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| DOCKET NO. HHD-CV-22-5075490-S | : | SUPERIOR COURT |
| NOEMI SOTO | : | JUDICIAL DISTRICT OF HARTFORD |
| v. | : | AT HARTFORD |
| CONNECTICUT GENERAL ASSEMBLY | : | DECEMBER 15, 2022 |

**MEMORANDUM OF DECISION RE MOTION TO DISMISS, # 106**

The question raised by the present motion to dismiss is whether the plaintiff has standing and the court jurisdiction, either pursuant to General Statutes § 9-371b[1] or principles of classical aggrievement, to decide if the Connecticut General Assembly (Assembly) appropriately effected amendments to three provisions of the Connecticut constitution when the designation by the Assembly of the question submitted to the voters of the state of Connecticut at referendum referenced only one of the provisions. Stated differently, the question the plaintiff, Noemi Soto, wants this court to address is whether the Assembly properly submitted to the electorate, three changes to our constitution when the question it chose for submission to our citizens identified only one of the three amendments. The court may not answer this question because the threshold question of whether it has subject matter jurisdiction must be answered in the negative.



The following legal landscape, facts and procedural history are relevant to this decision. Amendments to the Connecticut constitution are governed by article twelfth of the constitution of Connecticut.[2] Pursuant to this article, "amendments to the constitution may be proposed by

[1] General Statutes § 9-371b provides in pertinent part that "[a]ny 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."

[2] Article twelfth provides in relevant part that "[a]mendments to this constitution may be proposed by any member of the senate or house of representatives. An amendment so proposed, approved upon roll call by a yea vote of at least a majority, but by less than three-fourths, of the total membership of each house, shall be published with



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any member of the Senate or House of Representatives and, if approved by at least three fourths of the total membership of each chamber at the next legislative session, shall be presented to electors for approval at the next general election." *Bysiewicz v. Dinardo*, 298 Conn. 748, 796 n.47, 6 A.3d 726 (2010). Article twelfth further provides that any proposed amendment approved by both houses "shall [be transmitted] by the secretary of the state" to the various town clerks for submission of the amendment to voters.[3] Conn. Const., art. XII. The Connecticut constitution does not mandate the format of proposed amendments or the associated referendum question. The legislature addressed this lacuna in General Statutes § 2-18,[4] which mandates that the proposed resolution include an interrogatory, termed a "designation," to be submitted to voters, that commences "with the words 'shall the Constitution of the state be amended to' and ends with "a statement of the intended objective addressed by the amendment." Id.

Prior to 2022, the Connecticut constitution permitted the legislature to authorize absentee voting under certain conditions. See Conn. Const., art. VI, § 7. It did not however, authorize



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the laws which may have been passed at the same session and be continued to the regular session of the general assembly elected at the next general election to be held on the Tuesday after the first Monday of November in an even-numbered year. An amendment so proposed, approved upon roll call by a yea vote of at least three-fourths of the total membership of each house, or any amendment which, having been continued from the previous general assembly, is again approved upon roll call by a yea vote of at least a majority of the total membership of each house, *shall, by the secretary of the state, be transmitted to the town clerk in each town in the state, whose duty it shall be to present the same to the electors thereof for their consideration at the next general election* to be held on the Tuesday after the first Monday of November in an even-numbered year." (Emphasis added.) Conn. Const., art. XII.

[3] See footnote 2.

[4] General Statutes § 2-18, which addresses generally public and special acts, in addition to constitutional amendments, provides in relevant part that "[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 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.*" (Emphasis added.)

early in-person voting. Moreover, article third, § 9, and article fourth, § 4, of the Connecticut constitution, required the local vote tallies for members of the general assembly and state officers, respectively, to be delivered - under seal - by the local presiding officers to the secretary of state.

In 2019, the Senate and House of Representatives passed Resolution Act No. 19-1 (No. 19-1). No. 19-1 proposed an amendment to section 7 of article sixth of the constitution of Connecticut to permit early in-person voting and to delete the proviso in section 9 of article third and section 4 of article fourth that election tallies be delivered under seal to the secretary of the state by the presiding officers. No. 19-1 contained the designation, or resolution question, "Shall the Constitution of the State be amended to permit the General Assembly to provide for early voting." The designation contained no mention of the amendments to article third, § 9 or article fourth, § 4. As required by article twelfth, the resolution was continued to the next session of the General Assembly. In 2021, a majority of the membership of both chambers of the General Assembly passed what became known as Resolution Act No. 21-1 (No. 20-1), the substance of which was identical to No. 19-1 except for the introductory paragraphs and the addition of language in No. 20-1 that the amendments be presented to the voters at the November 8, 2022, general election. The referendum passed by 60.52 percent of the vote. See The Office of the Secretary of the State, "2022 Election Results," available at http://portal.ct.gov/sots, (last visited December 15, 2022).



