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 : September 16, 2010

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

With reference to federal Local Rules of Civil Procedure, Rule 7(a), the Plaintiffs Ethan Book and Ethan Book for U.S. Senate hereby present a formal Opposition to the Motion to Dismiss presented by the Defendants on September 1, 2010. In summary, in a rambling and repetitive style, the Defendants have used established case laws of sets of facts which differ from the present to attempt to apply the same principles to the present. Also, they have micro-managed word games to seek to distract attention from the full texts of what the Plaintiffs present and they are observed to have engaged in abusive litigation tactics.

Oral Argument Not Requested

Expedited Processing Requested

I. BACKGROUND:

This is an action dealing with various claims of defective election procedures, actions regarding the election process for the position of United States Senate and matters related to these. Bases for federal court jurisdiction include multiple constitutional provisions and multiple provisions of federal statutes. In addition, the Plaintiffs attest to the Defendants' participation in an interagency governmental conspiracy. The Plaintiffs seek prospective injunctive relief and financial compensation for injuries. The Plaintiffs constitute a formal campaign which is officially registered as Republican with the Federal Elections Commission. Focal points of this lawsuit include a form for Certificate of Endorsement which was prepared and distributed by Defendant Susan Bysiewicz as Secretary of State, the actual filing of that form by Republican Candidate Linda McMahon and related matters having substantial bearing on the election process. Other named Defendants are Gayle S. Slossberg and James F. Spallone who serve as Co-Chairmen of the legislative Government Administration and Elections Committee and Richard Blumenthal, the State Attorney General. Mr. Blumenthal is also the Democrat Party candidate for the United States Senate.

Other background information is found in the Complaint, the Plaintiffs' Motion and Memorandum of Law in Support of Motion for Emergency Temporary Preliminary Injunction (#4) and the Plaintiff's Motion of August 22, 2010 for Reconsideration of Court Ruling to Deny Unopposed Motion for Emergency Temporary Preliminary Injunction.

In order to have good understanding of related background, the Plaintiffs focus again on events of state and local governments during 1983 through 1988. The Complaint clearly describes this period as one during which excessive and unlawful official actions were taken with respect to the $300 million redevelopment of the Greater Bridgeport Resource Recovery Project by the Connecticut Resources Recovery Authority (CRRA; Complaint at Paras. 10 through 17; and Pls.' Motion for Preliminary Injunction; #4 at pgs. 4 – 8 and its Affidavit at Paras. 7 – 8). This information well describes a bid-rigging conspiracy as well as related conspiracies to perpetuate the bid-rigging conspiracy and to cover-up legitimate Plaintiff attempts to expose

and correct substantive error against the public interests. As part of that scam, CRRA officials and those acting in privity with them sought that individual municipalities of the Bridgeport area enter a contract with the CRRA to commit their municipal residential and commercial waste collections to the CRRA project. In the Complaint, the Plaintiffs cite a letter presented by Plaintiff Book to the Fairfield Ethics Commission on November 27, 1987 (at Para. 11, fn. 1). The letter describes a conversation which Book had with then Fairfield First Selectman Jacqueline Durrell (R) on August 24, 1987. In that meeting, Book reminded Ms. Durrell of her overt support such for the Town's participation in the CRRA's Bridgeport Project such as was observed during August of 1985. He also reminded her that there was no observed meaningful support for her position (that for a matter in which the CRRA proposal was heavily contested before the Town and the ultimate Town vote was quite divided). During the meeting, Book specifically asked Ms. Durrell if she had received any personal benefit, political or financial, in return for her active support. Ms. Durrell simply answered the question in the negative. Book had exercised his right to record that conversation. Following that meeting, several qualified detectives performed a voice stress analysis of the recording. The very clear electronic result, which was not apparent from any audible distinction of Ms. Durrell's voice, indicated that Ms. Durrell had answered the question falsely. Book had also arranged a meeting with former Bridgeport Mayor Leonard Paoletta (R). In a similar situation, Book commented to Mr. Paoletta about the apparent lack of observed support for his active role in promoting that the City of Bridgeport participate in the CRRA project. To that, Mr. Paoletta quickly responded by saying that "I made my deal with that nice quy, Mr. Denito" (Justin Denito was the CRRA Chairman for a short period of late 1983 through early 1984. He had been appointed by Governor William O'Neill (D) but he suddenly resigned after media reporting by the Manchester Journal Inquirer of ties to organized crime.). Book then asked Mr. Paoletta if he had received any personal benefit, either political or financial, for his active support of the Bridgeport participation in the CRRA project. He answered the question in the negative. Book also exercised his right to record the conversation. Following that meeting, qualified detectives performed a voice stress analysis of the recording. The clear electronic result indicated that Mr. Paoletta had answered the question falsely. A complete copy of

Book's letter to the Fairfield Ethics Commission is found attached hereto as Exhibit 1 (at A-1; See esp. pgs. A-4 and A-6.).

The Plaintiffs' Motion and Memorandum in Support of Motion for Preliminary Injunction (#4) makes mention of various substantive instances of illegal government action regarding the redevelopment of the CRRA's Bridgeport Project. On pages 6 and 7, there is detail regarding glaring instances of mail fraud and bond fraud as well as mention of Book's claim of bid-rigging as was developed in Book's letter to the Auditors of Public Accounts of March 25, 1987. A copy of that letter is provided hereto as Exhibit 2 (at p. A-9). The letter includes specific mention of various points of deviation of the CRRA "action" of September 20, 1983 to select Signal Environmental Systems, Inc. (aka Wheelabrator Technologies, Inc.) as the preferred vendor from what had been earlier stated to be intended guidelines. Also, the CRRA board action of September 20, 1983 was performed without record of a vote count or of any mention of a vote whatsoever.[1] According to Freedom of Information law, that is a fatal defect! However, when Book sought review of this crucial point before the Freedom of Information Commission, the Commission evaded addressing this important point. Likewise, when Book appealed the Commission action to Superior Court, that Court also evaded reviewing this crucial point. It is also observed that the CRRA later acted (again without record of a vote) to increase the project size from 1500 TPD ("tons-per-day") to 2250 TPD *in return for a $10 million "redevelopment contribution" made by to it by Signal.* Other information such as a report made by the New York General Assembly regarding organized crime involvement in the garbage industry (also containing detail as to the involvement in a garbage operator based in Mamaroneck, NY whose company had been selected by the CRRA without proper procedural compliance for operation of transfer stations serving the Bridgeport

[1] Based on Book's extensive review, it is apparent that such a substantive defect of a lack of vote record regarding CRRA board action is observed only with the board dealings regarding the redevelopment of the Bridgeport Project.

