UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

ETHAN BOOK and
ETHAN BOOK FOR U.S. SENATE
Plaintiffs : Case No. 3:10-cv-1228 (PCD)

v.

SUSAN BYSIEWICZ, GAYLE S. SLOSSBERG, JAMES F. SPALLONE, RICHARD BLUMENTHAL and STATE OF CONNECTICUT
Defendants : February 11, 2011

PLAINTIFFS' MOTION FOR RECONSIDERATION OF COURT RULING TO GRANT DEFENDANTS' MOTION TO DISMISS

With reference to Fed. Rules of Civ. Procedure, Rule 59, the Plaintiffs Ethan Book and Ethan Book for U.S. Senate hereby present a formal Motion for Reconsideration of the Court Ruling of February 3, 2011 to grant the Defendants' Motion to Dismiss (#39).

I. BACKGROUND INFORMATION:

The Plaintiffs rely primarily on the Nature of the Case which is provided as part of the

ORAL ARGUMENT REQUESTED

Amended Complaint (#27) and to the Background section of their Opposition to Defendants' Motion to Dismiss (#19). This Court describes Background of the lawsuit at pages 1 – 2 of the recent ruling. For clarity, the Plaintiffs elect here to expand upon information which was summarized in the Court ruling.

This lawsuit begins with a focus on a defective Certificate of Endorsement which was presented by presumed Republican endorsed candidate Linda McMahon to the Secretary of State on June 2, 2010. Such issues as they have developed and been expanded during this lawsuit pertain to matters including the Plaintiffs' demands for declaratory and mandamus relief sought against Defendant Susan Bysiewicz in her official capacity. However, the specific issues raised of that Certificate include not only what this Court recognized as merely the two factors being (1) of the lack of the word "duly" within the phrase that "each of the following persons was [] endorsed as a candidate" and (2) the lack of the mandatorily required date of signing of the Chairman or Presiding Officer of the Convention, but also other substantive issues including (3) that the prepared form for Certificate of Endorsement was never formally promulgated by the legislative Regulation Review Committee as is required of the Uniform Administrative Procedure Act, and also (4) that the acceptance of the form by the Office of the Secretary of State was precluded by substantive issues of a lack of full and fair opportunity for the Plaintiffs to campaign (Amended Complaint, #27 at para. 46 and its Exhibit 10 at pgs. A-36 and A-37).

In addition to such proper multiple issues of the McMahon Certificate of Endorsement, other related claims have arisen during the course of the recent statewide election process such as are described in the Amended Complaint (#27) and in the various unopposed Plaintiffs' Motions for Leave to Supplement. For example, there is a related issue very relevant to the present that Defendant Bysiewicz failed to hold a formal hearing as is required by statute on the Petition for Declaratory Ruling which the Plaintiff's filed on June 24, 2010 (Amended Complaint, #27 at para. 47), that that the Certificate of Endorsement filed on behalf of presumed Democrat Party candidate Richard Blumenthal on May 26, 2010 reflects some of the same substantive deficiencies that are described of the McMahon Certificate of

Endorsement (Amended Complaint, #27 at para. 51 and its Exhibit 14), that the prepared form distributed by the Secretary of State since 2006 for Mail-In Voter Registration was never formally approved by the Regulation Review Committee, another mandatory requirement of the Uniform Administrative Procedure Act (3rd Supplement, #30 at p. 5 and its Exhibit 1), that the conduct by the Office of the Secretary of State is further implicated through credible reports that Defendant Bysiewicz had instructed municipal Registrars *not* to verify voter eligibility beyond what is requested of the voter registration form of presenting an affirmation which is subject to criminal penalities (also that there is no meaningful enforcement of that provision), that various officials of polling areas in the state did not verify voter identification (4th Supplement, #32), that Defendant Bysiewicz disregarded substantive issues raised in a formal supplementary pleading presented by the Plaintiffs to her on November 22, 2010 when on November 24, 2010 she proceeded to attempt to certify election results (4th Supplement, #32 at Exhibits 2 and 4), that she failed to satisfy the statutory requirements of CGS, Sec. 9-315 when she attempted on November 24, 2010 to certify the portion of the election for the position of U.S. Senator (5th Supplement, #33 at pgs. 4 – 5), that other substantive legal errors are observed of the candidacy of Dan Malloy and Nancy Wyman as candidates of the Working Families Party for Governor and Lieutenant Governor, respectively (6th Supplement, #34 at pgs. 5 – 10 including also discussion of a broad epidemic of deliberate indifference as is practiced by state and local public officials) and further that Governor M. Jodi Rell failed to respond to the Plaintiffs' proper and timely request for a copy of the letter of the certification of a Senator-elect that the Governor is required by statute to provide to the President (7th Supplement, #37 at pgs. 2 – 5). In addition, the Plaintiffs point out that in the respective pleadings including the Amended Complaint (#27, the Plaintiffs' Opposition to Defendants' Motion to Dismiss (#19; esp. at pgs. 20 - 22), the Motion for Reconsideration of Court Ruling to Deny Motion for Preliminary Injunction (#11) and in the eight presented and unopposed Supplements to that Motion, the Plaintiffs presented an abundance of credible and relevant information regarding a lack of fundamental fairness to the statewide election process.

In addition to the mentioned issues regarding declaratory ruling and mandamus action, the

Plaintiffs also present demands for financial compensation, those presented against Defendants Bysiewicz, Slossberg, Spallone and Blumenthal in their individual capacities and also against the State of Connecticut (Amended Complaint, #27 at pgs. 28 – 29).

