OLR RESEARCH REPORT

May 17, 2013 2013-R-0221

SUMMARY OF REPUBLICAN PARTY OF CONNECTICUT V. MERRILL

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This report summarizes the Connecticut Supreme Court's decision in *Republican Party of Connecticut v. Merrill* (307 Conn. 470 (2012)).

SUMMARY

In this case, the Connecticut Supreme Court considered the proper construction of CGS § 9-249a and the order of parties on the general election ballot when the current governor required the votes of a cross-endorsing party to win the election. The plaintiffs, Republican Party of the State of Connecticut, contended that the law requires the secretary of the state to place the party whose gubernatorial candidate received the most party-line votes in the last election at the top of the ballot. The defendant, Denise Merrill in her capacity as secretary of the state, contended that "the statute focuses on the candidate's vote total, not the party's vote total" (307 Conn. at 491).

After reviewing the statutory text, legislative history, and an earlier interpretation of the law, the court unanimously held that the Republican Party had interpreted the law correctly, as "the statute intends to measure party, not candidate support" (307 Conn. at 491). It therefore concluded that the Republican Party, whose gubernatorial candidate had received the most party-line votes in 2010, was entitled to appear at the top of the 2012 election ballot.

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FACTS

CGS § 9-249a sets the order in which the secretary of the state must place parties on the ballot. It currently reads, in part:

> "*The names of the parties shall be arranged on the ballots in the following order:*
> *(1) The party whose candidate for Governor polled the highest number of votes in the last-preceding election…"*

In the 2010 election, the Republican gubernatorial candidate, Foley, received 560,874 votes, all on the Republican party line, while the Democratic candidate, Malloy, received only 540,970 votes on the Democratic party line. However, Malloy received an additional 26,308 votes on the Working Families party line because it had cross-endorsed him as its gubernatorial candidate. After Malloy won the 2010 election, the secretary of the state determined that the Democratic Party should appear at the top of the ballot in the 2012 election.

In July 2012, the Republican Party chairman and the Senate and House of Representatives Republican leaders wrote a letter to Secretary of the State Merrill contending their party should be listed first on the 2012 ballot because Foley had garnered the most party-line votes in the 2010 election. The Republican leaders argued that the ballot ordering law requires the secretary to place the party whose candidate received the most party-line votes in the last election at the top of the ballot.

Secretary Merrill disagreed with the Republican leaders, saying they had not "differentiate[d] between the appearance of a candidate on the ballot by 'party' nomination and by 'nominating petition with a 'party designation'" (307 Conn. at 475, quoting Secretary Merrill's letter dated July 27, 2012). She argued that the distinction is important because parties using a nominating petition are not major or minor parties for purposes of CGS § 9-249a.

In making this determination, the secretary looked to the definition of party in CGS § 9-372. Under this statute, a "major party" is one whose (1) candidate for governor received at least 20% of the total votes cast for that office at the last gubernatorial election or (2) enrolled membership, as of the last gubernatorial election, was at least 20% of the total enrollment in all political parties in the state. A "minor party" is one that is not a major party and whose candidate for the office in question received, under the party designation, at least 1% of the votes cast for the office at the last regular election.

The secretary therefore concluded that the Working Families Party had not achieved (minor or major) party status and thus, the votes Malloy received under that party line properly accrued to the Democratic party line. However, CGS § 9-372 does not apply to CGS § 9-249a. Another statute, CGS § 9-453t, allowed the Working Families Party to be classified as a party during the 2010 election (307 Conn. at 492-3). While it was not considered a minor party for the 2010 gubernatorial race, it had nonetheless achieved minor party status with respect to other offices on the ballot and could nominate candidates accordingly.

In response to the secretary's letter, the Republican leaders brought an action in trial court for declaratory action and injunctive relief. Upon the petition of both parties, the trial court reserved the questions before it for the advice of the Appellate Court. As permitted by law, the Supreme Court took up the questions itself.

ISSUES

The primary issue before the court was whether CGS § 9-249a requires the party with the most party-line votes for governor or the party of the candidate who received the most votes for governor in the last election to be placed at the top of the ballot. But, before considering this issue, the court first addressed whether the plaintiffs had exhausted their administrative remedies, which was required for the court to have jurisdiction over the action.

HOLDINGS

The court held that (1) it had jurisdiction over the action and (2) the law's legislative history supported the Republican leaders' interpretation, thus entitling them to be listed first on the 2012 election ballot.