Project) was provided by Book to proper state and local entities. Additional information regarding the apparent governmental scam of the CRRA's Bridgeport Project is available.[2]

It is curious that despite such developing information, after the Connecticut legislature acted in 1987 to abolish the Office of the Inspector General and thereby transfer such activities to the Auditors of Public Accounts (wherein the findings of the Auditors of Public Accounts would then be reviewed by the Office of the Attorney General) (See Complaint at p. 8, fn. 2), then Attorney General Joseph Lieberman evaded addressing substantive matters of CRRA bid-rigging and bond fraud (Complaint at Para. 14).

Based on substantial supporting facts obtained and reviewed over time, the Plaintiffs hereby assert that the CRRA's Bridgeport Project progressed largely as a result of monetary bribes paid to then CRRA President Michael Cawley, to then Governor William O'Neill, to then Fairfield First Selectman Jacqueline Durrell and to then Bridgeport Mayor Leonard Paoletta and/or to persons closely associated with them. In addition, the Plaintiffs hereby assert that then Attorney General Joseph Lieberman was also either a direct recipient of such illegal bribes or he was well aware of their occurrence yet for political reasons chose not to act accordingly.

In addition, the attached letter which Book sent to Deputy Assistant Attorney General Clarine Nardie Riddle on June 2, 1988 (Exhibit 3 at p. A-11) suggests that someone of the State of Connecticut acted to influence the State of New York to prohibit an environmental specialist from speaking at a meeting of the Committee to Stop the Bridgeport Garbage Plant. The Plaintiffs suggest, based on observations of official conducts over time, that the logical source of such influencing was the Office of the Attorney General. In other words, the credible facts suggest the existence of an interstate, interagency governmental conspiracy.

---

[2] It is notable that in late August 1985 when most of the Bridgeport area communities had made their decisions, late decisions were made not only by the Town of Fairfield and the City of Bridgeport but also in the Town of Trumbull (where Democrat Paul Timpanelli was the First Selectman) and the City of Milford (where Democrat Alberta Jagoe was Mayor).

To the above, the Plaintiffs point out that state and federal banking authorities made curious and quick decisions during about 1984 to approve applications for the merger of Connecticut Bank & Trust Co. (CBT) with the Bank of New England. That regionally important merger became effective in 1985. In early 1991, just over five years following that action, the Federal Deposit Insurance Corporation (FDIC) intervened the merged bank in what was described as the largest commercial bank failure on record. During 1983 through 1988, Joseph Lieberman was Attorney General. In 1988, he was elected to the U.S. Senate. Considering multiple facts obtained over time, the Plaintiffs hereby assert that Joseph Lieberman as Attorney General used his position to ensure the state and federal approvals of the merger between CBT and Bank of New England and later as U.S. Senator he used his influence to ensure that the respective bank failure would not be fully investigated.

Defendant Richard Blumenthal is known to be a political associate of Joseph Lieberman with both having concurrently attended Yale Law School. Mr. Blumenthal followed Mr. Lieberman as Attorney General in 1990.

The Summons forms which were prepared by this Court and properly served upon all Defendants on August 3, 2010 explicitly advises that the Defendants "must" serve on the Plaintiffs an answer or a motion presented pursuant to Rule 12 of the Fed. Rules of Civil Procedure within 21 days after service of the summons. The acting Defendants' legal counsel presented a partial Appearance on September 5, 2010, that to encompass representation of Defendants Susan Bysiewicz, Gayle S. Slossberg, James F. Spallone and Richard Blumenthal. The form was presented and signed by Robert D. Snook using the title of Assistant Attorney General. The same legal counsel presented on August 24, 2010 a Corrected Appearance, that reflecting representation also of the State of Connecticut. The Defendants' Motion to Dismiss was presented on September 1, 2010. The Motion raises issues of subject matter jurisdiction [FRCP, Rule 12(b)(1)] and issues of stating-a-claim jurisdiction [FRCP, Rule 12(b)(6)].

Other Background discussion is particular to the Defendants' Motion to Dismiss. The Memorandum of Law in Support of the Motion to Dismiss opens by describing the three

demands for relief presented by the Plaintiffs in their Complaint (at p. 1). While the Defendants are correct in describing a demand for declaratory ruling regarding the invalidity of the McMahon Certificate of Endorsement and a demand for financial compensation, regarding the demand for writ of *mandamus*, they mention only that the Plaintiffs seek to postpone the Republican Primary Election scheduled for August 10, 2010. They fail to acknowledge that the Plaintiffs specifically seek to "suspend or postpone" that Primary Election (Complaint at p. 27).

The Defendants then give brief Background discussion (Memo. at p. 2). As statutory reference to the defective McMahon Certificate of Endorsement, they refer only to Conn. Gen. Statutes, Sec. 9-388 without considering the context of Conn. Gen. Statutes, Sec. 9-3, the Uniform Administrative Procedure Act or other statutory and constitutional provisions. They then state that "[t]he Connecticut Secretary of State has a form for the convenience of party candidates". However, there is nothing of proper support for the statement that the form is merely for the convenience of party candidates. In fact, such an unsupported statement is in conflict with the very form which makes multiple statutory references and has a bold letter warning at the bottom of the form, a warning which is explicit that "[i]f this certificate, properly completed, is not <u>received by the SECRETARY OF STATE by the deadline indicated above</u>, the party shall be deemed to have made <u>NO ENDORSEMENT OF ANY CANDIDATE</u> for the office. . . (Sec. 9-388)" (Complaint at Para. 44 and its Exhibit 9; same Certificate provided herewith at <u>Exhibit 4</u> at p. A-13). Also, the Defendants' standing to even make such an assertion is deficient given that the Defendant Bysiewicz failed to review the matter in a full, open hearing as is required of the Uniform Administrative Procedure Act (See Complaint, Exhibit 12 at pgs. A-39 to A-40.).

