

NO. HHD-CV22-5075490-S : CONNECTICUT SUPERIOR COURT  
NOEMI SOTO : JUDICIAL DISTRICT OF HARTFORD  
VS. : AT HARTFORD  
CONNECTICUT GENERAL ASSEMBLY : DECEMBER 1, 2022

**PLAINTIFF MEMORANDUM OF LAW IN OPPOSITION**  
**TO DEFENDANT’S MOTION TO DISMISS**

**STATEMENTS OF LAW**

**Connecticut Constitution, Article First, Sec. 10.**

**All courts shall be open**, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay.

**CGS Sec. 51-164s.**

**The Superior Court shall** be the **sole court of original jurisdiction** for all causes of action, except such actions over which the courts of probate have original jurisdiction, as provided by statute. All jurisdiction heretofore conferred upon and exercised by the Court of Common Pleas and the Juvenile Court prior to July 1, 1978 shall be transferred to the Superior Court on July 1, 1978.

**CGS Sec. 52-1.**

**The Superior Court** may administer legal and equitable rights and apply legal and equitable remedies in favor of either party in one and the same civil action so that legal and equitable rights of the parties may be enforced and protected in one action. Whenever there is any variance between the rules of equity and the rules of the common law in reference to the same matter, the rules of equity shall prevail.

**CGS Sec. 52-29.**

(a) **The Superior Court in any action or proceeding** may declare rights and other legal relations on request for such a declaration, whether or not further relief is or could be claimed. The declaration shall have the force of a final judgment.

(b) The judges of the Superior Court may make such orders and rules as they may deem necessary or advisable to carry into effect the provisions of this section.

**CGS Sec. 9-371b.**

Any person (1) claiming to have been aggrieved by any ruling of any election official in connection with a referendum, (2) claiming that there has been a mistake in the count of votes cast for a referendum, or (3) claiming to be aggrieved by a violation of any provision of section 9-355, 9-357 to 9-361, inclusive, 9-364, 9-364a or 9-365 in the casting of absentee ballots at a referendum, **may bring a complaint to any judge of the Superior Court for relief from such ruling, mistake or violation.**

**Amodio v. Amodio, 247 Conn. 724, 727-28, 724 A.2d 1084 (1999).**

"Subject matter jurisdiction involves the authority of a court to adjudicate the type of controversy presented by the action before it. 1 Restatement (Second), Judgments § 11. 'A court does not truly lack subject matter jurisdiction if it has competence to entertain the action before it.' *Monroe v. Monroe*, 177 Conn. 173, 185, 413 A.2d 819, appeal dismissed, 444 U.S. 801, 100 S.Ct. 20, 62 L.Ed.2d 14 (1979). Once it is determined that a tribunal has authority or competence to decide the class of cases to which the action belongs, the issue of subject matter jurisdiction is resolved in favor of entertaining the action." *Craig v. Bronson*, 202 Conn. 93, 101, 520 A.2d 155 (1987). It is well established that, in determining whether a court has subject matter jurisdiction, **"every presumption favoring jurisdiction should be indulged."** *Connecticut Light Power Co. v. Costle*, 179 Conn. 415, 420-21 n. 3, 426 A.2d 1324 (1980).

**Simmons-Cook v. Bridgeport, 284 Conn. 823 (2008) (quoting Caruso v. Bridgeport, supra, 285 Conn. 637-38 (2008)).**

We previously have recognized that, under our democratic form of government, an election is the paradigm of the democratic process designed to ascertain and implement the will of the people. . . . [E]lection laws . . . generally vest the primary responsibility for ascertaining [the] intent and will [of the voters] on the election officials . . . . We look, therefore, first and foremost to the election officials to manage the election process so that the will of the people is carried out.

