DOCKET NO. HHD-CV22-5075490-S	:	CONNECTICUT SUPERIOR COURT
NOEMI SOTO	:	JUDICIAL DISTRICT OF
Plaintiff,	:	HARTFORD
	:	
v.	:	
	:	
CONNECTICUT GENERAL ASSEMBLY	:	
Defendant.	:	DECEMBER 8, 2022

DEFENDANT CONNECTICUT GENERAL ASSEMBLY'S REPLY MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO DISMISS

Plaintiff Noemi Soto concedes that the Connecticut General Assembly passed identical resolutions by a majority vote of both chambers in two consecutive regular sessions of the legislature proposing the constitutional amendments at issue in this case. As such, the General Assembly complied with the requirements of Article Twelfth of the Connecticut Constitution. Plaintiff's Memorandum of Law in Opposition to Defendant's Motion to Dismiss ("Opp. Memo"), p.10 (Dkt. No. 108). Thus, the sole remaining issue before this Court is whether the Court has subject matter jurisdiction to decide Plaintiff's claim that the General Assembly failed to comply with Connecticut General Statute § 2-18 when it drafted the referendum question that would appear on the ballot for the November 8, 2022 election. The answer is no. Plaintiff has not identified any basis for this Court to exercise jurisdiction over her claim of a statutory violation by the General Assembly.

I. A Superior Court's General Jurisdiction Does Not Extend to Every Case Brought Before It.

A court of general jurisdiction, such as the Superior Court, may hear all manner of cases properly brought before it. *LaBella v. LaBella*, 134 Conn. 312, 316,

(1948); *see* Conn. Gen. Stat. § 51-164s. Even so, a plaintiff must establish that a particular case is justiciable before the court may exercise its jurisdiction. *Kleinman v. Marshall*, 192 Conn. 479, 484 (1984). Therefore, Plaintiff's arguments regarding the general jurisdiction of the Superior Court are entirely misplaced. *See* Opp. Memo. pp.7-8. Here, Plaintiff's case is not justiciable because she lacks statutory and classical aggrievement.

A. The Plaintiff Is Not Aggrieved Under § 9-371b By a Ruling of an Election Official.

This Court should dismiss Plaintiff's claim brought pursuant to Conn. Gen. Stat. § 9-371b, the election contest statute for issues arising during a referendum, because she cannot establish that she has been aggrieved by a ruling of an election official. First, the General Assembly is not an election official. Second, the phrasing of the referendum question is not a ruling of an election official. Therefore, there has been no "ruling" of an election official.

1. The General Assembly is Not an Election Official.

Plaintiff relies on Conn. Gen. Stat. § 9-371b(1) as a basis for her claim against the General Assembly. As with the election contest statutes arising from elections of candidates to office, the contest statute for referenda requires that the person bringing the claim has been "aggrieved by any ruling of an election official in connection with a referendum" for the Court to have jurisdiction over the claim. § 9-371b(1); *see also Price v. Independent Party of CT- State Central*, 323 Conn. 529 (2016) (discussing definition of "election official" and holding that members of a minor party selecting their candidates for office are not "elections officials").

Plaintiff argues, without citation to authority, that the General Assembly becomes an election official, within the meaning of the election contest statutes, "when performing responsibilities directly vested upon them, by virtue of election laws." Opp. Memo. p.9. She further contends that "[p]rimary 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 . . . who share[] primary responsibility, management or oversight for the interpretation of election laws that govern the referendum process and make any ruling regarding the intent and will of the voters." *Id.* p.9. Plaintiff's argument rests on a flawed interpretation of what is meant by the election process.

First, even if Plaintiff were correct that the General Assembly could be construed as an election official when performing responsibilities vested in it by the election laws, which is not supported by any statute or case law, the phrasing of a referendum question for a constitutional amendment is not governed by any election law. The statute governing the phrasing of referendum questions is not an "election law." Rather, it is a statute enacted by the General Assembly to govern its own conduct in amending *any* existing legislation or the state constitution, not just election laws, including "[e]ach 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." Conn. Gen. Stat. § 2-18. Thus, under Plaintiff's analysis the General Assembly would become an "election official" any time it amended or enacted any election law. Such a sweeping definition of "election official"

finds no support in the election contest statutes or any case interpreting those statutes and defies common sense.