The Defendants then correctly comment that the Complaint begins with a recitation of various lawsuits filed by Plaintiff Book through the years in state and federal courts involving a number of issues, some of which allege that there is pervasive corruption in various branches of state government (Memo. at p. 2 referencing Complaint at Paras. 9 and 16). Several matters which are important to recognize of the situation is the glaring manner that the Conn. Appellate

Court evaded public responsibility and distorted established legal norms in Connecticut Resources Recovery Authority et al. v. Freedom of Information Commission et al., 19 Conn.App. 489 (1989) and of a misdemeanor matter administered against Plaintiff Book in Stamford Superior Court in 2001 through 2003. Essentially no observer of the misdemeanor matter who has minimal knowledge of relevant facts of it does not realize that Book was wrongfully convicted. Book even believes that the Defendants in this matter realize that he was wrongfully convicted. However, no one does anything about such an injustice! Book states that it is one thing for government officials to act to obtain a guilty conviction in a criminal matter in a manner that is erroneous but not malicious. However, it is wholly something of much greater significance where such a criminal conviction is sought for reasons of knowing, malicious error, that related to vested political interests. Further, it is even a matter of yet greater significance where officials who have the opportunity and responsibility to take corrective measures where such error is exposed yet they fail to do so. It is Book's opinion that responsible officials have failed to take corrective measures because the fact that the blatantly wrongful conviction has become the *status quo* for which many persons have become comfortable, also because the power platforms of certain prominent members of the two major political parties (who by no means are implied to be a majority of either party) would be disrupted, additionally because acknowledging the errors and correcting them could result in financial liability, and further for reasons related to the initiation and development of the respective political intrigue. correction could result in uncomfortable implications and questions for U.S. Senator Joseph Lieberman and Defendant Blumenthal, among others. All this has substantial implications for the issues and claims presented in this lawsuit.

The Defendants then state that "[t]he gravamen of this lawsuit is that the certificate of endorsement for Republican candidate Linda McMahon . . . is legally deficient and that 'Secretary of State Susan Bysiewicz has erred in not having a form for Certificate of Endorsement reasonably prepared (with the word "duly") . . . '" (Memo. at p. 2). That statement is a serious misrepresentation of the facts of this lawsuit. The Complaint is explicit in describing various substantive defects to the McMahon Certificate of Endorsement (Complaint at Para. 24 with reference to its Exhibits 9 and 10). For example, there is also

an issue that the McMahon Certificate does not contain a date of signing of the Chairman or Presiding Officer of the Convention, that the form was never formally promulgated by the legislative Regulation Review Committee, and also that for matters of the yet unaddressed political cancer in state government, that for itself and other mentioned defects, resulted in the Plaintiffs not having a full and fair opportunity to campaign, and further that Defendant Bysiewicz was legally estopped from accepting and filing the McMahon Certificate. In addition, there is the issue of the persistent failure of Defendant Bysiewicz to have reasonably addressed these substantive issues once they were specifically presented to her. Thus, for the Defendants' counsel to micro-focus on one sole mentioned item of the Plaintiffs' claims without acknowledging the relevant whole is an abusive litigation tactic.

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)]. 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.]. Finally, "[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. *See* 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".

III. LEGAL DISCUSSION:

A. PRELIMINARY MATTERS

Before specifically addressing the particular arguments and assertions made by the Defendants, the Plaintiffs first raise several substantive procedural and legal matters.

First, promptly upon receiving the Defendants' Appearance of August 5, 2010, the Plaintiffs specifically raised with the acting counsel the question of the propriety that one using the title of Assistant Attorney General would represent in this matter the Defendant Richard Blumenthal who is Attorney General, one who is also a major party candidate for the U.S. Senate. The acting counsel has to date not addressed that relevant issue.

Second, the Defendants presented their Motion to Dismiss *after* the deadline date which is specified in the Summons of 21 days following service of the Summons. The deadline date was August 24, 2010. The Motion to Dismiss was issued on September 1, 2010, fully *eight days after the deadline*. The Defendants did not present a timely motion for extension of time or a motion for leave to late present their Motion nor did they either claim nor state lawful cause for any extension or leave such as of excusable neglect. The stated deadline is a substantive procedural requirement.

Third, in addition to factors that are described in various docket pleadings including in the Complaint at Paragraphs 12 through 32, there is other information bearing on the issue of credibility of Richard Blumenthal, both as the one under whose authority the opposing Defendants' counsel acts as well as for a named Defendant.

In a letter dated August 19, 2010 and directed to Defendant Blumenthal, Plaintiff Book requested pursuant to the Freedom of Information Act (Conn. General Statutes, Sec. 1-200 *et seq.*) that documentation which would reflect the amounts paid to the law firms of Silver, Golub & Teitell of Stamford, Emmett & Glander of Stamford and Carmody & Torrance of

Hew Haven regarding their professional representation of state interests in the multi-state litigation of the late 1990's against several tobacco companies. On August 23, 2010, Associate Attorney General Joseph Rubin sent to Book a letter in which he explained that the Office of the Attorney General does not have documents responsive to the request. Rather, he explained that such payments were made by the tobacco companies and that the Tobacco Master Settlement Agreement provided a mechanism for the compensation of states' private counsel (with further reference provided as www.naag.org/backpages/naag/tobacco/msa).