**Fay v. Merrill, 336 Conn. 432,449 n.19 (2020) (quoting Wrinn v. Dunleavy, 186 Conn. 125, 134 n.10 (1982))**

“It is well established that our election contest statutes ‘may not [be] use[d] ... to challenge a law or regulation under which the election or primary election is held by claiming aggrievement in the election official’s obedience to the law.’”

**CGS Sec. 2-18. Form of bills amending statutes and resolutions amending Constitution; ballot designation of proposed constitutional amendments.**

Each bill for a public act amending any statute, each special act amending any special act and each resolution proposing an amendment to any provision of the Constitution shall set forth in full the act or constitutional provision, or the section or subsection thereof, to be amended. **Matter to be omitted or repealed shall be surrounded by brackets** and new matter shall be indicated by underscoring or, where an electric magnetic tape typewriter or other electronic equipment or device is used, by capitalization or underscoring of all words in the manuscript bill and by underscoring, capitalization or italics in its printed form. Each resolution proposing an amendment to any provision of the Constitution **shall** also include the **designation of such proposed amendment to be used** on the voting tabulator ballots and absentee ballots in the event such amendment is approved by the General Assembly. **Such designation shall be a question, commencing with the words “shall the Constitution of the state be amended to” and ending with a statement of the intended objective addressed by the amendment.** Nothing in this section shall preclude the General Assembly from adopting rules authorizing the introduction by members of bills, special acts or resolutions which set forth only a statement of purpose or of intent and do not set forth the statute or constitutional provision to be amended.

**CGS Sec. 9-314. Return of preliminary and duplicate lists of votes by moderator; exception for 2020 state election re duplicate lists.**

(a) As used in this subsection, “moderator” means the moderator of each state election in each town not divided into voting districts and the head moderator in each town divided into voting districts. The moderator **shall make a preliminary list** of the votes given for each of the following officers: Presidential electors, Governor, Lieutenant Governor, Secretary of the State, Treasurer, Comptroller, Attorney General, United States senator, representative in Congress, state senator, judge of probate, state representative and registrars of voters when said officers are to be chosen, as reported solely by the tabulator, as provided in section 9-309, in the moderator's town and **shall immediately transmit such**

**preliminary list** to the Secretary of the State not later than midnight on election day. Once the **preliminary list has been transmitted** to the Secretary of the State, the moderator shall make a **duplicate list** of the votes given in the moderator's town for each of the following officers: Presidential electors, Governor, Lieutenant Governor, Secretary of the State, Treasurer, Comptroller, Attorney General, United States senator, representative in Congress, state senator, judge of probate, state representative and registrars of voters when said officers are to be chosen. **Such duplicate list shall indicate** the total number of names on the official check list of such town and the total number of names checked as having voted. **The moderator shall transmit such duplicate list** to the Secretary of the State **by electronic means** as prescribed by the Secretary of the State not later than forty-eight hours after the close of the polls on election day. The moderator shall also **seal and deliver one of such duplicate lists** to the Secretary of the State not later than the third day after the election. Any such moderator who fails to so **transmit or deliver** such **duplicate list** to the Secretary of the State by the time required shall pay a late filing fee of fifty dollars. The moderator shall also deliver one of such **duplicate lists** to the clerk of such town. The Secretary of the State shall enter the returns in tabular form in books kept by the Secretary for that purpose and present a printed report of the same, with the name of, and the total number of votes received by, each of the candidates for said offices, to the General Assembly at its next session.

(b) As used in this subsection, "moderator" means the moderator of each municipal election in each town not divided into voting districts, and the head moderator in each town divided into voting districts. The moderator **shall make a preliminary list** of the votes given for each municipal office elected at such municipal election, as reported solely by the tabulator, as provided in section 9-309, in the moderator's town **and shall immediately transmit such preliminary list** to the Secretary of the State not later than midnight on election day. Once the **preliminary list has been transmitted** to the Secretary of the State, the moderator **shall make a duplicate list** of the votes given in the moderator's town for each municipal office elected at such municipal election. **Such duplicate list shall indicate** the total number of names on the official check list of such town and the total number of names checked as having voted and shall be on a form prescribed by the Secretary of the State. The moderator **shall transmit such duplicate list** to the Secretary of the State **by**