On November 7, 2022, the self-represented plaintiff filed the present action. In her complaint, the plaintiff claimed entitlement to declaratory relief pursuant to § 9-371b (1) on the basis that the referendum violated § 2-18 because only one of the intended objectives, that of

early voting, was identified as the subject of the vote.[5] The court scheduled a hearing on November 8, 2022, at which time the Assembly appeared and asserted that this court lacked subject matter jurisdiction because the plaintiff lacked standing to assert her cause. Following briefing, oral argument was held on December 14, 2022.

"[A] motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court." (Internal quotation marks omitted.) *Santorso v. Bristol Hospital*, 308 Conn. 338, 350, 63 A.3d 940 (2013). "A court deciding a motion to dismiss must determine not the merits of the claim or even its legal sufficiency, but rather, whether the claim is one that the court has jurisdiction to hear and decide." (Internal quotation marks omitted.) *Hinde v. Specialized Education of Connecticut, Inc.*, 147 Conn. App. 730, 740-41, 84 A.3d 895 (2014). "The issue of standing implicates the trial court's subject matter jurisdiction." (Citation omitted.) *State v. Bradley*, 341 Conn. 72, 79, 266 A.3d 823 (2021). "Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or representative capacity, some real interest in the cause of action . . . . When standing is put in issue, the question is whether the person whose standing is challenged is a proper party to request an adjudication of the issue.

"Standing is established by showing that the party claiming it is authorized by statute to bring [an action] or is classically aggrieved. . . . The fundamental test for determining [classical] aggrievement encompasses a [well settled] twofold determination: first, the party claiming



[5] The plaintiff also alleged that No. 21-1 was "substantially different" than the resolution passed in 2019. At oral argument, the plaintiff conceded that this assertion was incorrect because it incorrectly presumed that Senate Joint Resolution. No. 14, rather than House Joint Resolution No. 161, was the progenitor of No. 19-1. S.J. 14, in fact, omitted the intent to remove the "under seal" provision present in H.J. No. 161.

aggrievement must successfully demonstrate a specific, personal and legal interest in [the subject matter of the challenged action,] as distinguished from a general interest, such as is the concern of all members of the community as a whole. Second, the party claiming aggrievement must successfully establish that this specific personal and legal interest has been specially and injuriously affected by the [challenged action.]" (Internal quotation marks omitted.) Id., 79-80. "[I]n cases of statutory aggrievement, particular legislation grants standing to those who claim injury to an interest protected by that legislation." (Internal quotation marks omitted.) *Rainbow Housing Corp. v. Cromwell*, 340 Conn. 501, 510, 264 A.3d 532 (2021).

In its motion to dismiss, the Assembly argues that § 9-371b (1), upon which the plaintiff relies, provides standing only for a person who "claims to have been aggrieved by any ruling of any election official in connection with a referendum" and the Assembly is not an "election official" nor is the passage of No. 21-1 a "ruling." Further, the Assembly argues that the plaintiff lacks standing under principles of classical aggrievement. The court agrees.



Section 9-371b, which provides a mechanism by which complaints relative to referenda may seek judicial review, is part of a uniform statutory scheme that addresses aggrievement in a variety of electoral contexts and confers standing for judicial redress to "[a]ny elector or candidate who claims that he is aggrieved by any ruling of any election official in connection with any relevant election." See generally Chapter 149 of the General Statutes, that addresses complaints in the context of federal elections; statewide offices; state officers and judges of probate; municipal officers and nominations of justices of the peace and primaries. Our Supreme Court has instructed that "the legislature intended that claims involving referenda would be subject to the same substantive standards as claims involving elections, regardless of the specific

procedure by which such claims are brought;" *Arras v. Regional School District No. 14*, 319 Conn. 245, 260 n.17, 125 A.3d 172 (2015); and should be given a similar interpretation. Id., 261.

