
SUPREME COURT
OF THE
STATE OF CONNECTICUT

S.C. 20477

MARY FAY, ET AL.
PLAINTIFFS

V.

SECRETARY OF STATE DENISE MERRILL
DEFENDANT

BRIEF OF AMICUS CURIAE IN SUPPORT OF PLAINTIFF
WITH SEPARATE APPENDIX

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STATEMENT OF INTEREST¹

Plaintiffs have asked this Court to enjoin the Executive Branch from altering Connecticut absentee ballot laws by administrative decree. The Public Interest Legal Foundation's ("Foundation") recent analysis of the Connecticut voter roll discovered thousands of potential inaccuracies and list maintenance deficiencies. The Foundation supports Plaintiff's request for injunctive relief. The Foundation has alerted the Defendant that these list maintenance deficiencies appear to exist.

As a threshold matter, Connecticut election laws work in pari materia to protect the integrity of voting. The statutory scheme fosters trust in the election results and in its safeguards. Statutes proscribing the absentee voting process are designed to extend the privilege while simultaneously deterring those who might attempt to cast a ballot in someone else's name.

Research conducted by amicus curiae the Public Interest Legal Foundation raises a serious and credible concern that Connecticut's voter roll contains acute inaccuracies which are complicated by any administrative decision to move toward a mail election. First, the roll appears to contain thousands of deceased registrants. Second, the Foundation's research reveals hundreds of active registrants in Connecticut who are potentially registered to vote more than once *and* who, according to government records, may have been assigned voting credits in two states in the 2018 General Elections. Inaccuracies in the lists of eligible registrants are relevant to the equities in this case.

¹ No counsel for a party wrote the brief in whole or in part, and no one other than *amicus curiae* made monetary contributions to the submission of this brief.

While election officials alone are the final judge of registrant eligibility and are well suited to replicate the Foundation's research, data that demonstrates potentially serious problems with the list of registrants eligible to receive a mail ballot is relevant to the issues in this case.

TABLE OF AUTHORITIES

Cases:

Dombkowski v. Messier, 164 Conn. 204, 319 A.2d 373 (1972) 3
In re Election of the United States Representative for the Second Cong. Dist., 231 Conn.
602, 651, 654 (1994) 3

Statutes:

General Statutes § 52-29 v
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General Statutes § 9-324 4
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NATURE OF PROCEEDINGS

Plaintiffs Mary Fay, Thomas Gilmer, Justin Anderson, and James Griffin are four candidates on the ballot for the August 11, 2020 primary election. Plaintiffs allege that the Secretary of the State's Application for Absentee Ballot for said primary election permits voters to utilize the absentee ballot effectively without any statutory basis. On July 1, 2020, Plaintiffs filed the instant matter pursuant to General Statutes §§ 9-323, 52-29, and 52-471 seeking declaratory and injunctive relief halting the Secretary of the State's "no-excuse" absentee ballot plan.

ARGUMENT

I. The Foundation's Research and Submission of Findings to Connecticut's Secretary of State.

As part of its organizational mission, the Foundation analyzes voter rolls across the Nation. In November 2019, the Foundation received a copy of Connecticut's statewide voter roll extract from the Secretary of State's office. Then, at considerable expense for a 501(c)(3) charitable organization, using detailed methodologies and matching techniques, the Foundation identified hundreds of potentially duplicate registrations on the Connecticut roll, as well as thousands of likely deceased registrants who remained on the list of registrants eligible to vote after they died. As a result, thousands of addresses on the voter roll are potentially outdated and potentially hundreds of others are on the lists of registrants eligible to vote more than once. On July 1, 2020, the Foundation sent a letter to the Secretary of State in which it described its findings and methodology and urged the Secretary to investigate and take corrective action where necessary.² See Appendix, A1, Letter to Secretary Merrill.

II. The Foundation Matched Nearly 12,000 Connecticut Registrants to a Verifiable Federal Record of Death.

The Foundation's research indicates that there were potentially 11,900 deceased individuals with an active registration in Connecticut in the lists of eligible registrants purchased by the Foundation. See Appendix, A1, at 1. To ensure an acceptable degree of confidence, the Foundation matched the Connecticut registrant data against the U.S. Social

² Election officials are the final judge of voter eligibility. The Foundation asks election officials to do what is permissible under state and federal law to investigate the leads the Foundation submits.