**electronic means** as prescribed by the Secretary of the State not later than forty-eight hours after the close of the polls on election day. The moderator **shall also seal and deliver one of such duplicate lists** to the Secretary of the State not later than the third day after the election. Any such moderator who fails to so transmit or deliver such **duplicate list** to the Secretary of the State by the time required shall pay a late filing fee of fifty dollars. The moderator shall also deliver one of such **duplicate lists** to the clerk of such town.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, for the state election in 2020, (1) **the duplicate list** required under said subsections **to be transmitted by electronic means** to the Secretary by such moderator shall be so transmitted not later than ninety-six hours after the close of the polls on election day, and (2) **the duplicate list** required under said subsections to be **sealed and delivered** to the Secretary shall be so delivered not later than the fifth day after the election.

## **AMENDMENT PROVISIONS OF RESOLUTION ACT NO. 21-1 AKA: H.J. NO. 59**

### **CT Constitution, Article Sixth, Section 7**

The general assembly may provide by law for voting in the choice of any officer to be elected or upon any question to be voted on at an election by qualified voters of the state who are unable to appear at the polling place on the day of election because of absence from the city or town of which they are inhabitants or because of sickness or physical disability or because the tenets of their religion forbid secular activity. The general assembly may further provide by law for voting in person prior to the day of election in the choice of any officer to be elected or upon any question to be voted on at an election by qualified voters of the state.

### **CT Constitution, Article Third, Section 9**

At all elections for members of the general assembly the presiding officers in the several towns shall **[receive the votes of the electors, and]** count and declare **[them]** the votes of the electors in open meeting. The presiding officers shall make and certify duplicate lists of the persons voted for, and of the number of votes for each. One list shall be delivered

within three days to the town clerk, and within ten days after such meeting, the other shall be delivered [under seal] to the secretary of the state.

#### **CT Constitution, Article Fourth, Section 4**

[At the meetings of the electors in the respective towns held quadrennially as herein provided for the election of state officers, the presiding officers shall receive the votes and shall count and declare the same in the presence of the electors.] The votes at the election of state officers shall be counted and declared in open meeting by the presiding officers in the several towns. The presiding officers shall make and certify duplicate lists of the persons voted for, and of the number of votes for each. One list shall be delivered within three days to the town clerk, and within ten days after such meeting, the other shall be delivered [under seal] to the secretary of the state. The votes so delivered shall be counted, canvassed and declared by the treasurer, secretary, and comptroller, within the month of November. The vote for treasurer shall be counted, canvassed and declared by the secretary and comptroller only; the vote for secretary shall be counted, canvassed and declared by the treasurer and comptroller only; and the vote for comptroller shall be counted, canvassed and declared by the treasurer and secretary only. A fair list of the persons and number of votes given for each, together with the returns of the presiding officers, shall be, by the treasurer, secretary and comptroller, made and laid before the general assembly, then next to be held, on the first day of the session thereof. In the election of governor, lieutenant-governor, secretary, treasurer, comptroller and attorney general, the person found upon the count by the treasurer, secretary and comptroller in the manner herein provided, to be made and announced before December fifteenth of the year of the election, to have received the greatest number of votes for each of such offices, respectively, shall be elected thereto; provided, if the election of any of them shall be contested as provided by statute, and if such a contest shall proceed to final judgment, the person found by the court to have received the greatest number of votes shall be elected. If two or more persons shall be found upon the count of the treasurer, secretary and comptroller to have received an equal and the greatest number of votes for any of said offices, and the election is not contested, the general assembly on the second day of its session shall hold a joint convention of both houses, at which, without debate, a ballot shall be taken to choose such officer from those persons who received such a vote; and the balloting shall continue on that or subsequent

days until one of such persons is chosen by a majority vote of those present and voting. The general assembly shall have power to enact laws regulating and prescribing the order and manner of voting for such officers. The general assembly shall by law prescribe the manner in which all questions concerning the election of a governor or lieutenant-governor shall be determined.