ANALYSIS

Jurisdiction

Under the Uniform Administrative Procedure Act, before the Republican leaders could file a claim in court, they had to exhaust their administrative remedies, which meant they had to petition the secretary of the state for a declaratory ruling on the applicability of the ballot ordering law to the 2012 election ballot. By law, the secretary is empowered to issue declaratory rulings.

Citing *Cannata v. Department of Environmental Protection*, 239 Conn. 124 (1996), the court held that the Republican leaders had exhausted their administrative remedies before filing their court action. The court

held that the letter to the secretary was a request for a declaratory ruling and that her response constituted one, from which an appeal to the Superior Court is permitted. Thus, the court concluded it had jurisdiction to consider the issue of party order on the ballot.

Statutory Interpretation

Standard of Review. The court noted that before it could determine which party must be placed at the top of the 2012 election ballot, it had to interpret the meaning of CGS § 9-249a. The court exercises plenary review over matters of statutory interpretation. (In other words, it need not accord any deference to the secretary's interpretation of the statute.)

Plain Meaning Rule. By statute, the court must begin the process of statutory interpretation by looking at "the text of the statute itself and its relationship to other statutes" (CGS § 1-2z). But, if the meaning of a law is not clear and unambiguous from the text, the court may consult extratextual evidence. Here, the court found the language in CGS § 9-249a ambiguous because "party" could have multiple plausible definitions. While Secretary Merrill relied on the definition in CGS § 9-372, the court noted that "statutory itemization indicates that the legislature intended the list to be exclusive" (307 Conn. at 492-3, quoting *Commissioner v. Mellon*, 286 Conn. 687 (2008)). Because CGS § 9-372 does not appear to apply to CGS § 9-249a, the court looked to other statutory definitions of "party" (e.g., CGS § 9-453t), and concluded that if they were applied, the meaning of CGS § 9-249a could change.

Legislative History. The court then looked to the legislature's intent to determine the meaning of CGS § 9-249a. It found that before 1953, the ballot ordering law clearly placed the party with the most party-line votes at the top of the ballot ("the name of the political party polling the largest number of votes for governor shall be first" (307 Conn. at 496)). However, in 1953 the legislature directed the secretary of the state to "prepare a revision of the General Statutes…[to] consolidat[e] and clarify[] the same" (307 Conn. at 497).

The language was changed to say "the names of the political parties shall be arranged…[with] precedence being given to the party whose candidate for governor polled the highest number of votes…" (307 Conn. at 496-7). The court noted that this phrasing is very similar to the language that exists today in CGS § 9-249a. Although in 1953 then-Secretary Leopold explicitly told the legislature that her revisions merely "rearrange[d] and re-codifi[ed] [] existing laws," Secretary Merrill argued that these changes were substantive. However, the court did not agree; it said that the "legislative history provides strong evidence that the

legislature intended the meaning of the revised ballot ordering provisions to be consistent with the way the statute has previously been interpreted" (307 Conn. at 497).

Earlier Interpretation. The court noted that the conclusions it drew from the provision's legislative history were buttressed by a 1939 attorney general opinion arising out of similar facts. The opinion, applying the pre-1953 ballot ordering law, said the legislature "did not intend preference to be given to a party, which did not poll the highest number of votes, but whose candidate was elected with the votes received as an indorsed (sic) candidate of another party" (307 Conn. 500, quoting from March 21, 1939 opinion).

Avoiding Absurd or Bizarre Results. Returning to the law's legislative history, the court noted that the wording changes in 1953 applied only to machine ballots; the language for paper ballots was not changed ("the party which polled the highest number of votes for governor…" (307 Conn. at 501)). The court argued that it was unlikely the legislature intended the provisions to have different effects, thus showing the 1953 changes were indeed "purely organizational" (307 Conn. at 501).

Moreover, the court held that their conclusions were supported by public policy concerns, as applying the secretary's interpretation could have absurd or bizarre results. The court noted that if, for example, the Democratic and Republican parties cross-endorsed the winning candidate, and the secretary applied her interpretation of the law, it would be unclear which party was entitled to be listed at the top of the ballot by law. Because the provision's legislative history showed that the secretary of the state was to have no discretion in ordering parties on the ballot, the court held that adopting Secretary Merrill's interpretation would be poor public policy (307 Conn. at 502-4).

Conclusion

Given the provision's legislative history, prior interpretation, and public policy concerns, the court held that the secretary of the state must place the Republican Party at the top of the ballot in the 2012 election because it received the most gubernatorial party-line votes in the 2010 election.

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