Further, the Plaintiffs point out that the Office of the Attorney General under the direction of Defendant Richard Blumenthal is unable to provide documentation which reflects the proper authorization for the agency action to hire Attorney Robert D. Snook, the official to whom the defense of this lawsuit has been assigned (Plaintiff's Supplement, #23 at pgs. 3 – 4).

Concerning the relevant procedural aspects of this lawsuit, the Plaintiffs comment that the Defendants declined to present a reply to the Plaintiffs' Opposition to Motion to Dismiss, they declined to present oppositions to any of the Plaintiffs' Motions or Supplements, they objected to discovery which likely would have yielded additional supporting information (See docs. #14 and 16), and this Court declined to act on the Plaintiffs' timely Motion for Order of Show Cause (#29). It is further relevant that presiding District Judge Peter C. Dorsey has not addressed the issue of a potential conflict of interest as is raised in the Plaintiff's Motion for Articulation (#8; at p. 4, Item #IV).

The Defendants presented a Motion to Dismiss alleging both lack of subject matter jurisdiction [Rule 12(b)(1)] and failure to state a claim [Rule 12(b)(6)]. This Court's ruling grants the Motion to Dismiss on both grounds. There are no rulings on the Plaintiffs' various Motions for Leave to Supplement Motion for Reconsideration of Court Ruling Regarding Preliminary Injunction.

II. LEGAL STANDARDS:

Established references affirm that "[i]n considering a Fed. R. Civ. P. 12(b) motion to dismiss, a court should take the facts alleged in the complaint as true and draw all reasonable inferences in favor of the plaintiff" [Broader v. Cablevision Sys. Corp., 418 F.3d 187, 196 (2nd Cir.

2005)]. Also, "it is the burden of the party who seeks the exercise of jurisdiction in his favor, clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute. . ." [Leeds v. Meltz, 85 F.3d 51, 53 (2nd Cir. 1996)]. In addition, dismissal pursuant to Rule 12(b)(1) is inappropriate unless it appears beyond doubt that plaintiff can prove no set of facts which would entitle him to relief [Raila v. United States (2004, CA2 Conn) 355 F.3d 118]. Further, in reviewing an issue of subject matter jurisdiction, "the District Court may reference evidence beyond the allegations in the pleadings" [Makarova v. United States, 201 F.3d 110, 113 (2nd Cir. 2000)]. Further, in analyzing a motion to dismiss pursuant to Rule 12(b)(1), the Court must "construe jurisdictional allegations liberally and take as true uncontroverted factual allegations" [Robinson v. Overseas Military Sales Corp., 21 F.3d 502, 507 (2nd Cir. 1994)]. Also, for establishing subject-matter jurisdiction, a plaintiff is not required to make a showing beyond a reasonable doubt. Section 3564 of Wright & Miller's Federal Practice & Procedure (Vol. 13B, 3rd Edition, p. 92) states that "[t]he test for dismissal is rigorous one and if there is any foundation of plausibility to the claim federal jurisdiction exists" [See also Musson Theatrical v. Federal Express Corp. (1996, CA6 Tenn.) 89 F.3d 1244.]. Further, "[w]hen the jurisdictional facts are intertwined with the merits of plaintiff's claims, as they were in this case, a court should assume that jurisdiction exists, and then proceed to determine the merits of the claim" [2A Moore, Lucas & Grotheer's Moore's Federal Practice, Sec/ 12-07[2-1], at 12-50 to 12-53 (2d ed. 1987"; Mont v. Heintz. 849 F.2d 704, 712 (2nd Cir. 1988)].

The courts generally disfavor Rule 12(b)(6) motions and only grant such motions in rare circumstances [Altadis USA, Inc. v. NPR, Inc. (2004, MD Fla) 308 F.Supp.2d 1304, 17 FLW Fed.D. 482]. Merely because complaint does not set forth complete and convincing picture of alleged wrongdoing does not mean that it fails to state claim [Nelson v. Ipalco Enters (2003, SD Ind) 31 EBC 2930]. Raila v. United States (2004, CA2 Conn.) 355 F.3d 118. Conley v. Gibson, 355 U.S. 41, 47-48 (1957) affirms that a simplified "notice pleading" is made possible by the liberal opportunity for discovery and other pretrial procedures. The "threshold is exceedingly low for complaint to survive a motion to dismiss for stating a claim" [DIRECTTV, Inc. v. Cope (2003, MD Ala) 301 F.Supp.2d 1303]. For a stating of a claim issue, it is the defendant that has

