

State of Connecticut General Assembly

Committee on Government Administration and Elections February Session 2014

Testimony in Favor of Raised Bill No. 274: *An Act Concerning Certification Requirements for Minor Party Candidates*

Submitted by: Kyle Dostaler, Chairman of the Chatham Party
kyledostaler@chathamparty.org
East Hampton, CT – March 3, 2014

I am the Chairman of the Chatham Party, a minor party which exists in East Hampton, CT that was established in 2005. We have participated in the Town's last 5 municipal elections having candidates elected to office in each election except for the very last election this past year (attachment Chatham Party Election Results). I have served on the East Hampton Town Council twice and was an incumbent in the 2013 municipal election.

In order for equality to exist in the election process and for ballot access, legitimately established minor parties should not be held to a higher standard than the two major parties when it comes to our State's Election Laws. In order establish a more equal elections process, I urge you to vote in favor of SB 274 to eliminate the signature requirement for minor party candidates as part of the certification of the nominations process. A state's election laws should not disadvantage minor parties.

Overview

There is no dispute or question in regards to the timeliness of the Chatham Party's filings neither with the Secretary of State nor with the SEEC (State Elections Enforcement Commission). On September 11, 2013 I attended the Registrar of Voters' public lottery to determine the order of names of candidates on how they would appear on the election ballot. On September 17th, 19 days after our certification filing, I received a call from the East Hampton Town Clerk (Sandi Wieleba) that the Secretary of State would be invalidating the Chatham Party's Certification of Party Endorsement and that our line would be removed from the ballot due to a three year old requirement for minor parties to provide candidate signatures, amongst other information, with its certification.

On September 18th I met with the Town Clerk (attachment letter dated 09/18/2013) and submitted to her our 32 pages of SEEC forms containing each candidate's name, signature, full street address and the title of office in an attempt to correct any insufficiencies with our Certification of Endorsement. This was refused. Another request was made September 23rd offering for each candidate to sign their names to the timely filed certification. This request was forwarded onto Attorney Mr. Bromley (Secretary of State), but was never replied to (see attachment by Halloran & Sage dated 10/18/2013).

It wasn't until October 7th that the Chatham Party was finally given a reprieve by court order permitting candidates from the Chatham Party to legally appear on the ballot for municipal election in East Hampton.

End Results

Amongst Chatham Party members and supporters, the events that occurred between September 17th and October 7th is often referred simply to as *The Debacle*, which had a significant negative impact on the Chatham Party's chances for a successful and timely election campaign as evidenced by the following:

- A further and overall increase in voter disenfranchisement across all party lines. Before the court's decision on October 7th, many people approached Chatham Party members and candidates and questioned whether they should even bother to vote in the election. Of note, I came to realize that a significant number of people were going to split their votes across the three party lines.
- There was a loss in campaign opportunities for the Chatham Party.
- There was a loss in campaign funding opportunities.
- We're a legitimate minor party with 5 municipal campaigns under our belt yet we had to spend 41% of our campaign funds on court and attorney fees to regain access to the ballot.
- Our good-standing and reputation in the community was damaged because residents were questioning the very legitimacy of the Chatham Party to appear on the ballot and there is nothing more fundamental to the American system than the ballot. The effects of the Town Clerk's and Secretary of State's lack of communication and their actions put into question the equality of ballot access.
- I estimate that the additional five words added to Section 9-452 that went into effect in July of 2011 cost the Chatham Party around 100 to 175 votes for our better known and well established candidates. Despite any number that I can offer as an estimate, *we lost votes* because of those 5 additional words.

Further Clarification Needed

In regards to form over substance there are other significant deficiencies in the current statutory language of Section 9-452:

- *Certification form*: there is no actual form by the Secretary of State for a Certification of Party Endorsement for a minor party. All that existed prior to the filing deadlines for Certification was a single online sample letter. That sample letter was for major parties only.
- *Arbitrary enforcement*: who is responsible for local decisions regarding election filings – local Town Clerks or the Secretary of State's Office? The Statute is not clear.
- *Arbitrary enforcement*: the language in Section 9-452 adding an additional requirement of minor parties for candidate signatures went into effect in July of 2011. The Chatham Party submitted the same filings in 2011 as it did in 2013. In 2011 there was no enforcement of Section 9-452 by either the Town Clerk or the Secretary of State.
- *Timing and validity of filings*: While I admit that it is my responsibility to file a Certification of Party Endorsement in a timely fashion and that the document is correct and follows election law, what responsibility does the Town Clerk have to ensure that such filings are in fact valid when received and filed by the due date? (see attachment *Hartford Courant* article 09/24/2013)

Chatham Party Election Results

The Chatham Party was founded and created in 2005 having had candidates in the last five election cycles in the Town of East Hampton, CT.