On August 27, 2010, Book then presented to Defendant Blumenthal a letter in which he expanded his request to include the authority for the Attorney General to contract with the three mentioned law firms and also the identity of the independent auditing firm which had been named as part of the multi-state settlement agreement. In a letter dated August 31, 2010, Attorney Rubin informed Book that the only authority for the Attorney General action of contracting with private law firms was Conn. General Statutes, Sec. 3-125 and that the Houston office of Price Waterhouse Coopers is the independent auditing firm regarding tobacco settlement payments and disbursements. Book followed that notice with his letter of September 1, 2010 to Defendant Blumenthal in which he questioned the limited reference of Conn. General Statutes, Sec. 3-125 as the sole authority (or guideline) for contracting with private law firms (copy attached as Exhibit 5). Also, in a telephone conversation of September 1, 2010, an official of the Houston office of Price Waterhouse Coopers informed Book that neither the tobacco companies nor Price Waterhouse Coopers administered any payments to private tobacco counsel, rather that such payments would have been made out of the proceeds of the settlement which have been distributed to the participating states.

On September 6, 2010, Book sent to Nancy Wyman, the State Comptroller, a formal request for information. With a focus on vendor payments made by the State, he requested detail of payments made to the three mentioned law firms from 1996 to the present. On September 9, 2010, he was provided by that office detail as to payments made by the State to Carmody and Torrance with detail as to the particular agency involved and the yearly payments. There is an active line of that detail which pertains to professional services provided on behalf of the

Office of the Attorney General. It is curious that from July 1996 through June 1998, the total payments were $72,175.57 (or an average of $24,058.52 annually) and that from July 1998 through June 2010, the total payments were $7,470,524.28 (or an average of $622,524.61 annually). On September 10, 2010, the State Comptroller provided Book detail of vendor payments made by the State to the law firms of Silver Golub Teitell and Emmet Glander for the years of 1995 to the present. That detail reflects no payments made to those firms for professional services provided on behalf of the Office of the Attorney General.

In addition, Book observes of the Freedom of Information Act, specifically of the statutory definition of "public records or files", as "any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, *or to which a public agency is entitled to receive a copy by law or contract under section 1-218 . . . "* [CGS, Sec. 1-200(5); italics added]. Thus, there is the appearance that Defendant Blumenthal has evaded his responsibility in this matter.

Further, Silver Golub & Teitell is a former employer of Defendant Blumenthal. There has been unrefuted public speculation that the three law firms contracted by the State for the multi-state ligitation received as much as $60 million in compensation for their services. These facts constitute a substantial credibility issue for Defendant Blumenthal for his role as Attorney General, for his supervision of the opposing counsel, and also for his posture in this lawsuit as a named Defendant.

B. THE DEFENDANTS HAVE FULLY FAILED TO DEMONSTRATE THAT THE <u>PENNHURST</u> DOCTRINE REQUIRES THAT THIS COURT DISMISS PLAINTIFFS' CLAIMS FOR LACK OF SUBJECT MATTER JURISDICTION:

The Defendants begin this section by stating that "[i]t is well-established that the Eleventh Amendment, absent a valid exception, deprives the federal courts of jurisdiction over all claims against a State by its own citizens and by citizens of another state. *Edelman v. Jordan,* 415

U.S. 651 (1974); *Dunn v. New Jersey*, 251 U.S. 311 (1920)" (Memo. at p. 4). Just at the outset, there are glaring problems with the Defendants' statement including that only one of the five named Defendants in this lawsuit is the State, that the Eleventh Amendment in fact does not prohibit claims against a State by its own citizens, and further that the Defendants cannot properly assert that there are not in this lawsuit valid exceptions to what is otherwise presumed of the Pennhurst doctrine. Other discussion follows.

The Eleventh Amendment is fully quoted as follows:

> The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, *by citizens of another State, or by citizens or subjects of any foreign state*. (italics added)

There is no mention of any kind of constitutional prohibition of a suit in law or equity by a citizen of a State against the same State. However, in Duhne v. New Jersey. 310 U.S. 311 (1920), the Supreme Court decided to expand the Eleventh Amendment beyond its explicit wording to prohibit also suits of a citizen of a State against the same State. The same decision specifically comments that the added case law provision which they were establishing was merely "the general rule" and the Court even discussed apparent conflict of its position with Article III, Section 2 of the Constitution (at p. 313). Notwithstanding such an added case law limitation, such a provision of state sovereign immunity does not normally apply to suits presented against state officials in their individual capacities [Ex parte Young, 209 U.S. 123 except in limited circumstances such as where the relief deals with a refund of state taxes as is addressed in Ford Motor Co. v. Department of Treasury of Indiana, 323 U.S. 459 (1945)].

The focus of Edelman is a particular and limited definition of claims against state officials both in their official capacity and their individual capacity. The case does not fully alter provisions such as of Ex parte Young. However, the case deals with both injunctive relief and damages in matters which would not merely be "from the pockets of the individual state officials who were the defendants in the action" but would be from the state treasury (at p. 668). Citing Edelman, the Defendants state that "[fourteenth amendment] immunity applies regardless of whether the

relief sought is monetary" (Memo. at p. 4). However, the case deals with claims for relief which really and directly affect the state treasury, not the situation of the present (except for the case citing of the State of Connecticut as Defendant, a situation discussed below). Citing Cory v. White, 457 U.S.85, 90-91 (1982), the Defendants additionally assert that such immunity applies also injunctive relief. However, the decision in Cory considered there was not a significant federal issue (p. 89). Then citing Atlantic Healthcare Benefits Trust v. Googins, 2 F.3d 1, 4 (2nd Cir. 1993) (an appeal of a decision of the Connecticut District Court), the Defendants say that such immunity applies to declaratory relief. However, the immunity to which they refer in that case pertains to claims against a state agency and not to claims against a state official. The Defendants further cite Regents v. University of California v. Doe, 519 U.S. 425, 429 (1987) to comment that such immunity applies to state agencies and its instrumentalities. However, such a concept does not alter established provision for claims against state officials. The additional multiple case citings which the Defendants give (Memo. at p. 5) add nothing more to their limited argument.