### **Designation in accordance with CGS Sec. 2-18**

RESOLVED: That the foregoing proposed amendment to the Constitution be continued to the next session of the General Assembly elected at the general election to be held on November 3, 2020, and published with the laws passed at the present session, or be presented to the electors at the general election to be held on November 3, 2020, whichever the case may be, according to article sixth of the amendments to the Constitution. The designation of said proposed amendment to be used on the ballots at such election shall be "Shall the Constitution of the State be amended to permit the General Assembly to provide for early voting?"

NOW, THEREFORE, BE IT RESOLVED BY THIS ASSEMBLY: That the said amendment so proposed is approved and that it be presented to the electors at the general election to be held on November 8, 2022.

## **ARGUMENT AND DISCUSSION**

### **I. WHAT COURT HAS JURISDICTION?**

Defendant argues that a motion to dismiss properly attacks the jurisdiction of the court to hear my complaint. I disagree, and oppose such conclusion because this court has been delegated jurisdiction by multiple authorities, including:

- our Connecticut Constitution, Article First, Sec. 10, which states that "All courts shall be open", and every person "shall have remedy by due course of law, and right and justice administered without denial or delay".

- CGS Sec. 51-164s, which identifies “The Superior Court shall be the sole court of original jurisdiction for all causes of action”.
- CGS Sec. 52-1 of Chapter 895 titled “Civil Jurisdiction” which states that “The Superior Court may administer legal and equitable rights and apply legal and equitable remedies in favor of either party in one and the same civil action so that legal and equitable rights of the parties may be enforced and protected in one action.
- CGS Sec. 52-29 which addresses declaratory action to be within the scope of “The Superior Court in any action or proceeding” and specifies that the Superior Court “may declare rights and other legal relations on request for such a declaration, whether or not further relief is or could be claimed.”
- And CGS Sec. 9-371b which clearly states that “Any person claiming to have been aggrieved by **any ruling of any election official** in connection **with a referendum**, may bring a complaint to **any judge of the Superior Court** for relief from such ruling, mistake or violation.

I further add in opposition to any claim that this court lacks subject matter jurisdiction the statements made in *Amodio v. Amodio*, 247 Conn. 724, 727-28, 724 A.2d 1084 (1999), which state:

"Subject matter jurisdiction involves the authority of a court to adjudicate the type of controversy presented by the action before it. ... 'A court does not truly lack subject matter jurisdiction if it has competence to entertain the action before it.' ... Once it is determined that a tribunal has authority or competence to decide the class of cases to which the action belongs, the issue of subject matter jurisdiction is resolved in favor of entertaining the action." ... It is well established that, in determining whether a court has subject matter jurisdiction, "every presumption favoring jurisdiction should be indulged." ...



## II. WHAT IS AN ELECTION OFFICIAL?

The Defendant argues that the Connecticut General Assembly is not an election official and I disagree. Pursuant defendant's own argument and the case law notably referenced in context, an "election official" are those who "manage the election process so that the will of the people is carried out." Defendant's memorandum acknowledges that there is no "normative definition" of "election official", that the legislature has chosen to list positions, but that the Supreme Court has assumed that the term may also apply to other state positions such as the secretary of the state and municipal town clerks.

In *Simmons-Cook v. Bridgeport*, CT Supreme Court Judge Rogers reiterates defendants quote from *Caruso v. Bridgeport* in more complete detail, "We previously have recognized that, under our democratic form of government, an election is the paradigm of the democratic process designed to ascertain and implement the will of the people. . . . [E]lection laws . . . generally vest the primary responsibility for ascertaining [the] intent and will [of the voters] on the election officials . . . . We look, therefore, first and foremost to the election officials to manage the election process so that the will of the people is carried out." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Caruso v. Bridgeport*, supra, 285 Conn. 637–38.