the burden of establishing legal insufficiency of complaint [Moriarty v. K & M Plastics, Inc. (2004, ND Ill.) 32 EBC 2264]. The moving party bears a weighty burden. It must show that pleadings themselves fail to provide a basis for any claim of relief under any set of facts [Hobson v. Kemper Nat'l Servs. Integrated Disability Mgmt. (2004, SD Ind) 33 EBC 1221]. Pleadings are sufficient if they are susceptible to the interpretation that the Plaintiff gives [Schoonfield v. Baltimore (1975, DC Md) 399 F.Supp. 1068, 11 BNA FEP Cas 880]. In Ashcroft v. Iqbal, 556 U.S. ____, 129 S.Ct. 1937, 173 L.Ed.2d 868, the Court explains that to survive a Rule 12(b)(6) motion, a plaintiff must present facts sufficient for more than a mere *possibility* of a viable claim yet less than facts to suggest that such a claim is *probable*. Rather, a plaintiff must present sufficient that such claim is *plausible.* The district court, "before granting a motion to dismiss, must accept as true all of the factual allegations set out in plaintiff's complaint, draw inferences from those allegations in the light most favorable to the plaintiff, and construe the complaint liberally" [Tarshis v. Riese Org., 211 F.3d 30 (2nd Cir. 2000); See also Baker v. Pataki, 85 F.3d 919, 922 (2nd Cir. 1996)]. Again, 13B Wright & Miller's Federal Practice & Procedure (3rd Ed.) (p. 92) states that "[t]he test for dismissal is rigorous one and if there is any foundation of plausibility to the claim federal jurisdiction exists".

The purpose of Rule 59 is to provide for correction of manifest errors of law or fact or to present newly discovered evidence [Consilidated Data Terminals v. Applied Digital Data Systems (1981, ND Cal.) 512 F.Supp. 581]. A district judge has the responsibility to weigh evidence and set aside a verdict when, in his conscientious opinion, verdict is contrary to weight of evidence [Cecil Corley Motor Co. v. General Motors Corp. (1974 MD Tenn.) 380 F.Supp. 819]. Further, the factors discussed in Shrader v. CSX Transportation, Inc., 70 F.3d 255, 257 (2nd Cir. 1995) would not prohibit reconsideration of the present as this moving party can point to controlling decisions and data which the Court overlooked. In fact, Metropolitan Entertainment Co. v. Koplik, 25 F.Supp.2d 367, 368 (D.Conn. 1998) gives several guidelines for reconsideration:

> In general, three grounds justify granting a motion for reconsideration; (1) an intervening change in controlling law; (2) the availability of newly discovered evidence; and (3) the need to correct clear error or prevent manifest injustice.

III. LEGAL DISCUSSION:

CLAIMS AGAINST THE STATE OF CONNECTICUT: This Court begins with reference to Duhne v. New Jersey, 251 U.S. 311 (1920) to explain that "[a]bsent a valid exception, the Eleventh Amendment deprives the federal courts of jurisdiction over all claims against a State by its own citizens" (Ruling, #39 at p. 4). The Court then concludes regarding Plaintiff claims against the State that no such exception exists in this case. However, as the Plaintiffs pointed out in their Opposition to Motion to Dismiss (#19), such state sovereign immunity would and should not apply for a claim against the state for financial compensation where there is an institutionalized, interagency governmental conspiracy (at p. 15 citing Columbia v. Omni Outdoor Advertising, Inc., 111 S.Ct. 1344)[1]. That is a proper, established and raised exception.

CLAIMS AGAINST DEFENDANT SUSAN BYSIEWICZ AS SECRETARY OF STATE: With specific reference to the various issues of the McMahon Certificate of Endorsement, this Court's Ruling further refers to Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 102 (1984) to comment that "a claim that state officials violated state law in carrying out their official responsibilities is a claim against the State that is protected by the Eleventh Amendment (at p. 4). The ruling further explains that "[t]he proper forum to address matters of state law is state court". However, in addition to the exception discussed above regarding the State as Defendant, even Pennhurst clarifies that such a limitation would not apply where the suit challenges the constitutionality of the state official's action (at p. 102 as is discussed in Plaintiffs' Opposition, #19 at p. 16). Also, such a limitation would not apply where there is a claim that fair and adequate state remedy is not available [Opposition at p. 16 citing Powell v. Power, 436 F.2d 84, 85 and 88 (2nd Cir. 1970)]. In their Opposition to Motion to Dismiss (#19), the Plaintiffs further commented that "[c]ertainly for what is presented in this docket, it is abundantly evident that the Plaintiffs are not afforded a full and fair opportunity for relief

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[1] As the Plaintiffs pointed out in their Opposition to Motion to Dismiss (#19 at p. 15)), the same important principle was raised in Ethan Book Jr. v. Conn. Commission on Human Rights & Opportunities, Case No. 3:95-cv-0421(DJS) yet the District Court failed to acknowledge and address it.

in state agencies or state courts (Complaint at Paras. 9, 13, 14, 15, 20, 22, 24, 26 33, 45 and 47)" (#19 at p. 16; See also discussion at pgs. 26 - 27). The Defendants have not disputed this assertion and this Court did not address it. Thus, for the fact of there being an uncontroverted factual allegation, jurisdiction exists (Robinson v. Overseas Military Sales Corp., *supra.*).

This Court then cites Shannon v. Jacobowitz, 394 F.3d 90, 96 (2nd Cir. 2005) to comment that "[a]lthough Plaintiffs' stated claim against the Secretary of State is for a constitutional violation rather than a state law violation, a violation of state law cannot be transformed into a violation of the federal Constitution just because the party would like it to be so" (at p. 5). The Court further comments that "the Second Circuit has consistently held that federal court involvement in 'garden variety' election disputes, such as this one, is inappropriate" [citing also Powell v. Power, 436 F.2d 84, 86 (2nd Cir. 1970)].