Plaintiff's argument that the General Assembly has the primary responsibility for ascertaining the will of the voters during the election process is similarly misplaced. Although legislators are tasked with representing the interests of their constituents through the passing of legislation, voters express their will *by voting*. *See, e.g. Wrinn v. Dunleavy*, 186 Conn. 125, 141 (1982) (will of the voter ascertained from the ballots). Thus, the election process contemplated by the election contest statutes is related to administering the election itself, during which voters cast their votes for candidates and on issues presented to them on the ballot. *See Caruso v. Bridgeport*, 285 Conn. 618, 637 (2008). The General Assembly has no role in that process.

The General Assembly is not an "election official." Therefore, Plaintiff lacks standing to bring a claim under Conn. Gen. Stat. § 9-371b(1) challenging the method the General Assembly used in authorizing the constitutional referendum.

2. Even if Plaintiff Had Named an Election Official, She Has Not Alleged that There Was a Ruling of an Election Official.

Plaintiff has not identified any election official in her Complaint, and indeed cannot identify any, who took any action interpreting the General Assembly's conduct in proposing the constitutional amendment. Once the General Assembly proposed the constitutional amendment by passing identical resolutions in 2019 and 2021, each official thereafter, even if properly considered an election official, simply performed a ministerial duty to put the amendment on the ballot. Thus, there was no ruling of

any election official. Plaintiff argues that she has been aggrieved by "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*." Opp. Memo p.10 (emphasis in original). She further argues that she is 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." *Id.* at pp.9-10.

Plaintiff fails to identify any point after the passage of the resolutions where *any* individual was required to interpret the referendum question to determine whether it satisfied the requirements the General Assembly created for itself in § 2-18. There is none and, therefore, no "ruling" as that term has been interpreted. As noted in the General Assembly's initial memorandum, and conceded by Plaintiff, the General Assembly's passage of the resolutions for the proposed constitutional amendment in 2019 and 2021 complied with the requirements of Article Twelfth of the Connecticut Constitution. *See* Defendant Connecticut General Assembly's Memorandum of Law in Support of Its Motion to Dismiss ("MIS MTD") (Dkt. No. 107), pp.5-7, 15, 18-19, Opp. Memo. p.10. Even assuming *arguendo* that the referendum question should have included language concerning the "under seal" modification, §

2-18 provides no mechanism for rejection of a referendum question that does not comply with that statute. There was no basis upon which the Secretary of the State (Secretary) (assuming he were a party), or anyone else, could conclude that they even had any authority, not to mention an actual constitutional or statutory duty, to reject the referendum question. *See, generally, Arciniega v. Feliciano*, 329 Conn. 293, 184 A.3d 1202, 1205 (2018) (election official's decision to accept a form with an error in an address was not a "ruling" under the contest statute so long as the decision "conform[ed] to specified mandates."). Plaintiff has cited no constitutional or statutory authority that would have permitted the Secretary, or the town clerks, to have rejected the referendum question even if they had agreed with Plaintiff's interpretation of Connecticut General Statute § 2-18. There would have been absolutely no support for such action.

Plaintiff's argument regarding the conduct the General Assembly, and individuals working on their behalf, is similarly unavailing. Determining how to phrase legislation, whether a bill or resolution, is not the interpretation of a law or regulation governing the election process. As noted above, the statute governing the drafting of resolutions and referendum questions governs the drafting of all legislation that seeks to modify existing bills, special bills, or the state constitution. § 2-18. Therefore, the drafting of the resolution, including the referendum question, and a legislative committee's vote related to the proposed resolution, neither (1) decides a question presented to the official, or (2) interprets some statute, regulation,

or other authoritative legal requirement, applicable to the election process. *See Arciniega v. Feliciano*, 184 A.3d at 1208.

Therefore, this Court should conclude that neither the drafting and enactment of the resolution, including the referendum question, nor the inclusion of the question on the ballot by subsequent elections officials, were a "ruling" of an election official under § 9-371b and this Court lacks jurisdiction to decide Plaintiff's claim under that statute.