With this case law in context, we can infer that an "election official" are those who, by virtue of election laws, have been vested with primary responsibility for ascertaining the intent and will of the voters and manage the election process so that the will of the people is carried out.

Because a Referendum Question is part of the election process and is included within election laws, Plaintiff argues that members of the General Assembly become "election officials" when performing responsibilities directly vested upon them, by virtue of election laws.

Primary responsibility for ascertaining the intent and will of the voters, in regards to the referendum in dispute, falls on a broad scope of members and staff of the Connecticut General Assembly; From the Government Administration and Elections Committee members, to the committee clerk, and any legal staff member of the CGA who shared primary responsibility, management or oversight, for the interpretation of election laws that govern the referendum process and make any rulings regarding the intent and will of the voters.

### **III. WHAT IS A RULING AND WHAT RULING IS PLAINTIFF AGGRIEVED WITH?**

Defendant states on p. 13 of their memorandum of law, that “A ruling of an election official for purposes of the election contest statutes, such as § 9-371b, requires some act or conduct by the official that (1) decides a question presented to the official, or (2) interprets some statute, regulation, or other authoritative legal requirement, applicable to the election process.”

Plaintiff’s complaint alleged to be grieved by two separate election official violations of law in connection with the same referendum approved through **Resolution Act No. 21-1**. The first allegation pertained to a violation of **Article Sixth of the Amendments to the Constitution**, and the second pertained to a violation of **CGS Sec. 2-18**. With the discovery of **H.J. No. 161**, introduced by defendant’s counsel, I plaintiff can not claim any violation of Article Sixth of the Amendments to the Constitution. I stand corrected and appeased in regards to the first alleged violation of my complaint. The second election official ruling violation is still before this court.

Plaintiff is aggrieved with all election officials responsible for **interpreting the designation** of “Shall the Constitution of the State be amended to permit the General Assembly to provide for early Voting?” **as sufficient to meet the intended will and requirement of CGS Sec. 2-18, which is applicable to the election process.** Plaintiff is also aggrieved by the election

officials who drafted such a severely-deficit and deceitful designation, as well as the official members of the Government Administration and Elections Committee, who represent as a front line of defense against such severely-deficit and deceitful proposals, who made the decision to vote “yea” in approval of such a severely-deficit and deceitful proposal.

#### **IV. HOW IS THE DESIGNATION SEVERELY-DEFICIT AND DECEITFUL?**

CGS Sec. 2-18, sets forth a responsibility that for “Each resolution proposing an amendment to any provision of the Constitution shall also include the designation of such proposed amendment to be used on the voting tabulator ballots and absentee ballots in the event such amendment is approved by the General Assembly. Such designation **shall be a question**, commencing with the words “shall the Constitution of the state be amended to” **and ending with a statement of the intended objective addressed by the amendment.**

Resolution Act No. 21-1, purports to be a single amendment with the sole intended objective “to permit the General Assembly to provide for early voting”. The truth however, is that Resolution Act No. 21-1 addresses two separate and distinct amendments that each hold separate and distinct objectives. As noted on p. 6 of Defendant’s memorandum of law, “The resolution also proposed amending section nine of article third and section four of article fourth of the constitution”, which removes the requirement “that a duplicate list of election results for state officers and state legislators, be sent to the secretary of state within 10 days after the election, be submitted under seal”. (see RA 21-1 Public Act Summary).