The Plaintiffs deem it proper to provide as follows a portion of their Opposition to Motion to Dismiss (#19 at pgs. 22 – 23):

> The Court in Rivera-Powell explicitly affirms principles discussed . . . in Archie [v. City of Racine, 847 F.2d 1211, 1217 (7th Cir. 1988)]:
>
> > When the state conduct in question is random and unauthorized, the state satisfies procedural due process requirements *so long as it provides meaningful post-deprivation remedy*. (at p. 459; italics added)
>
> The decision also cites Shannon v. Jacobowitz, 394 F.3d 90, 96 (2nd Cir. 2005) (at p. 469) which was explicit in that an unintentional violation of state law does not, by itself, afford a basis for federal court jurisdiction whereas "an intentional act", "systematic discrimination" and "other willful conduct that undermines the organic processes by which candidates are elected" are fully proper bases for a federal court to intervene in a state electoral process (at p. 96). The above discussion of the McMahon Certificate of Endorsement in its context well supports all of these factors. In addition, there are the related aspects of criminality to actions of Defendant Blumenthal and those acting in privity with him [Complaint at Paras. 23 – 32 and Pls. Motion and Memorandum in Support of Preliminary Injunction; #4 at pgs. 4 – 9; See also Donohue v. Board of Elections of State of New York, 435 F.Supp. 957 (E.D.N.Y. 1976)]. In addition, the Shannon decision cites Burton v. Georgia, 953 F.2d 1266, 1268 (11th Cir. 1992) (at p. 94).

That case quotes from Griffin v. Burns, 570 F.2d 1065, 1078 (1st Cir. 1978) (at p. 1268): "'Due process is implicated where the entire election process – including as part thereof the state's administrative and judicial corrective process – fails on its face to afford fundamental fairness'". It also quotes from Duncan v. Poythress, 657 F.2d 691, 703 (5th Cir. 1981) (at p. 1269) to explain that the plaintiffs "may prevail only 'if the election process itself reaches the point of *patent and fundamental unfairness . . .'"* (a situation for which "'there are no bright lines'" to distinguish). The Shannon case additionally cites Gamza v. Aguirre, 619 F.2d 449, 453 (5th Cir. 1980). In that, the Court comments that "[a] cause of action has been recognized when 'willful conduct . . . undermines the organic processes by which candidates are elected.' Hennings v. Grafton, 523 F.2d 861, 864 (7th Cir. 1975)" (at p. 542). The Court further references Smith v. Cherry, 489 F.2d 1098 (7th Cir. 1973) to explain that "the offering of a sham candidate to prevent another from winning the primary election was said to have 'clearly debased the rights of all voters in the election'" (at p. 453). Consideration is also given to whether state officials "have succumbed to 'temptations to control . . . elections by corruption,' Ex parte Yarbrough, 110 U.S. 651, 666, 4 S.Ct. 152, 159-60, 28 L.Ed. 274, 279 (1884)" (at p. 543). Finally, the Court comments that "[w]e must, therefore, recognize a distinction between state laws and *patterns of state action that systematically deny equality in voting*, and episodic events . . . " (citing Powell v. Power, 436 F.2d 84, 88 (2nd Cir. 1970) (at p. 453; italics added).

Thus, for the present, we clearly have multiple intentional acts including multiple criminal acts, systematic discrimination and "other willful conduct that undermines the organic processes by which candidates are elected". We also have a situation "where the entire election process – including as part thereof the state's administrative and judicial corrective process – fails on its face to afford fundamental fairness". Further, we have before us a glaring situation where "the election process itself reaches the point of *patent and fundamental unfairness."* **In fact, this must be one of the most egregious cases of judicial record where the election process has reached the point of *"patent and fundamental unfairness".***

The Defendants then cite several cases which are either discussed above (re: Gamza v. Aguirre) or they do nothing to develop the principles which they earlier raised and which are adequately discussed and rebutted above (Memo. at pgs. 7-8). In fact, Burton v. Georgia, 953 F.2d 1266, 68-69 (11th Cir. 1992) affirms federal court jurisdiction in an election where there is a lack of "fundamental fairness" and where there are "patterns of state action". Also, in Evans v. Cornman, 398 U.S. 419 (1969), the Supreme Court affirmed District Court review of an election law of the State of Maryland.

Thus, simply for these references, it is apparent that the Defendants failed to controvert the

Plaintiffs' factual issues pertaining to Court jurisdiction.[2] In addition, there is cause for further review of the cases cited by this Court. Shannon, *supra.*, deals with a claim that a voting machine malfunction deprived voters of their right to vote. At no place did the plaintiffs allege intentional misconduct or discrimination (at p. 96). That situation is what that Court described as a "'garden variety' of election dispute". Also, in Powell, *supra.*, the plaintiffs alleged that state officials permitted voting by persons not qualified under state law. However, they did not claim any purposeful and wrongful discrimination but only single, random error in the election process (at p. 84). In addition, that case again relies on the availability of fair and adequate state remedy (at p. 85). Such case descriptions as are found in these cases are fully distinguished from the present.

Thus, for the interrelated and undisputed and unaddressed factors that the multiple issues of error of Defendant Bysiewicz are not random but rather are part of a broad and long-term pattern, are of broad, long-term pattern of deliberate indifference, even of systematic bias and conspiracy, to the point that there is a lack of fundamental fairness to the election process, this in addition to the undisputed lack of availability of effective state remedy, then this case is wholly distinguished from the mere "garden variety" of election issues such as are discussed in Shannon and Powell and federal court claims against Defendant Bysiewicz are established.