The Defendants further comment that the "only exceptions" to the limited focus argument discussed above is "if a State consents to suit or Congress has abrogated the State's immunity" [Memo. at p. 5, fn. 1; citing Kilcullen v. New York Dept. of Labor, 205 F.3d 77, 79 (2nd Cir. 2000)]. However, the cited case does not specifically state that the two mentioned exceptions are the only exceptions. In fact, the State of Connecticut did not dispute Book's assertion that an institutionalized governmental conspiracy is an exception to the general rule of state sovereign immunity [Ethan Book Jr. v. Conn. Commission on Human Rights & Opportunities, Case No. 3:95-cv-0421 (DJS) citing Columbia v. Omni Outdoor Advertising, Inc., 111 S.Ct. 1344]. Nor have the Defendants in the present disputed the Plaintiffs' claims of the existence of an institutionalized, interagency governmental conspiracy. Because the Defendants have not disputed the Plaintiffs' claims of the existence of an institutionalized, interagency governmental conspiracy, this factor alone cuts past every Defendants' arguments discussed above on the issue of Eleventh Amendment state sovereign immunity both as it might apply to the Defendant State of Connecticut as well as to other named Defendants either in their official or individual capacities.

The Defendants then cite Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 102 (1984) to say that "the Eleventh Amendment bars federal suits against state officials, *regardless* of the relief sought, *if based upon violations of state law"* (Memo. at p. 5). Not so fast! Even Pennhurst is clear that such a limitation would not apply where the suit challenges the constitutionality of the state official's action (at p. 102). Also, Powell v. Power, 436 F.2d 84, 85 and 88 (2nd Cir. 1970) explains that even if the claims were solely based on violations of state law (which the present is clearly not), then federal court jurisdiction could be available where there is a claim that fair and adequate state remedy is not provided. Certainly for what is presented of this docket, it is abundantly evident that the Plaintiffs are not afforded a full and fair opportunity for redress in state agencies or state courts (Complaint at Paras. 9, 13, 14, 15, 20, 22, 24, 26, 33, 45 and 47). Also, considering established principles for judicial notice, the Plaintiffs refer to a Show Cause which Plaintiff Book presented to the District Court on June 30, 2008 in Ethan Book Jr. v. Mortgage Electronic Registration Systems, Inc., Case No. 3:08-cv-0821 (SRU) and to the respective 12-page affidavit (plus attachments) in which Book begins explaining "[t]hat the following information is presented regarding relevant background for the referenced matter, particularly with respect to the related issue of lack of full and fair opportunity for litigation which I have encountered for a long-term period of 20 years in courts of the State of Connecticut". In addition, in Ethan Book Jr. v. Kimberly Parks, Police Department of City of Bridgeport et al., Case No. 3:09-cv-0472 (AVC), on September 11, 2009, Book presented an Opposition to Defendants' Motion to Dismiss which included a 41-page affidavit (plus attachments) which provides detail of a systematic situation of deliberate indifference regarding public issues involving Book, a deliberate indifference emanating from the state legislature and affecting state agency action as well as local government action including local law enforcement. Additional supporting information is available.

This issue which is fully one of federal constitutional interest as well as of federal court jurisdiction (Constitution, Art. III, Sec. 2), is also in part a result of errors and offenses of Defendant Blumenthal and of those acting in privity with him. The Plaintiffs refer to their well-supported statement that "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. 19). Considering also the political and social interrelationships between Defendant Blumenthal and Senator Lieberman (described above in Background), there is even greater understanding of this problem. Joseph Lieberman was the previous Attorney General and was clearly accustomed to administering that high office in a manner that advanced his personal political objectives and aspirations. With political capital which he developed as Attorney General (additional information available), he was elected in 1988 to the U.S. Senate. As one of two U.S. Senators representing the Constitutional State of Connecticut, Senator Lieberman alternates turns with the other Senator for Connecticut to suggest to the President nominees for the federal bench. The record reflects that a primary pool of candidates for such recommendations is state judges. Therefore, state judges are inherently aware that to protect their opportunities for advancement and promotion, they should avoid any action that might have adverse implications for Joseph Lieberman. There isn't much of anything which Book has presented in state courts over the last 20 years which doesn't either directly or indirectly have implications for Joseph Lieberman.

This situation began to become more aggravated in 2000 when Book presented a formal complaint to the State Claims Commissioner against Stamford Superior Court Judge John Kavenewsky and further in 2004 when he presented a federal lawsuit against Stamford Superior Court Judges Richard Tobin and Martin Nigro (Complaint at Para. 21). Such drastic actions were taken by Book as his only remaining remedies against a glaring pattern of systematic biases. However, the apparent responses from other state judges of Book's peaceable pursuit of justice is to "circle the wagons" around the defendant judges, effectively official retaliation against the peaceable exercise of Book's constitutional rights. In essence, Book has been repeatedly and seriously re-victimized!

This situation is also in part a result of Defendant Blumenthal's unarticulated policies and practices. Nathan v. Carter, 372 So.2d 560, 562 (La. 1979) discusses the legal doctrine of *contra non valentum:*

> . . . the doctrine of *contra non valentum* is, in part, but an application of the long-established principle of law that one should not be able to take advantage of his own wrongful act.

Quoting Ford Motor Co. v. Department of Treasury of Indiana, 323 U.S. 459, 464, 65 S.Ct. 347, 89 L.Ed. 389 (1945), the Defendants comment that the bar against suits of citizens against a State applies "regardless of how the defendants are named, as long as 'the state is the real, substantial party in interest'" (Memo. At p. 5). However, the quoted principle is not a general principle. To the contrary, it applies only in limited circumstances such as where the requested relief is directed at a refund of taxes collected (Ford Motor Co. at 459). That is not the situation of the present [See Balabin v. Scully, 606 F.Supp. 176, 184 (S.D.N.Y. 1985) which affirms claims made against state prison officials who were alleged to have "acted outside their authority . . . ."].