Security Death Index (SSDI), and where possible, against the SSDI and printed obituaries and other public notices. See Appendix, A1 at 1. The true number of deceased registrants is likely even higher because the Foundation limited its research to only those in “active” registration status. While it is possible that the Secretary of State’s office may have removed some of these deceased inactive voters in the intervening time, the record is not subject to dispute that there are problems in Connecticut of deceased registrants remaining “active” for many years. Indeed, the problem of deceased registrants remaining active on the lists of eligible voters drew the attention of the United States Department of Justice. The Department initiated an enforcement action against Connecticut for failing to adequately remove deceased registrants. See Appendix, A4, “New DOJ Process for Removing the Dead from Voter Rolls,” Feb. 21, 2019, available at <https://www.wnpr.org/post/new-doj-process-removing-dead-voter-rolls> (last accessed July 15, 2020).

III. The Problem with Deceased Registrants on the Roll is that Ballot Applications and Ballots May Be Mailed to Obsolete Addresses.

Deceased registrants continue to receive election mail at their formerly registered address until an election official removes them from the roll. Election mail includes such documents as absentee ballot applications, as well as absentee ballots. Because absentee ballots have been linked to higher incidences of election fraud,³ statutes governing absentee voting procedures work together to ensure that ballots are sent only to those who are eligible to receive them. Indeed, this Court has recognized that the “statutory scheme, as a whole, contemplates” procedural rigor, and that certain provisions regarding absentee

³ See Appendix A5, *U.S. Elections: Report of the Commission on Federal Election Reform* 46 (2005) (“Carter–Baker Report”), pp. 12, 20, 35, 46-17, full report available at <https://www.legislationline.org/download/id/1472/file/3b50795b2d0374cbef5c29766256.pdf> (last visited July 16, 2020).

ballots “are mandatory because they are designed to mitigate the risk of fraud that is inherent in the absentee voting process.” In re Election of the United States Representative for the Second Cong. Dist., 231 Conn. 602, 651, 654 (1994) (citing Dombkowski v. Messier, 164 Conn. 204, 319 A.2d 373 (1972)).

The absentee voting statutes, codified at General Statutes Chapter 145, contain multiple safeguards that maintain the integrity of absentee ballots and must be followed. “[P]rocedural rigor is a significant safeguard against fraud ...” In re Election of the United States Representative for the Second Cong. Dist., 231 Conn. at 652. These include requirements that logs be maintained identifying who has requested a ballot, how many ballots were requested, a signature of the requestor, the confirmation of a mailing address, the signature of anyone who is assisting a voter request an absentee application, and an assigned number belonging only to the recipient of the ballot application, among other things. See General Statutes §§ 9-140(a)-(o); 9-140a-e.

In addition to these safeguards, the General Assembly enacted specific laws to address the problem of absentee ballots being automatically mailed to voters without a specific and recent request from the registered voter to do so, which occurs when voters have been granted permanent absentee ballot status. See General Statutes § 9-140e. Permanent absentee ballot status is granted to those who are “permanently physically disabled” and apply for it. See id. When it is granted, the voter will automatically receive absentee ballots for each election in which he or she is eligible to vote until he or she is removed from the roll or requests it to end. See id. It is critical to note that even those who have been granted permanent status must verify and confirm their mailing address every single year so that their ballots are not mailed to ineligible residents at the wrong address.

Moreover, the process starts in January of every year, to give election officials plenty of time to confirm the address or make corrections:

(b) The registrars of voters shall send written notice to each such elector with permanent absentee ballot status in January of each year, on a form prescribed by the Secretary of the State, for the purpose of determining if such elector continues to reside at the address indicated on the elector's permanent absentee ballot application. If (1) such written notice is returned as undeliverable, or (2) not later than thirty days after such notice is sent to the elector, the elector fails to return such notice to the registrars of voters, as directed on the form, the elector in question shall be removed from permanent absentee ballot status.

General Statutes § 9-140e (LEXIS current through 2020).

Connecticut law does not require signature matching before the absentee ballot is counted. The only time a signature on an absentee ballot is analyzed is when there is a challenge to the ballot. See General Statutes § 9-159p(a); §§ 9-323, 9-324, 9-328, 9-329a. Defendant's administrative revisions to statutory procedures regarding absentee ballots impair and frustrate the statutory protections that help make absentee voting more secure. To wit, ballot applications are mass-mailed, potentially to obsolete addresses of registrants. The current resident (or anyone else opening the mail) signs the name of the addressee and returns it. The resident will then receive a ballot because the addressee's name is still on the list of registrants eligible to cast a ballot. Signatures are not compared. When the mail ballot is returned, the only record checked is to see if the addressee's name remains on the list of those eligible to cast a ballot. See General Statutes § 9-140c(c).

Failing to adhere to Connecticut's statutory absentee ballot protections makes it easier for unknown recipients to return ballot applications and completed ballots while posing as the registrant/addressee.

IV. The Foundation Identified Potentially Duplicated Registrations with Apparent Voting Credits Assigned for the 2018 General Election.