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[2] In addition to other relevant issues including of the very glaring irregularities of the election process of the City of Bridgeport and of the unchallenged legal issues of the candidacies for Democrat Party candidates Dan Malloy and Nancy Wyman for the positions of Governor and Lieutenant Governor, respectively (See Plaintiffs' 3rd, 4th and 6th Supplements to Motion for Reconsideration; #30, 32 and 34.), the Plaintiffs have recently received additional information that at about 8:00 p.m. on the evening of Tuesday, November 2, 2010, the day of the general election, just when there were public media announcements about the curious Superior Court order to extend the voting hours for certain voting districts of the City of Bridgeport, there was an automated telephone message directed to telephone subscribers of Bridgeport-area exchanges from President Obama. The message advised of the extension of voting hours and it urged Bridgeport voters to get to the polls to vote (Compare with Plaintiffs' 4th Supplement, #32 at p. 5.). There is a growing public consensus that the recent election results in Bridgeport swung the statewide election outcome. It is further noted that the Election Panel which was formed by Bridgeport Mayor Bill Finch (D) promptly after the City election crisis exploded on November 2, 2010 (See Plaintiffs' 4th Supplement, #32 at p. 3 and its Exhibit 1.) has not yet issued a final report!

CLAIMS AGAINST DEFENDANTS GALYE S. SLOSSBERG, JAMES SPALLONE AND RICHARD BLUMENTHAL:

With regard to claims presented against these Defendants, this Court comments that "the Plaintiffs' factual allegations do not state a plausible claim to relief . . . ." (Ruling at p. 5)[3]. That concept was initially raised in the Defendants' Memorandum of Law in Support of Motion to Dismiss (#13), that in the section which responds to claims against Defendant Blumenthal (at pgs. 10 – 12). The concept is discussed in Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) and it deals with the requirement that some supporting facts must be provided for a respective claim to be viable. In other words, "a plaintiff's pleading obligation . . . requires more than labels and conclusions . . . . " [quoting Burch v. Pioneer Credit Recovery, Inc., 551 F.3d 122 (2nd Cir. 2008)].

With particular attention to Defendant Blumenthal acting as Attorney General, a focus of the claims against him is Count Two of the Complaint:

> **That Attorney General Richard Blumenthal and those under his direct authority ha[ve] acted over a long-term period in manners that exceed the norms for the conduct of his office, that to the effect of violating Book's constitutional rights, of negligence and conspiracy to deprive Book of his rights including of his rights of reasonable access to state and federal courts and of establishing, creating and/or taking advantage of systematic biases in state government and in federal courts.**

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[3] Earlier in the same paragraph, this Court comments that "Plaintiffs' legal claims and requested relief against Gayle Slossberg, James Spallone, and Richard Blumenthal are so vague that this Court is unable to decipher whether jurisdiction properly falls within this Court." Because this comment does not appear to form a basis for any Court conclusion, it is properly treated by these Plaintiffs as *dictum.* However, if this was, in fact, a consideration of any portion of this Court's conclusions, then it would be a matter suited for a Rule 12(e) Motion for More Definite Statement presented by the Defendants as opposed to a Court action of dismissal. Rule 12(e) is designed to strike at unintelligibility of a complaint [Jones v. Kreminski (1975, DC Conn) 404 F.Supp. 667]. For the present, the Defendants were observedly able to respond to the Complaint.

The Complaint is also very clear in providing supporting facts to this Count (Complaint at paras. 23 – 32). From those facts, the Plaintiffs further stated the following:

> For all the above, it is apparent that Mr. Blumenthal and/or officials under his authority abuse their positions to attempt to influence officials of state agencies and state courts as collateral attack against those who might have legitimate federal claims against state officials or state agencies. . . . (Complaint at para. 32)

As the Plaintiffs pointed out in their Opposition to Motion to Dismiss (#19), the filing of motions to dismiss might be a usual role for an Attorney General. However, filing motions with extreme arguments which are intended to distort the judicial processes and deprive a litigant of constitutional rights are *not* proper functions of an Attorney General (at p. 32).

The fact that a Court may have adopted his arguments does not absolve the responsibility of an attorney having presented extreme arguments (#19 at p. 35). This is true particularly where systematic biases practiced by Defendant Blumenthal are interconnected with systematic biases of the respective judicial authorities (Complaint at para. 16), those which contribute to systematic biases and conducts of deliberate indifference undisputedly practiced by many officials of state and local agencies [Opposition, #19 at p. 8 and discussion of Ethan Book Jr. v. Kimberly Parks and City of Bridgeport Police Department et al., Case No. 3:09-cv-0472(AVC)]. In addition, the Defendants present no supporting references for their position. It appears that they may be attempting to expand the principles of collateral estoppel. However, Isaac v. Truck Service, Inc., 253 Conn. 416, 752 A.2d 509, 513 (2000) affirms the following:

> . . . doctrines of preclusion . . . should be flexible and must give way when their mechanical application would frustrate other social policies based on values equally or more important than the convenience afforded finality of judgments.