B. Plaintiff Lacks Standing to Challenge the Placement of the Referendum Question on the Ballot.

Lacking standing under § 9-371b, and providing no other statutory basis for standing, to bring this claim Plaintiff must establish that she is classically aggrieved. Plaintiff cannot do so because she has no "specific, personal and legal interest" in the placement of the referendum question on the ballot different than "a general interest that all members of the community share." *Mayer v. Historic Dist. Comm'n of Groton*, 325 Conn. 765, 772 (2017) (quotation marks omitted). In her opposition to the General Assembly's motion to dismiss, Plaintiff has failed to brief the issue of classical aggrievement. Therefore, this Court should deem abandoned any claim by Plaintiff that she has standing outside of the scope of § 9-371b. *See Conn. Light & Power Co. v. Dept. of Public Util. Control*, 266 Conn. 108, 120 (2003) (Appellate courts are not required to review inadequately briefed claims. The same principles "apply to claims raised in the trial court.").

II. Plaintiff's Claim is Barred by Sovereign Immunity.

Even if this Court concludes that Plaintiff has not abandoned any claim that she has standing to bring a declaratory judgment action independent of § 9-371b and determines that she has standing, which it should not, Plaintiff's claim is barred by sovereign immunity. Plaintiff argues that sovereign immunity does not bar her claim for a declaratory judgment because "Plaintiff has properly brought this complaint . . . in part to specifically establish if immunity is even applicable to any wrongful conduct that may be determined upon judicial review of this complaint." Opp. Memo p.12. Plaintiff's argument is entirely unavailing because she fails to assert in what way her claim satisfies any of the three exceptions to sovereign immunity. *See Columbia Air Servs., Inc. v. Dept. of Transp.*, 293 Conn. 342, 349 (2009). Simply alleging "wrongful conduct" is not a basis for waiver of sovereign immunity. As provided in more detail in the General Assembly's Memorandum in Support of Its Motion to Dismiss, Plaintiff cannot establish any exception to sovereign immunity. *See* MIS MTD pp.17-20.

III. The Political Question Doctrine Precludes Adjudication of Plaintiff's Claim.

Even if the aforementioned jurisdictional impediments did not bar Plaintiff's remaining claim, which they do, this Court should further decline to reach Plaintiff's claim because it presents a nonjusticiable political question and "a court is not the proper forum for its resolution." *Nielsen v. Kezer*, 232 Conn. 65, 75 (1995). Contrary to Plaintiff's argument, Opp. Memo p.13, determination of whether the General Assembly complied with the requirements it established for itself in § 2-18 is a

political question. *See Nielson v. State*, 236 Conn. 1, 7 (1996) (Claims embracing political questions are not justiciable because, "in such cases, some other branch of government has constitutional authority over the subject matter superior to that of the courts." (quoting *Pellegrino v. O'Neill*, 193 Conn. 670, 680 (1984))).

Insofar as Plaintiff challenges the phrasing of the referendum question, relying on Conn. Gen. Stat. § 2-18, the determination of how to present a constitutional amendment to the electors is clearly committed to the General Assembly by the constitution. Article Twelfth of the Connecticut Constitution provides that: "If it shall appear, *in a manner to be provided by law*, that a majority of the electors present and voting on such amendment at such election shall have approved such amendment, the same shall be valid, to all intents and purposes, as a part of this constitution." (Emphasis added.) The General Assembly is the branch of government tasked with providing the laws. Thus, the constitution clearly commits to the General Assembly the authority to determine the form in which the proposed amendment is presented to the electors and the manner in which those electors shall vote on the proposed amendment. Determination of whether the referendum question complied with the format which the General Assembly previously determined referendum questions should be phrased would be "an impermissible intrusion upon the prerogatives and functions of" the General Assembly. *Nielson v. State*, 236 Conn. at 9.

This Court should not entertain Plaintiff's attempt to adjudicate a political question, which is inappropriate for judicial resolution, and should dismiss her claims.

CONCLUSION

For the foregoing reasons, and those found in the General Assembly's Memorandum in Support of Its Motion to Dismiss, Plaintiff's claim against the General Assembly should be dismissed in its entirety because the General Assembly is not an election official and there has been no ruling of an election official. Moreover, to the extent that Plaintiff seeks to bring a claim independent of § 9-371b, she lacks standing and her claim is barred by sovereign immunity. Finally, Plaintiff's claims are nonjusticiable political questions and must be dismissed.

Respectfully submitted,

DEFENDANT

CONNECTICUT GENERAL ASSEMBLY

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing memorandum, having been electronically filed with the Court, was emailed to Plaintiff on this 8th day of December 2022.

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