The Defendants then quote from Archie v. City of Racine, 847 F.2d 1211, 1217 (7th Cir. 1988) to suggest again that mere violation of a state law does not, by itself, rise to a violation of the federal constitution (Memo. at p. 6). Again, the Defendants have missed the essence of the case. The same case affirms the following:

> Where government does not monopolize avenues of relief, or where government has already afforded process sufficient to yield accurate decisions, government has no further obligation to give aid under the Constitution itself. (at p. 1212, hn. 9)

The decision also explains the difference between mere reckless negligence and deliberate indifference. "Deliberate indifference" in constitutional law is an act so egregious that "the defendant's knowledge of the risk can be inferred" [at p. 1219; affirmed in Bass v. Jackson, 790 F.2d 260, 262-63 (2nd Cir. 1986)].[3] The distinctions which we consider here are further explained in the case with the comment that although the Due Process Clause of the Constitution (i.e., the Fourteenth Amendment) is phrased in the negative such that a

---

[3] See also Russo v. City of Bridgeport, 479 F.2d 196 (2nd Cir. 2007) and Balmer v. Oliveira, 594 F.3d 134 (2nd Cir. 2010). Deliberate indifference has been used to apply to Constitutional claims involving the 4th, 8th and 14th Amendments.

state shall not "deprive" residents of life, liberty or property without due process, it is also explains that "[t]he Fourteenth Amendment, adopted in 1868 at the height of laissez-faire thinking, *sought to protect Americans from oppression by state government* . . . " (at p. 1220, italics added). The Court additionally comments that that the Due Process Clause is "designed to protect the people from government, to cut it down to size lest it repeat the excesses of George III and the slave states" [at p. 1221; Compare with Plaintiffs citing of Krulewitch v. United States, 336 U.S. 440, 445-48, 69 S.Ct. 716, 719-20 (1949) at Complaint, Para. 31.]. The case further comments 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). The case further defines such a "special relationship" of "cases in which the state either deliberately inflicted injury or greatly increased risk while constricting access to self-help" (at p. 1223). A suitable summary follows:

> When the state puts a person in danger, the Due Process Clause requires the state to protect him to the extent of ameliorating the incremental risk. When a state cuts off sources of private aid, it must provide replacement protection. (at p. 1223)

The Defendants' references to Blake v. Papadakos, 953 F.2d 68, 73 n.5 (2nd Cir. 1982) and Benning v. Board of Regents, 928 F.2d 775, 778 (7th Cir. 1991) (Memo. at p. 6) neither address nor conflict with the important exception discussed above of Archie. Thus, even if the thrust of this lawsuit was an issue of state officials' administration of state law (which it clearly is not), for the glaring lack of Plaintiffs' access to reasonable state remedy, then federal court jurisdiction, in fact, exists.

The Defendants then state that "[i]n the present, Plaintiffs' central complaint is that the form used by the Secretary of State is deficient because it does not include the term 'duly' before the word 'endorsed'". They go on to surmise that the essence of the case is an issue of administration of Conn. Gen. Statutes, Sec. 9-388, which they describe simply as a state law matter (Memo. at p. 6). Even if the Defendants' statement was correct (which it is not), for the above discussion of Archie, their conclusion is fundamentally incorrect as the Plaintiffs

do not have reasonable access to remedy in state forums.

However, their statement is incorrect, misleading and meritless! A proper review of the McMahon Certificate of Endorsement reflects various substantive legal issues. First, even if the form was designed for the convenience of the candidates, a suggestion which is inconsistent with the known facts (See above Background.), it is nonetheless undisputed that the form is an implementation of state statute, Conn. Gen. Statutes, Sec. 9-388 (See multiple statutory references at Exhibit 4.). Therefore, for the proper, unsatisfied mandatory requirements of the Uniform Administrative Procedure Act, the form as well as its use is legally invalid. They are legally void! Also, even if the Uniform Administrative Procedure Act would not apply, then according to Conn. Gen. Statutes, Sec. 9-3, the form would be treated as law (Complaint at Paras. 44 and 46 and its Exhibits 10 and 12). In addition, the fact that the form indicates "Rev. 3/06" reflects that it was prepared and approved by Defendant Bysiewicz as Secretary of State. Defendant Bysiewicz is an elected state official. She is a politician. All statesmen are politicians but not all politicians are statesmen. As a licensed attorney, Defendant Bysiewicz either knew or should have known of the scope and requirements of the Uniform Administrative Procedure Act. However, the proper steps for formal promulgation of the revised form were not taken in 2006. In addition, for a licensed, practicing attorney, the lack of the word "duly" before the word "endorsed" was or should have been apparent even in 2006. However, proper care and due diligence were not exercised. The facts suggest that Defendant Bysiewicz evaded full and proper preparation and review with the understanding and expectation that she would be doing what is politically expedient in the eyes of major party leadership for whom she realized that she was protecting their political power bases. This therefore becomes both a due process constitutional issue (42 U.S. Code, Sec. 1983) as well as one of systematic biases (42 U.S. Code, Sections 1985 and 1986). For this, the Plaintiffs have more than met the plausibility requirement for stating a claim. Second, for the considerations of both the above discussion of Archie as well as the above expanded discussion of the failure of Defendant Bysiewicz to have had the form formally promulgated, the lack of the word "duly" before "endorsed" is fully an issue for federal court jurisdiction. Third, questions about how the form was actually completed