Application of collateral estoppel is also precluded where there has been a lack of full and fair opportunity to litigate. Locurto v. Giulliani, 447 F.3d 159, 160 (2nd Cir. 2006) reaffirms that "an opportunity to litigate is neither full nor fair when litigant is denied discovery, available in the ordinary course, into matters going to the heart of his claim". Additional supporting

reference is found with the annotated comments for the Connecticut Rules of Professional Conduct. With respect to Rule 3.2 dealing with expediting litigation, the comments particularly include that "[i]t is not a justification that similar conduct is often tolerated by the bench and bar". This gives cause to quote federal Judge Kenneth Star who said, "It is decidedly unchristian to win at any cost." Further, in accord with the "Pinkerton doctrine", a conspirator can be held liable for the overt acts committed by his or her co-conspirators [State v. Martinez (2006) 900 A.2d 485, 278 Conn. 598]. In addition, even lawful acts can comprise a criminal conspiracy [See quote from Krulevich v. United States, 336 U.S. 440, 445-48, 69 S.Ct. 716, 719-20(1949) at Amended Complaint, #27 at p. 19.].

Further, the described state actions of officials of the Department of Motor Vehicles to precipitously arrive to Plaintiff Book's place of residence and operation of his small business to unlawfully confiscate license plates from his commercial vehicles, that for a state agency which was assigned to Assistant Attorney General Charles Walsh and just at the time that Book had presented substantive pleadings to the Court of Appeals in Book v. CRRA (Complaint at para. 25; Compare with Opposition, #19 at pgs. 30 - 31.) is glaring, credible, court-acceptable evidence in support of the Plaintiffs' claims. Additional supporting and uncontroverted information is provided with the Plaintiffs' 8th Supplement (#38; that dealing with a natural alliance between Defendant Blumenthal and then Stamford Mayor Dan Malloy and the logical significance of that as pertains to long-term public issues of Plaintiff Book).

Also, the issue of the non-answered letter sent by Plaintiff Book in November of 2003 to Defendant Blumenthal *in the context of* the curious concurrent non-response of other state officials regarding the same subject (Opposition, #19 at pgs. 32 -33) is additional evidence in support of such claims. The known facts establish a negative inference which, by itself, raises the strength of the Plaintiffs' claims above that of a mere possibility.

In addition, there are the glaring and unaddressed implications for Defendant Blumenthal

and/or those acting in privity with him of the recent "Westchester sting" reported in the Plaintiffs' unopposed 5th Supplement (#33 at pgs. 5 – 9) and of the yet unexplained, anonymous blacklisting of Plaintiff Book in state computer systems available for interstate and international law enforcement. Such action is fully consistent with other uncontroverted factual allegations such as are highlighted above and including to the separate implications for inter-state governmental collusion which is apparent from Plaintiff Book's letter of June 2, 1988 to the Office of the Attorney General (Opp., #19 at p. 9 and its Exhibit 3), all of which fully constitutes more than a plausible showing in support of the Plaintiffs' claims.

Further, it is notable that the Defendants state that "[t]here is nothing in the Complaint that links or alleges that Attorney General Blumenthal has had any role in the actions of the Secretary of State in filing the Certificate of Endorsement for Linda McMahon or otherwise has any interaction with state elections officials regarding Plaintiffs' senate campaign" (Memorandum of Law in Support of Motion to Dismiss, #13 at p. 11). It is important to recognize that the Plaintiffs never alleged that Defendant Blumenthal had any particular role in the actions of the Secretary of State in the filing of the McMahon Certificate of Endorsement (See above Count Two.). Undisputed clarification on this is found at the Plaintiffs' Opposition, #19 at p. 31:

> The [Defendants'] statement is again misleading as the Complaint is clear in alleging that Defendant Blumenthal has had *much* involvement in the systematic biases for which the errors of the form and its filing took place. In addition, it is inferred from the Complaint that Defendant Blumenthal had a role in the failure of Defendant Bysiewicz to reasonably address the issues of substantive defects to the form and the filing once the Plaintiffs timely brought these matters to her attention. Simply for the portion of the Plaintiffs Declaration and Petition for Declaratory Ruling presented to Defendant Bysiewicz on June 24, 2010 (Complaint at Para. 44 and its Exhibit 10), it is reasonably and properly inferred that *Defendant Blumenthal has had an active role in the factor of the lack of full and fair opportunity for the Plaintiffs to campaign.*

The Defendants never challenged these assertions!

Concerning the second portion of the above Defendants' statement dealing with the question

of interaction by Defendant Blumenthal with state elections officials regarding the Plaintiffs' senate campaign, there has been no rebuttal to the Plaintiffs clarification as was timely presented in their Opposition, #19 (at p. 32):

> Either for Defendant Blumenthal directly or through various acting in privity with him, such a link is alleged.

Additional supporting information is then provided in the Plaintiffs' Opposition, #19 at p. 32, footnote 5. Other supporting legal reference is State v. Hayes, 127 Conn. 543 (1941) (See Complaint at para. 14 and reference to Plaintiff Book's unanswered letter of October 23, 1997 to Senator Joseph Lieberman, its Exhibit 2.). The case involved charges of criminal conspiracy "to cheat and defraud the city of Waterbury and taxpayers thereof . . . ." (p. 548). It is also of great interest that this case quoted from State v. Murphy, 124 Conn. 554, 564, 1 A.2d 274 as follows:

> The proof of this [conspiracy] is not often made, by direct, open and positive evidenced; but more generally and more naturally, by proving a repetition of acts of a character conducing to show a mutual purpose. In such case, it is seldom true that any one act, taken by itself, can be detected as tending to prove a combination; but when it is seen in connexion with other acts, its true nature may be discovered. And so, as this species of proof is multiplied, a strong case of unlawful conspiracy is often established.