2005

- 5 Candidates / 5 TC
- 5 Elected
- Total votes for Town Council: 18,202
- Total votes for CP TC candidates: 10,105
- 55.5% of TC vote

2007

- 5 Candidates / 5 TC
- 2 Elected
- Total votes for Town Council: 17,027
- Total votes for CP TC candidates: 5,769
- 33.8% of the TC vote

2009

- 9 Candidates / 5 TC; 2 BoE; 2 BoF
- 1 Elected / 1 TC
- Total votes for Town Council: 15,715
- Total votes for CP TC candidates: 4,425
- 28% of the TC vote

See reverse side for further election results.

Chatham Party Election Results

The Chatham Party was founded and created in 2005 having had candidates in the last five election cycles in the Town of East Hampton, CT.

2011

- 14 Candidates / 5 TC; 3 BoE; 3 BoF; 2 ZBA
- 8 Elected / 4 TC; 2 BoE; 2 BoF

- Total votes for Town Council: 16,763
- Total votes for CP candidates: 6,171
- 36.8% of the TC vote

- Total votes for BOF: 9,637
- Total votes for CP candidates: 3,758
- 38.9% of the BOF vote

- Total votes for BOE: 13,085
- Total votes for CP candidates: 4,757
- 43.3% of the BOE vote

2013

- 16 candidates / 5 TC; 4 BOE; 3 BOF; 2 ZBA; 2 BOAA
- 0 Elected

- Total Votes for Town Council: 15,329
- Total votes for CP candidates: 4,341
- 28% of the TC vote

- Total votes for BOF: 11,783
- Total votes for CP candidates: 2,396
- 20% of votes the BOF vote

- Total votes for BOE: 14,630
- Total votes for CP candidates: 35,45
- 24% of total vote for BOE

- Total votes for BOAA: 5,397
- Total votes for CP candidates: 1795
- 28.7% of total vote for BOAA

- Total votes for ZBA-1: 2,999
- Total votes for CP candidate: 835
- 27.8% of total votes for ZBA-1

- Total votes for ZBA-2: 2,946
- Total votes for CP candidate: 795
- 26.9% of total votes for ZBA-2

See reverse side for further election results.

The
CHATHAM PARTY
An Independent Voice for East Hampton

September 18, 2013

Sandi Wieleba, Town Clerk
20 East High Street
East Hampton, CT 06424

Re: Certification of Party Endorsement, Municipal Office
State Statute / Sec. 51. Section 9-452

Sandi,

In accordance to the above referenced State Statute, the Chatham Party respectfully submits that the required filings to nominate and endorse its candidates have been deemed to have been properly filed in a timely manner and verified by the Town Clerk of East Hampton. The Chatham Party has complied with all four of the requirements of Statute 9-452 to provide: (1) each candidate's name, (2) signature, (3) full street address and (4) title of office.

Attached is the following:

- Certification of Party Endorsement for Municipal Office with a list of names and addresses of each candidate and the title of office for which each candidate has been nominated.
- SEEC Form I and IB of each candidate's name, street address and signature.

Sincerely,



Kyle R. Dostaler, Chatham Party Chair
56 William Drive
East Hampton, CT 06424
p: 860-267-0499
e: kyledostaler@chathamparty.org

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TOWN CLERK'S OFFICE

2013 SEP 18 P 12: 34

SANDI F. WIELEBA, TC
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October 18, 2013

Michael Maniscalco, MPA
Town Manager
Town of East Hampton
20 East High St.
East Hampton CT 06424

Re: Kyle Dostaler, et al. v. Sandra Wieleba
Our File No.: 07964.57

Dear Mike:

As we will not be available to attend the Town Council meeting on October 22, 2013, we have prepared a recitation of the events surrounding the litigation brought by members of the Chatham Party against Town Clerk, Sandy Wieleba, based upon their failure to comply with all of the technical requirements of § 9-452 of the Connecticut General Statutes which requires the signature of each "minor party" candidate on the Certificate of Endorsement filed with the municipal town clerk.