Using the same Connecticut voter data file, the Foundation cataloged registrants that are potentially duplicated across state lines. See Appendix, A1 at 2. To ensure a degree of confidence, the Foundation cataloged only those registrations with identical dates of birth and nearly identical first, middle, and last names. Matched interstate sets were then compared against commercial databases to discern singular identity validation. The Foundation also reviewed voting histories to determine if one or more voting credits were assigned to these potentially problematic entries. A voting credit is a government record from the state of Connecticut indicating whether a registrant voted in a particular election.

For the 2018 General Election, there were 470 potential duplicate registrations that were apparently assigned voting credits according to government records. See Appendix, A1 at 2. The Foundation cannot confirm whether the apparent duplicate registrations did or did not cast ballots, only that the records from the state of Connecticut and one other state indicate that they did. The number of individuals with two or more active duplicate registrations is almost certainly even higher because the Foundation flagged only registrations that were apparently assigned voting credits according to records provided by the State of Connecticut and other states.

While Connecticut is a member of the Electronic Registration Information Center, it does not appear that this membership is part of a list maintenance practice that is successfully cataloging registrants who may be simultaneously registered in other states and voting.

V. The Foundation Respectfully Invites the Court to Appoint an *Amicus Curiae* to Verify the Foundation's Research.

The Foundation's research can be replicated. The Foundation hopes that replication would resolve any doubts concerning ambiguities in the data. The Foundation therefore respectfully invites the Court to verify its research. For example, the Court could appoint its own amicus curiae to replicate the study to ascertain the number of duplicate registrations on the public voter rolls in Connecticut, should the Court believe it is warranted.

VI. The Foundation's Research Demonstrates Voter Roll Inaccuracies Nationwide.

The Foundation's research across the nation affirms how important it is that election officials continuously act to maintain accurate voter rolls. For example, the Foundation recently informed the North Carolina State Board of Elections of potentially duplicated registrations that were apparently assigned voting credits for the same election. See Appendix A13, Thousands of North Carolina Registrants are Credited for Voting Twice by Mail, Public Interest Legal Foundation (July 9, 2020).⁴ Specifically, for the 2016 General Election, more than 1,700 potential intercounty duplicates were apparently assigned voting credits according to government records, and more than 9,700 potential intra-county duplicates were apparently assigned voting credits according to government records. Id. For the 2018 General Election, 7,000 potential duplicated registrations were apparently assigned voting credits according to government records. Id. Either registrants were being improperly assigned multiple voting credits, or registrants were voting more than once – both are circumstances which justify a careful examination by election officials.

In June of 2020, the Foundation alerted election officials in the State of California to concerns regarding potentially deceased registrations and potentially duplicated

⁴ Also available at <https://publicinterestlegal.org/blog/thousands-of-north-carolina-registrants-are-credited-for-voting-twice-by-mail/>.

registrations. See Appendix, A22, Court Brief: Thousands of Dead, Duplicated CA Voter Registrants Could Get Mail Ballots, Public Interest Legal Foundation (June 24, 2020).⁵ The Foundation's research found more than 23,000 potentially deceased individuals with an active registration in the State of California. The Foundation also identified more than 12,200 registrations listing a year of birth occurring 105 or more years ago. Id. Regarding potentially duplicated registrations, the Foundation identified more than 2,000 potentially duplicated registrations across state lines with apparent voting credits assigned by election officials in each state for the 2018 General Election. Id. And in April 2020, the Foundation informed election officials in the state of Virginia of potential inaccuracies on its voter rolls. See Appendix, A29, Court Brief: Thousands of Dead Registrants Remain on Voter Rolls in Virginia, Public Interest Legal Foundation (April 28, 2020).⁶ Specifically, the Foundation identified 11,600 potentially deceased registrants. Id.

CONCLUSION

The data presented supports Plaintiffs' request for an injunction. Connecticut's potentially deficient list maintenance practices make any administrative changes that circumvent established statutory balloting practices problematic.

Respectfully Submitted,

THE PUBLIC INTEREST LEGAL FOUNDATION

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⁵ Available at <https://publicinterestlegal.org/blog/court-brief-thousands-of-dead-duplicated-ca-voter-registrants-could-get-mail-ballots/>

⁶ Available at <https://publicinterestlegal.org/blog/court-brief-thousands-of-dead-registrants-remain-on-voter-rolls-in-virginia/>

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CERTIFICATION

Undersigned counsel certifies that a copy of the foregoing was served on July 17, 2020, in accordance with Practice Book §§ 66-1 and 62-7 as follows:

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Undersigned counsel also certifies that this document has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law. Undersigned counsel also certifies this motion complies with all the provisions of Practice Book § 66-3, as well as all other applicable rules of appellate procedure.

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