Each statute in the legislative scheme governing electoral complaints that affords an elector or candidate the right to challenge an election or referendum contains the same language granting standing, that is, that each complainant must be "aggrieved by any ruling of any election official in connection with any" election or referenda. See General Statutes § 9-323 (federal elections); §9-324 (state officers and judges of probate); § 9-328 (municipal elections and primaries for justice of the peace); § 9-329a (primaries) and § 9-371b. "[A]lthough the term 'election official' is not expressly defined by statute, the term 'election' is statutorily defined as 'any electors' meeting at which the electors choose public officials by use of voting tabulators or by paper ballots . . . .' General Statutes § 9-1 (d)." *Price v. Independent Party of CT-State Central*, 323 Conn. 529, 540, 147 A.3d 1032 (2016).

In *Price*, the court, *Palmer, J.*, noted that "[r]ather than creating a normative definition, the legislature has chosen to list positions that qualify as election officials. These positions include 'moderator[s],' 'official checkers,' 'registrars of voters,' 'assistant registrars of voters,' 'appointed challengers,' 'voting tabulator tenders,' and 'ballot clerks,' as well as [h]ead moderators, central counting moderators and absentee ballot counters appointed pursuant to law . . . .' General Statutes § 9-258 (a); see also Regs., Conn. State Agencies § 9-242a-6 (adding 'demonstrators'). This court's cases have assumed that the term 'election official' applies to the secretary of the state; . . . municipal town clerks and selectmen; . . . and 'ballot caller[s]' and 'talliers'" (Citations omitted; footnote omitted.) Id., 538-39 (citing *Butts v. Bysiewicz*, 298 Conn. 665, 676, 5 A.3d 932 (2010); *Miller v. Schaffer*, 164 Conn. 8, 11, 320 A.2d 1 (1972) and *In re Election for Second Congressional District*, 231 Conn. 602, 618, 653 A.2d 79 (1994)).

The action of the General Assembly, vested by our constitution with the legislative power of the state; Conn. Const., art. III, § 1; in the exercise of that office, is not of the character of an "electors' meeting" in which voters cast their ballots. See General Statutes § 9-1 (d). The Assembly possesses exclusively the law-making power. *Casey v. Lamont*, 338 Conn. 479, 503, 258 A.3d 647 (2021). While the Assembly may prescribe the manner in which the laws it passes are executed, it does not execute those laws. Instead, the Assembly, by passage of General Statutes § 9-3,[6] vested authority to conduct and administer elections in the Secretary of the State, an office provided for in article fourth of the Connecticut constitution, "Of the Executive Department." Because the Assembly is not "an election official" as contemplated by § 9-371b, the plaintiff lacks standing to assert a claim under that statute.

The Assembly argues that the plaintiff lacks classical aggrievement to challenge the referendum. "Classical aggrievement requires a two part showing. First, a party must demonstrate a specific, personal and legal interest in the subject matter of the decision, as opposed to a general interest that all members of the community share. . . . Second, the party must also show that the agency's decision has specially and injuriously affected that specific personal or legal interest." (Internal quotation marks omitted.) *Mayer v. Historic District Commission*, 325 Conn. 765, 772, 160 A.3d 333 (2017). "In the specific context of declaratory actions, the appellate courts of this state likewise have held that a party who had not demonstrated how she was harmed in a unique fashion by the challenged conduct failed to establish a colorable claim of *direct* injury, and, accordingly, lacked standing to maintain the



[6] General Statutes § 9-3 (a) provides that "[t]he Secretary of the State, by virtue of the office, shall be the Commissioner of Elections of the state, with such powers and duties relating to the conduct of elections as are prescribed by law."

action." (Emphasis in original; internal quotation marks omitted.) *State Marshal Assn. of Connecticut, Inc. v. Johnson*, 198 Conn. App. 392, 409, 234 A.3d 111 (2020).

The plaintiff failed to brief the issue of classical aggrievement and as such is deemed to have abandoned any claim of standing outside of the scope of § 9-371b. *See Connecticut Light & Power Co. v. Dept. of Public Utility Control,* 266 Conn. 108, 120, 830 A.2d 1121 (2003) (Appellate courts are not required to review inadequately briefed claims. The same principles "apply to claims raised in the trial court."). The court notes, however, that her allegation in her complaint that the amendments at issue place her "in danger of losing substantial rights, power and privilege over ballot security and election integrity" articulates only a general interest shared by all members of the electorate and not a specific, personal injury.

For all of the foregoing reasons, the court is constrained from ruling on the propriety of the manner in which the Assembly sought to amend our constitution, and is obliged to dismiss the plaintiff's action for lack of subject matter jurisdiction.



THE COURT

/s/ #435707
Cesar A. Noble
Judge, Superior Court