Further, it is wholly relevant that what the Plaintiffs have presented thus far in this lawsuit has been done without he benefit of discovery. Thus, with reference to Burch, *supra.*, the Plaintiffs have presented much more than labels and conclusions. In addition, with further reference to Bell Atlantic Corp., *supra.*, "[f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the complainant's allegations are true" (at p. 1959). Here, the Plaintffs have more than met the required threshold. In fact, it can also be said that *Defendant Blumenthal has egregiously abused his position as Attorney General for personal political benefit such that the offset is that the Plaintiffs have not had a full and fair opportunity to litigate!* This is a very important and undisputed statement! In fact, regarding what is quoted above of the Complaint (at para. 32), these Plaintiffs assert that what they have properly

alleged of Defendant Blumenthal is worse by an order of magnitude than what was ever alleged against former President Richard Nixon or against former New York Governor Elliot Spitzer! In fact, it can be said that largely for the role of Defendant Blumenthal, Plaintiff Book has been the subject of a long-term continuing political gang rape (See Complaint at Nature of Case and its Exhibits 1 - 7; Opposition, #19 at pgs. 30 – 31; and 5th and 8th Supplements, #33 and 38; other supporting information pertains to the evasive responses by the Office of the Attorney General to proper requests for information regarding payments made to three private Connecticut law firms by the State for their roles in the multi-state litigation against several tobacco companies, See 5th Supplement, #32 at pgs. 7 – 10.).

Thus, the Plaintiffs have made much more showing in support of claims against Defendant Blumenthal than mere conclusory "labels and conclusions". In fact, they have provided substantially more than a plausible showing!

With respect to this Court's conclusion regarding Defendants Slossberg and Spallone as Co-Chairmen of the legislative Government Administration and Elections Committee, that being that "Plaintiffs' factual allegations do not state a plausible claim to relief" (Ruling, #39 at p. 5), proper reference for review is the Defendants' Memorandum in Support of Motion to Dismiss (#13 at p. 12). There, the Defendants comment "[h]ere, it is not a question of sufficient facts to establish a plausible claim, but of no facts, that relate to these defendants at all". The Defendants' statement is objectively false!

The Complaint at Count Three asserts the following:

> **That Defendants Slossberg and Spallone erred in not having reasonably and timely addressed specific and formal pleadings which Book properly presented to the [Government Administration & Elections] Committee beginning before March 20, 2008 and up to March 28, 2010. Such error is an actionable constitutional violation and it constitutes the continuation of an official posture of deliberate indifference and institutionalized conspiracy.**

The Plaintiffs' offered proper and uncontested discussion of this Count in their Opposition to Motion to Dismiss (#19 at p. 37):

> Referring then to the referenced Paragraph 33 of the Complaint, Defendants then comment that "[t]here is nothing in that paragraph that refers in any manner to the Certificate of Endorsement or any other election related issue". For the manner that Count Three is phrased, there was no additional need for the Plaintiffs to make specific mention of the McMahon Certificate of Endorsement. A reasonable person would understand that Count Three is part of a large body of matters, that including also Count Two against Defendant Blumenthal, for which the Plaintiffs specifically claimed in their Petition for Declaratory Ruling presented to Defendant Bysiewicz on June 24, 2010 of not having a full and fair opportunity to campaign (Complaint at Para. 44 and its Exhibit 10; part. at Item #6 at p. A-37; a paragraph which makes particular mention of the Plaintiff Book's written follow-up of March 28, 2010 to these Defendants).
>
> Also, Count Three makes specific mention of the Defendants' non-response as "an actionable constitutional violation and it constitutes the continuation of an official posture of deliberate indifference and institutionalized conspiracy". To these, we can add the concepts of systematic biases and of a conspiracy of silence. These valid concepts become more readily understood with the discussion and quotations above of Archie v. City of Racine (Legal Discussion above at III-B) which include that "[h]aving put the citizen on the defensive, or having stripped away avenues of self-help, the state must afford a procedure reasonably likely to reach an accurate conclusion even if that means the implication of positive rights from negative ones" (at p. 1222).

It is of additional note that the Defendants' Memorandum of Law in Support of Motion to Dismiss (#13) also comments regarding the Plaintiffs' Paragraph 33 of the Complaint that "[t]here is solitary reference to a letter involving the Connecticut Resource Recovery Authority ("CRRA") . . . ." (at p. 12). What is significant for this lawsuit is the content and context of that letter. That letter is a 13-page pleading which was presented to the Government Administration & Elections Committee on March 30, 2008 (full text is provided as Exhibit 5 to Complaint). The letter affirms and expands upon much of the information which is provided as Nature of the Case in the Complaint. The uncontroverted factual allegations of the letter in their contexts comprise an egregious situation of systematic biases, of deliberate indifference and of institutionalized interagency governmental conspiracy in which Defendant Blumenthal has undisputedly been an active contributor and participant, a situation which fully placed upside-down the basic principles of our Constitution and a situation which is rather unusual in a modern society. For that, Paragraph 33 comments of the letter as to "the long-term unaddressed issues of defects of the CRRA and of a very serious chain of consequences experienced [by Plaintiff Book]".