A legal review of the statutory provision, **CGS Sec. 9-314**, reveals that duplicate list of election results required to be “sealed and delivered” to the secretary of state is the only requirement for a physical hard copy of official election results. A recurring theme in the statute is the preparation of a “preliminary list” of election results being “transmitted” to the Secretary of

the State, followed by a “duplicate list” of the same election results to have specific details and be “transmitted” to the Secretary of the State “by electronic means”, followed by a requirement for the moderator to “seal and deliver” one of such duplicate lists to the Secretary of the State by a specified date. None of these provisions have anything to do with permitting the General Assembly “to provide for early voting”. Nor does the sealing and delivering of a hard copy set of election results hinder early voting in any capacity.

Removing the requirement to submit a hardcopy duplicate list of election results has everything to do with entirely digitizing the all the returns of election results, along with voter information, which Plaintiff argues that such amendments compromises election result integrity, ballot security and is entirely irrelevant to making provision for early voting, yet this intended objective represent two-thirds of Resolution Act No. 21-1, and is entirely omitted from the approved designation.

Plaintiff argues that the designation so drafted and approved by members of the CGA, in attempt to comply with statutory requirements listed in CGS Sec. 2-18, is “severely-deficit” in that it fails to address the actual contextual objectives contained within the amendment; and that it is deceitful due to the fact that omission a greater portion of the contextual objectives addressed by the amendment distorts the true significance of what the voters understood they were voting, for or against, when answering the designation on the ballot.

## **V. SOVEREIGN IMMUNITY AND THE POLITICAL QUESTION DOCTRINE**

Defendant rightly brings up sovereign immunity as being applicable to members of the General Assembly, however Plaintiff has properly brought this complaint with a request for declaratory judgment, in part to specifically establish if immunity is even applicable to any wrongful conduct that may be determined upon judicial review of this complaint. Because a

declaratory judgment rules on the existence or nonexistence of matters that exist or will arise in the future. Sovereign Immunity is not a proper claim that can dismiss my complaint.

Plaintiff is not asking the court to intrude upon the prerogatives and function of the General Assembly. The Legislative Branch is responsible for creating new laws, and the Judicial Branch is responsible for interpreting and upholding our laws. Plaintiff is asking the court to interpret whether or not the designated referendum question in Resolution Act No. 21-1, satisfies every legal element imposed by CGS 2-18; and to uphold our laws by declaratory judgments as to the “existence or nonexistence of any right, power, privilege or immunity; or (2) of any fact upon which the existence or nonexistence of such right, power, privilege or immunity does or may depend, whether such right, power, privilege or immunity now exists or will arise in the future.” CT PB. Sec. 17-54.

### **CONCLUSION**

Declaratory Judgment properly presents plaintiff’s complaint to this court for all intended purposes and lawful consideration. Declaratory judgment is sought as a request for judicial review of facts already known and public, without the request for an injunction nor claim to any award for damages. The power vested on this court to provide a declaratory judgment is outlined in **CGS Sec. 52-29** which states that: (a) The Superior Court in any action or proceeding may declare rights and other legal relations on request for such a declaration, whether or not further relief is or could be claimed. The declaration shall have the force of a final judgment. (b) The judges of the Superior Court may make such orders and rules as they may deem necessary or advisable to carry into effect the provisions of this section.

In accordance with the scope of a declaratory action, pursuant CGS Sec. 52-29 and CT PB Sec. 17-54, Plaintiff is asking this court to interpret and uphold our laws by:

- Denying Defendants motion to dismiss,
- Review the Plaintiff's complaint along with this Memorandum of Law and all evidence associated with the passage of Resolution Act No. 21-1(RA 21-1), along with any written and oral arguments presented,
- Declare whether or not prima facie evidence exists that constitutes impropriety with Resolution Act 21-1?
- Declare the existence or nonexistence of any right, power, privilege, or immunity that can remedy the impropriety.
- Declare whether or not, any actions committed or omitted, constitutes wanton, reckless or malicious conduct, and whether such wrongful conduct may be attributed to any specifiable individual or position.

Respectfully submitted,

/s/ Noemi Soto

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing memorandum, having been electronically filed with the Court, was emailed to Defendant on this 1<sup>st</sup> day of December 2022.

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