence presented was insufficient to permit exclusion of Petitioner pursuant to General Statutes § 9-60 et seq.

b. The conduct of the proceedings violated Petitioner's constitutional rights, including her rights to due process of law and freedom of association.

c. The accepted standard for membership in the Brookfield Republican Party allows members to occasionally support members of other candidates registered with other parties.

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

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

PRAYER FOR RELIEF

WHEREFORE, the Petitioner claims:

1. A writ of mandamus or order directing the Defendant, Thomas Dunkerton, to place the name of the Petitioner, Jane Miller, on the enrollment list of the Brookfield Republican Party.

2. Such other legal and equitable relief as the court deems just.

THE PETITIONER

By: _____

Neil Marcus
Alexander Copp
Cohen and Wolf, P.C.
158 Deer Hill Ave
Danbury, CT 06810
Tel: (203) 792-2771
Fax: (203) 791-8149
acopp@cohenandwolf.com
Juris No. 100137

EXHIBIT D

NO.: DBDCV1560172725	:	SUPERIOR COURT
JANE MILLER	:	JUDICIAL DISTRICT OF DANBURY
v.	:	AT DANBURY, CONNECTICUT
THOMAS DUNKERTON	:	JULY 27, 2015

BEFORE THE HONORABLE ANTHONY D. TRUGLIA, JR. JUDGE

A P P E A R A N C E S:

Representing the Plaintiff:

ATTORNEY NEIL MARCUS
Cohen and Wolf, PC
158 Deer Hill Avenue
Danbury, Connecticut 06810

Representing the Defendant:

ATTORNEY WARD J. MAZZUCCO
And
ATTORNEY KEVIN G. PALUMBERI
Chipman, Mazzucco, Land & Pennarola, LLC
39 Old Ridgebury Road
Danbury, Connecticut 06810

Recorded By:
Donna Savarese

Transcribed By:
Donna Savarese
Court Recording Monitor
146 White Street
Danbury, Connecticut 06810

Q So, were you involved at all of the erasure of Jane Miller's name from the republican roles?

A I had statutory roles as a hearing officer, sir.

Q Okay. So, prior to your being tapped to be a hearing officer, did you have any discussion on the Miller case?

A Yes, we did.

Q Where?

A At the republican -- at a republican town committee meeting, I believe, it might have been in the -- I think, it was in the winter of 2015.

Q So, in the winter of 2015, what did you discuss at the republican town committee, dealing with the Millers?

A Well, there had been discussions years earlier, with respect to -- to other people of this statute, when I was not the chairman and those -- those -- those discussions resulted in not -- action not being taken by the then sitting registrar.

And, when it came up when Mr. Dunkerton mentioned that he was considering it, but he wanted -- he said he wanted to give the party leadership a heads up on it, we took it into the republican town committee meeting, we had a quite a bit of a discussion in the town committee meeting and the conclusion was, without taking a vote, that if the registrar was to invoke the statute, he had to do it on his own and the town committee could have no role in invoking the statute, other than if it was invoked that the chairman would, obviously, sit in as a hearing officer. But, the town committee decided, this is an action for

the registrar and not the town committee.

Q But, did they encourage the action, did they want people removed from the party?

A No, sir, we did not encourage the action, we did not discourage the action, we said; this is entirely the registrar's decision, it is not ours.

Q So, you never had a discussion with Mr. Dunkerton, suggesting that he should take this action?

A My discussion with Mr. Dunkerton was; Tom, this is your decision, you need to make it absolutely independent of myself and the town committee.

Q And, when did that take place?

A I want to say a few weeks before he decided to actually issue the citation.

Q So, that would have been some time in March of 2015?

A February -- February/March, it was between the, probably, I would say the special election and the -- the actual citation.

Q So, this is the first time that -- that the republican town committee has had these types of discussions with the registrar?

A No, it -- it actually did take place some years earlier as well, when I was not chairman, with -- with a -- with an unrelated matter, but the -- the problem was; was that the person that would have been cited and was not, had not been in, actually, in the republican party, at the time they would have been cited, so there was no action to take, they had registered

NO.: DBDCV1560172728	:	SUPERIOR COURT
JANE MILLER	:	JUDICIAL DISTRICT OF DANBURY
v.	:	AT DANBURY, CONNECTICUT
THOMAS DUNKERTON	:	JULY 27, 2015

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Danbury, Danbury, Connecticut, before the Honorable Anthony D. Truglia, Judge, on the 27th day of July 2015.

Dated this 22nd day of August 2015 in Danbury, Connecticut.

Donna Savarese
Court Recording Monitor