(i.e., the apparent multiple handwriting styles, etc.) raise legitimate issues which are suited for full, open review in a formal hearing (Complaint at Exhibit 10). Fourth, the actual Certificate of Endorsement which was presented either by or on behalf of putative candidate Linda McMahon on June 2, 2010 was not completed in accord with stated requirements found on the face of the form. Fifth, considering the defects of the form not having been "properly completed", for the negative words found at the bottom of the form, either with reference to the Uniform Administrative Procedure Act or Conn. Gen. Statutes, Sec. 9-3, there is therefore a substantive defect of a mandatory requirement which is in effect jurisdictional (Complaint at Paras. 44 and 46 and its Exhibits 10 and 12). Sixth, the acceptance and filing of such a defectively completed form by or under the supervision of Defendant Bysiewicz (where other forms of other current candidates obtained by the Plaintiffs do not reflect the same kinds of substantive error) suggests deference to a candidate that is a perceived elite, an issue of systematic bias. In addition, notwithstanding the above issues of defects, for other related matters such as are discussed above of Archie, such as of the continuing unaddressed issue of a political cancer in state government and of the related lack of a full and fair opportunity for the Plaintiffs to campaign, the State is legally estopped from accepting the McMahon Certification of Endorsement. Seventh, even if the above matters were ones of mere negligence in the administration of state law, the manner that Defendant Bysiewicz twice evaded the key factual and legal issues in her official responses to the Plaintiffs proper and timely pleadings (Complaint at Paras. 45 and 47 and its Exhibits 11 and 13) rises to a due process constitutional issue. This factor becomes more significant given that she (a Democrat) was timely provided copies of letter communications by the Plaintiffs to Defendants Slossberg and Spallone (also both Democrats) on July 16 and July 20, 2010, with both letters being substantive updates and embellishments of prior pleadings to them such as of Book's letter of March 30, 2008 and his e-mail follow-up of March 28, 2010 (Complaint at its Exhibits 5 and 6). Eighth, related to the previous item, the fact that Defendant Bysiewicz issued her response to the Plaintiffs' proper, formal Declaration and Petition for Declaratory Ruling without conducting a full hearing as is required of the Uniform Administrative Procedure Act (Complaint at Exhibit 12, pgs. A-39 to A-40) is yet another due process issue. Thus, for the above, the Defendants attempt to define this lawsuit with a micro-focus of the relevant

issue of the lack of the word "duly" before "endorsed" is incorrect, misleading and meritless. It is an unprofessional exaggeration and distraction from the whole truth (See Conn. Rules of Professional Conduct, Rule 3.1 dealing with Meritorious Claims and Contentions and Rule 3.2 dealing with Expediting Litigation.). In addition, it is yet another Defendants' expression of self-serving, creative and even abusive litigation tactics.

The Defendants then attempt to broadly apply the qualified limitations of Pennhurst to matters of state elections. They specifically quote from Rivera-Powell v. New York City Board of Elections, 470 F.3d 458, 469 (2nd Cir. 2006) to suggest that the lack of the word "duly" in the prepared form used by Linda McMahon is merely a "'garden variety'" of election issues for which they compare to issues of "'election machinery, . . . registration cards . . . and certificates of election'" (Memo. at pgs. 6-7). Again, they err!

The Court in Rivera-Powell explicitly affirms principles discussed above in Archie:

> 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.

For the substantial public significance of this lawsuit, the Plaintiffs hereby emphasize their position regarding established provisions for which the Eleventh Amendment does *not* bar the various claims of this lawsuit. Doe by Hickey v. Jefferson County, 985 F.Supp. 66, 68 (N.D.N.Y. 1997) affirms that "Eleventh Amendment does not apply to suits against state officials in their personal capacity" [See also Atlantic Healthcare Benefits Trust v. Googins, 2 F.3d 1 (2nd Cir. 1993), a case of appeal of the Connecticut District Court.]. Also, Morrison v. Lefevre, 592 F.Supp. 1052, 1081 (S.D.N.Y. 1984) affirms that the Eleventh Amendment does not bar claims against state officials where the defendants "acted against both state and federal law and outside their authority". The case also affirms pendent jurisdiction, that is federal court review of a state claim where there are related federal issues all of which "derive from a common nucleus of operative fact" (at 1081). The decision's closing paragraph is useful:

> This case illustrates that, regardless of the practical and jurisprudential justifications for limiting the recent flood of largely meritless *pro se* prisoner petitions, the federal courts must remain open to vindicate claims such as the one brought by the Morrisons in this action. If the promise of due process is to remain real, the federal courts must ensure that prison officials will not be permitted to oppress their wards with fraudulent charges, *particularly as a form of official revenge for protected activities*. (at p. 1082; italics added)

In addition, Mont v. Heintz, Commissioner, Connecticut Department of Income Maintenance, 849 F.2d 704 (2nd Cir. 1988) affirms that the Eleventh Amendment does not bar a suit seeking injunctive relief against a state official where there are issues of federal statutes. Further, Hoblock v. Albany County Board of Elections, 422 F.3d 77 (2nd Cir. 2005) deals with a district court action of issuing a preliminary injunction to suspending results of a county election, that where federal court subject matter jurisdiction was not an issue.

For all the above, the Plaintiffs have provided fully arguable and sound bases for federal court jurisdiction for claims against the named Defendants of both official and individual capacities. In addition, with respect to all claims including claims against the Defendant State of Connecticut, the Eleventh Amendment does not bar claims for injunctive relief, declaraory relief or for money damages where there is an institutionalized governmental conspiracy. 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" (See Mont above at Legal Standards.).

C. STATING A CLAIM JURISDICTION

1. The Defendants Have Not and In Fact Cannot Demonstrate that Plaintiffs' Challenge of the McMahon Certificate of Endorsment Is Meritless:

Again, the Defendants state that "Plaintiffs claim that the absence of the word 'duly' on the Certificate of Endorsement renders it void" (Memo. at p. 8). *Again*, the Defendants statement is incorrect and misleading to the point of being abusive litigation practice. As is represented in the Complaint (Para. 44 and its Exhibit 10) and as is further discussed above at pages 19 – 21 of this Opposition, a focus of the Plaintiffs' claim that the McMahon Certificate of Endorsement is void is the failure for Defendant Bysiewicz to have had the form formally promulgated by the legislative Regulation Review Committee as is mandated by the Uniform Administrative Procedure Act [See Complaint at Exhibit 10 with focus on citing of Persico v. Maher (1983) 465 A.2d 308, 191 Conn. 384.]. If that was not true, then a proper application of Conn. Gen. Statute, Sec. 9-3 requires that the form of the Certificate of Endorsement be considered as law for which the negative words at the bottom of the form render the specific requirements of the form to be mandatory, hence jurisdictional. In addition, the separate but related issue of legal estoppel resulting from the Plaintiffs' lack of full and fair opportunity to campaign can be deemed to render the McMahon Certificate to be invalid.