We became aware of the matter on September 17, 2013 after you had been advised of the issue by the Town Clerk. Thereafter, we spoke with Ms. Wieleba and were advised that she became aware to the issue from other town clerks and had already sought guidance from the Office of the Secretary of State with regard to the issue which, apparently, had arisen in approximately a dozen municipalities throughout the state. After our conversation with Ms. Wieleba we spoke with Ted Bromley, staff attorney, in the Office of the Secretary of the State. Attorney Bromley advised us that he had been contacted by Ms. Wieleba with regard to the issue and his office was in the process of formulating an opinion based upon the facts and circumstances in the East Hampton case and others. He indicated that his office would issue an opinion to Ms. Wieleba's inquiry in short order.

On September 20, 2013, Ms. Wieleba received a letter from Attorney Bromley indicating that the Secretary's written opinions "shall be presumed as correctly interpreting and effectuating the administration of elections and primaries" [under the election laws]... provided nothing in this section shall be construed to alter the right of appeal provided

under the provisions of Chapter 54." In short, Attorney Bromley opined: "If a certificate of nomination does not contain all of the elements as required by Connecticut General Statutes § 9-452, such certificate would not comply with the requirements set forth by the above-referenced statute." Additionally, we became aware that Attorney Bernard Liu had written to the Bethel Town Clerk that "The lack of a signature would under the C.G.S. § 9-452 constitute a deficiency. This office has held that deficiency in the filing of a certificate of endorsement may not be corrected after the filing deadline. As a consequence, the office has also held that the deficiency leads to a failure of endorsement by the party making the endorsement."

On September 23, 2013, Mr. Dostaler sent a letter to Ms. Wieleba stating that the Chatham Party wanted to correct any insufficiencies with its Certificate of Endorsement by allowing the endorsed candidates to sign their name to the Certification which was timely filed. Ms. Wieleba promptly forwarded Mr. Dostaler's request onto Attorney Bromley seeking guidance, but never received a reply.

Additionally, on September 23rd, Mr. Dostaler, and other candidates of the Chatham Party, filed a lawsuit in Middletown Superior Court seeking an Order of Mandamus directing Ms. Wieleba to permit the plaintiffs to sign the Certified List and correct the technical defect in the filing of the Certificate of Endorsement. A Show Cause Hearing was scheduled for Monday, October 7, 2013.

After the filing the Mandamus action against Ms. Wieleba, we became aware of a similar lawsuit filed in Stamford Superior Court against the Westport Town Clerk seeking similar relief. We also learned that the parties to that lawsuit were working in conjunction with the offices of the Secretary of the State and Attorney General to draft a Stipulation which would allow the Westport plaintiffs to appear on the ballot for the November 5, 2013 municipal election. On September 30, 2013, a stipulation was entered into and approved by Judge Kenneth B. Povodator in the Westport case. Subsequent to Judge Povodator's order placing the minor party candidates on the ballot, the Secretary of State issued a Press Release praising the actions of the court stating: "I am glad the ballot in Westport is now set in a way that benefits the minor party candidates, the town clerk, and most importantly, the voters." Based upon the efforts of the Attorney General and Secretary of the State to work with the parties in the Westport matter to reach a Stipulation allowing for the Westport plaintiffs to be placed on the ballot, and the subsequent comments of the Secretary of the State, it was readily apparent that court-sanctioned stipulations were the preferred route for resolving these issues and allow for all the minor party candidates to appear on the ballot - if the Certificate of Endorsement had been timely filed with the municipal clerk, but only lacked the signatures of the minor party candidates.

We became aware that absentee ballots needed to be available no later than October 4, 2013 for the upcoming municipal election. Based upon the results in the Westport case, we advised the town clerk that it would be appropriate to place the Chatham Party candidates on a small number of absentee ballots available for distribution prior to the October 7th hearing in Middletown. If, for some reason, the result in

Middletown were different than the Westport case, the small number of absentee ballots actually issued could have been set aside and addressed at a later date, if necessary. The decision to have the Chatham Party candidates on those absentee ballots was further supported by an advisement from the attorney for the Chatham Party that his clients intended to register as write-in candidates. Thus, he claimed that any absentee ballots voting for Chatham Party candidates would be clear evidence of that voter's intent to write in the names of the Chatham Party candidates if they were not directly on the ballot.