What is further significant is the same Paragraph 33 additionally makes reference to other pleadings presented by Plaintiff Book to the legislative Committee including letters dated April 13, 2008, November 22, 2008 and November 2, 2009. Also, there is reference in that Paragraph of an electronic follow-up which Plaintiff Book sent to these Defendants on March 28, 2009 (copy at Complaint, its Exhibit 6; for simplicity provided here as Exhibit 1). Significant of the message is its reference to other earlier unanswered pleadings such as are mentioned above as well as of the following comments:

> . . . The letters describe what is correctly termed as an unaddressed and unresolved political cancer in state government. Other related and supporting information can be found at my recently announced campaign website at www.ethanbookforussenate.org. . . . A reasonable and prompt response is in order.

These Defendants to whom that message was directed are affiliated with the Democrat Party.

Emphasis is also made again to the unanswered letter sent by Plaintiff Book to Senator Joseph Lieberman on October 23, 1997 [copy provided at Complaint, its Exhibit 2, also mentioned in the above mentioned lengthy letter to the Committee (Exhibit 5 of Complaint at p. a-22) and for simplicity provided here also as Exhibit 2]. The letter affords early evidence of issues of systematic biases, of deliberate indifference and of governmental conspiracy of officials of the Office of the Attorney General. For the more complete and recent information discussed here in its proper contexts, the Plaintiffs' claims against these Defendants including of 14th Amendment violations, of systematic biases, of deliberate indifference and of participation in a massive, long-term interagency governmental conspiracy is not only provided as more than possible, or more than plausible or even more than probable. Rather the Plaintiffs have very effectively presented a preponderance of evidence which not only satisfies the minimal pleading standards for stating a claim but which is also sufficient for summary judgment in favor of these Plaintiffs.

Thus, the Plaintiffs may not have provided facts in support of the claims which the Defendants misleadingly distort and misconstrue and which have not been any part of this lawsuit. However, for the actual claims which the Plaintiffs carefully constructed, there are substantial supporting factual allegations which have been uncontroverted by the Defendants and which are fully sufficient for surviving their Motion to Dismiss.

ADDITIONAL COMMENTS:

IT IS NOTABLE THAT THERE IS NO COMMENT BY THIS COURT OF THE SUBSTANTIVE PLAINTIFFS' CLAIMS OF LACK OF VALIDITY OF VARIOUS KEY STAGES OF THE STATEWIDE ELECTION PROCESS REGARDING THE POSITION FOR U.S. SENATOR AS WELL AS FOR THE POSITIONS OF GOVERNOR AND LIEUTENANT GOVERNOR!

With particular focus on the claims against Defendant Blumenthal, the Plaintiffs quote here a portion from a 1765 article of the Boston Gazette, an article written by Thomas Jefferson and entitled "A Dissertation on the Canon and Feudal Law":

> The desire of dominion, that great principle by which we have attempted to account for so much good and so much evil, is, when properly restrained, a very useful and noble movement in the human mind. But when such restraints are taken off, it becomes an encroaching, grasping, restless, and ungovernable power.

Finally, for the great public significance of the issues and claims of this lawsuit considered together with the present time frame which follows both the Primary Election of August 10, 2010 and the General Election of November 2, 2010, there is therefore an additional federal interest in these claims including constitutional claims being expeditiously reviewed and decided in federal court [Constitution, Art. III, Sec. 2(1)].

CONCLUSIONS:

Regarding the claims against the State, the Plaintiffs have fully provided an exception to the general 11th Amendment state sovereign immunity which is allowed and established by case law precedent. With respect to claims against Defendant Bysiewicz, the Plaintiffs have established federal court jurisdiction through assertion and supporting information that her actions were not singular issues of state law but rather were multiple forming a pattern of conduct, that many of her actions were deliberate or part of patterns of official deliberate indifference and/or systematic bias,

and further were actions for which there is no readily available effective remedy in state forums. Such Plaintiffs' factual assertions have been uncontroverted. Concerning claims against Defendants Blumenthal, Slossberg and Spalone, the Defendants have failed to show that the "pleadings themselves fail to provide a basis for any claim of relief under any set of facts". In fact, the Plaintiffs' pleadings are fully susceptible to the interpretation that the Plaintiffs give. For these reasons, the Plaintiffs' claims are fully plausible. In fact, the Plaintiffs' claims are sufficiently probable as to justify the requested injunctive relief (docs. #11, 28, 32 and 34).

There is cause to refer to the famous words of Thomas Paine made in his Common Sense papers:

> In America, the law is king.

Finally, the Plaintiffs refer to the recent political crisis in Egypt. The New York Post of January 29, 2011 carries an article which discusses the early stages of this crisis and it reports various public comments made by various world leaders. British Prime Minister David Cameron commented as follows:

> Clearly, when you have people that have grievances and problems and want them responded to, it's in all our interests that these countries have a stronger rule of law, stronger rights, stronger democracy . . . . We in the West have taken a rather simple view that what matters is just the act of holding an election . . . ." (at p. 7)

There are good and proper causes for this Court to reconsider and reverse its recent ruling to grant the Defendants' Motion to Dismiss. The Plaintiffs so move!

Respectfully submitted for Ethan Book
and Ethan Book for U.S. Senate

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CERTIFICATION:

I hereby certify that a complete copy of the foregoing Plaintiffs' Motion for Reconsideration was mailed by 1st class regular mail in accordance with Rule 5(b) of the Federal Rules of Civil Procedure on February 11, 2011 to the following:

Robert D. Snook
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Also, courtesy copies are being concurrently provided to Christopher Healy, Linda McMahon, Peter Schiff, Vincent Forras, Jon Green and others as potentially interested persons.

_____

Ethan Book