

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 : JUNE 27, 2016

**REPLY TO PLAINTIFF'S BRIEF IN
OPPOSITION TO MOTION TO DISMISS**

Pursuant to Local Rule 7(d), the Defendants, Thomas Dunkerton and Martin Flynn¹, respectfully submit the foregoing reply to the Plaintiff's Brief In Opposition to Motion to Dismiss ("Brief-Opp")(Doc.#60). All references to Exhibits are to those filed with defendants' Motion to Dismiss (Doc. #40) dated March 29, 2016, unless otherwise noted.

**A. THE DOCTRINES OF RES JUDICATA AND COLLATERAL ESTOPPEL
ARE APPLICABLE TO THE CLAIMS AND ISSUES IN THIS CASE**

Beginning on page 6 of her Brief-Opp, plaintiff argues that the doctrines of res judicata and collateral estoppel are inapplicable to the claims and issues in this case. The plaintiff's arguments are without merit.

¹ In her Opposition to the Defendant's Motion to Dismiss (Doc. 60) in *Jane Miller v. Thomas Dunkerton, et al.*, Docket No. 3:16-cv-00174 (AWT), the plaintiff indicated in footnote 20 on page 17 that she would voluntarily dismiss Martin Flynn and George Walker from that action.

At the outset, the matter was fully and fairly litigated in the prior proceeding. 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).

Plaintiff’s assertions that she did not have an opportunity to fully and fairly litigate her claims ignores the undisputed record. Her Superior Court case was, as she claims, on an expedited track pursuant to state statute. Plaintiff cites to *Locurto v. Giuliani*, 447 F. 3d 159, 171 (2d Cir. 2006)(“an 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.”)(emphasis added) in support of her assertion that she did not have an opportunity to fully and fairly litigate her claims. See Brief-Opp at p. 8. The plaintiff in *Locurto* sought to depose named defendants and was not permitted to do so by the Deputy Commissioner. *Id.* at 171. In the Superior Court case, plaintiff was certainly not denied discovery that is available in the ordinary course, and the expedited track is pursuant to state statute. Further, the hearing did not take place for almost *two months* after the date she filed her petition. See Superior Court Docket, **Exhibit 1**. Two months is more than sufficient time to develop a “comprehensive set of legal grievances,” as demonstrated by Ms. Miller’s 25-page post-hearing brief (attached to co-defendants’

Motion to Dismiss [Doc. #54-2] as **Exhibit 3**). Plaintiff chose not to propound interrogatories and notice depositions. She certainly was not denied that right.

Ms. Miller's Connecticut Supreme Court brief (attached to co-defendants' Motion to Dismiss [Doc. #54-2] as **Exhibit 5**) further eliminates any argument that she has not already had a "full and fair opportunity to litigate her claims."

Plaintiff also argues on p. 11 of her Brief-Opp that the preclusion doctrines should not apply 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." See, Brief-Opp at p. 11. This argument is completely without merit.

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 complaint², 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

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).

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 application either of res judicata or collateral estoppel, and the judgment from the State Court is considered final. *See Sullivan v. Hyland*, 647 F.Supp.2d 143, 171 (2009) (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.

The plaintiff's claims in the instant matter 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. v.*

Connecticut Light and Power Co., 300 Conn. 325, 347-50, 15 A.3d 601 (2011). 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.**)

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.

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)).

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. (See, **Exhibit 3** at 8-9.)

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).

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. Res judicata prevents such “new” claims from being raised in a different tribunal. See *Tuccio Custom Homes, LLC v. Lamnica*, 116 Conn. App. 527, 530, 975 A.2d 1280 (2009) (holding that res judicata bars “subsequent relitigation of any claims relating to the same cause of action ... which might have been made”).

B. THE COLORADO RIVER ABSTENTION DOCTRINE APPLIES IN THIS CASE

The plaintiff argues that *Colorado River* Abstention does not apply to this matter; however, this argument must fail. First, the proceedings are in fact parallel, given that the plaintiff has noted withdrawal as to Mr. Flynn, and, as discussed above in Section A, the issues presented to the Court in this matter are identical to those raised in the State Court proceeding.

Not only are the proceedings parallel, but, as more fully addressed in Section A, there has been a full and fair litigation of this matter before the State Court, and the plaintiff’s interests have been adequately protected. Additionally, abstention in this matter is supported by the need to avoid piecemeal litigation, by the fact that the State Court proceeding came first in time, and, while federal law controls, the heart of the matter is the Connecticut state statute, which implicates extensive public policy concerns for the state. As such, abstention under the *Colorado River* doctrine is appropriate and should apply in this case.

C. PLAINTIFF HAS FAILED TO STATE AN EQUAL PROTECTION CLAIM FOR WHICH RELIEF MAY BE GRANTED

Here, the 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 v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937 (2009). 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.

I. CONCLUSION

WHEREFORE, for all of the foregoing reasons, and the reasons set forth in the defendants' Memorandum of Law in Support of Motion to Dismiss, this Court should grant the defendants' Motion to Dismiss.

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CERTIFICATION

I hereby certify that on June 27, 2016, a copy of foregoing Reply to Plaintiff's Brief in Opposition to 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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