During the week prior to the October 7th hearing, and with the knowledge of the positions taken by the Secretary of State and the Attorney General in the Westport case, we discussed a stipulation similar to the one entered into by the Westport parties. In fact, we were contacted by Assistant Attorney General, Robert J. Deichert, asking that he be made part of the process in any stipulation contemplated by the East Hampton parties. The stipulation which was prepared by the parties was virtually identical to the stipulation entered into by the Westport parties, endorsed by the court, and praised by the Secretary of the State.

The parties in the East Hampton case appeared before Judge Edward Domnarski on October 7, 2013. At that time, the parties and Attorney Deichert advised the court that they had prepared a stipulation that was virtually identical to the one entered into by the Westport parties and endorsed by Judge Povodator. Judge Domnarski concluded that the entry of a stipulation was appropriate and issued an order similar to that issued by Povodator directing that the Chatham Party plaintiffs be placed on the ballot for the November 5th election. Subsequent to that decision, the Secretary "praised" the order by Judge Domnarski permitting the Chatham Party candidates to appear on the November 5th ballot. She further stated: "Judge Domnarski's decision is good for the voters of East Hampton. It is always in the best interest of voters to have choices on the ballot, and I am relieved the Judge resolved the issue." She also noted: "There is no legal authority for a town clerk to ignore the law and permit a candidate onto the ballot if they or their party have not done what is legally required of them....courts are the appropriate venue to resolve such cases, and I am glad the ballot in East Hampton is now set in a way that benefits the minor party candidates, the town clerk, and most importantly, the voters."

A question has arisen as to why a different result occurred in the lawsuit brought by certain third-party candidates in the Town of Easton in a lawsuit filed in Bridgeport Superior Court and opposed by the Secretary of State and Attorney General. A review of the decision issued by Judge Barbara Bellis revealed that the Easton plaintiffs had not filed the Certificate of Endorsement by the statutory deadline. Thus, the court held that this was more than a mere technical deficiency as was the case in the Westport matter. In fact, Judge Bellis noted that the case before her dealt with an interpretation of § 9-453o(b) rather than § 9-452 as was the case in the Westport and East Hampton matters. In fact, Judge Bellis noted that Judge Povodator "agreed to enter the stipulation only after concluding that § 9-452 was not mandatory." See, Buckley v. Secretary of State, et al., Docket No. CV-13-6038400 (October 7, 2013, p. 18)

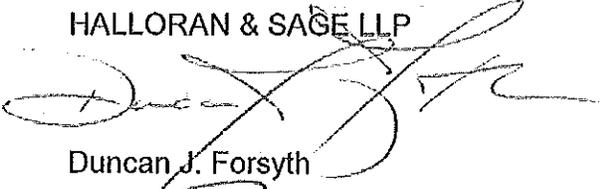
We are absolutely certain that the guidance we provided to Ms. Wieleba in this matter was entirely appropriate given the circumstances:

1. The handwriting was clearly on the wall after the Westport decision and the subsequent Press Release from the Secretary of State praising the court's decision. In fact, had Ms. Wieleba decided to keep the Chatham Party candidates on the ballot and others brought suit against her, we are confident that the outcome would have been the same.
2. There was a clear intention of the Chatham Party candidates to be on the ballot based upon their earlier filings with the State Elections Enforcement Commission as third-party candidates.
3. We believe there are significant constitutional issues related to the statutory requirement that only minor party candidates are required to sign a Certificate of Endorsement. Specifically, at issue is the First Amendment to the United States Constitution regarding the Freedom of Association, as well as the Fourteenth Amendment provision pertaining to Equal Protection under the Law. We further believe that, had these issues been litigated by the plaintiffs in this case, the outcome would, more likely than not, have been an order by the court that the Chatham Party candidates be placed on the ballot. In our professional judgment, resolving the issue via a stipulated judgment avoided costly and protracted litigation and was a preferable result for the Town.

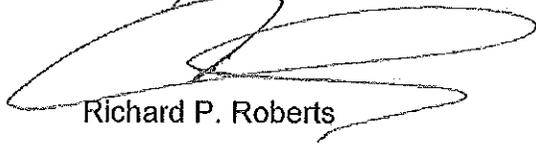
We hope that you find the above to be instructive with regard to the events which have occurred over the last couple of weeks. If you have any questions, please do not hesitate to contact us.

Very truly yours,

HALLORAN & SAGE LLP



Duncan J. Forsyth



Richard P. Roberts

DJF/RPR/hjw