The Defendants further comment that "it should be noted that it is Conn. Stat., Sec. 9-388, and not the form itself, that establishes the method of administering elections" (Memo. at p. 8). However, it is the Uniform Administrative Procedure Act which establishes the requirement of how an agency must establish procedures for the implementation of such statute [Complaint at Exhibit 12 with quoting at p. A-40 from Conn. Gen. Statutes, Sec. 4-166(13)]. In fact, without specific authorization from the state legislature, a state official can do nothing [re: Delegation Doctrine as is affirmed in Lester Bottone v. Town of Westport et al., 209 Conn. 652 (1989); cited in Exhibit 10 of Plaintiffs' Motion and Memorandum for Preliminary Injunction; #4].

It is further noted that in support of the Defendants' erroneous statement quoted above, they reference Pritchard v. Pritchard, 281 Conn. 262, 275, 914 A.2d 1025, 1033 (2007) as follows:

> As the Connecticut Supreme Court has said "forms for appeals and amended appeals do not in any way implicate appellate subject matter jurisdiction. They are merely the formal, technical vehicles by which parties seek to invoke that jurisdiction. Compliance with them need not be perfect; it is the substance that matters, not the form. See *State v. Findlay*, 198 Conn. 328, 329 n.2, 502 A.2d 921, *cert. denied*, 476 U.S. 1159, 106 S.Ct. 2279, 90 L.Ed.2d 721 (1986)." (Memo. at p. 8, fn. 2)

Once again, there are critical problems with the Defendants' position! First, the form for appeal to which they refer is JD-SC-38, a form issued by the Judicial Branch. The Judicial Branch is not subject to the Uniform Administrative Procedure Act. Second, the challenged conduct in Pritchard pertained to completion of the form for terms of the form which were not explicit. Third, the appeal form relates to Conn. Gen. Statutes, Sec. 52-263. Neither that statute nor the form itself provide negative wording regarding the failure to satisfy explicit requirements either of the statute or of the form. In comparison, Brown v. Smarrelli, 29 Conn.App. 660, 664, 617 A.2d 905 (1992) affirms that a statutory provision of convenience is mandatory when that provision is accompanied by language that expressly invalidates and action taken after non-compliance with it (See also Planitiffs' Motion for Preliminary Injunction; #4 at p. 3.)

There is more regarding Pritchard which is relevant to the present. Even as is observed of

the above Defendants' quoting, there is reference to the Findlay decision. That case discusses a question of the completed appeal form indicating that it is being taken "'from a jury verdict of guilty' rather than from the judgment as required by General Statutes, Sec. 52-263" (at p. 329, fn. 2). The decision further comments that "[a]s this defect in form is not jurisdictional in nature, it may be disregarded. See *State v. Kurvin*, 186 Conn. 555, 556 n.1, 442 A.2d 1327 (1982)." *There is great significance to this precedent!* In the Plaintiffs' Motion of August 22, 2010 for Reconsideration of Court Ruling to Deny Motion for Preliminary Injunction, there was detail regarding an appeal which Plaintiff Book had presented of the misdemeanor action administered in 2001 in Stamford Superior Court (Pls. Mot. at pgs. 9 – 10). In the Motion, Book explained that he had filed an appeal *after* the rendering of the jury verdicts yet *before* the case disposition. Specifically, he says that on October 16, 2001, he filed a Notice of Appeal, one which involved challenge of "several pre-trial rulings of the type which are distinctly appealable". Such specific claims for appeal should have precluded any *sua sponte* consideration by the Appellate Court that the Appeal had been filed early. However, the present discussion adds cause for the Plaintiffs to explain also that the same Notice of Appeal which was filed on October 16, 2001 (copy attached as Exhibit 5 at A-14), a Notice presented after the rendering of the jury verdicts yet before the case disposition, specifically mentioned challenge of the "verdict of 10/01/01". Considering the explicit precedents of Prichard and Findlay, this makes the situation for which the Appellate Court, despite other proper arguments timely made by Book, took official action to dismiss that appeal for having been presented early, as yet additional evidence (a) of the existence of both egregious systematic bias, (b) of the existence of an institutionalized interagency governmental conspiracy, (c) of another glaring example to support that the Plaintiffs do not have reasonable access to state remedies, and (d) further support to the Plaintiffs position of egregious and "patent and fundamental unfairness" which "undermines the organic processes by which candidates are elected".

The Defendants further comment that "there is no allegation that the Secretary of State or any other party intentionally left the word 'duly' out of the certificate form in order to deny Plaintiffs any statutory or constitutional rights" (Memo. at pgs. 8-9). Their argument is a burdensome regurgitation of earlier statements and arguments well discussed above. In

summary, for the consideration of a "playing the game" type of systematic bias, such an omission could well be one of intentional error. Also, the lack of the word "duly" before the word "endorsed" can implicate not simply a matter of state law but more importantly one of due process implications as well as of a pattern of systematic dysfunction. In addition, for having placed the Plaintiffs "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". Further, as is well-explained above, the lack of the word "duly" is but one of various substantive errors of state and federal laws and of excess of authority.

In addition to other established principles amptly discussed above, the Defendants extensive quoting from Gold v. Feinberg, 101 F.3d 796 (2nd Cir. 1996) fails to assist them, among other reasons including that the case excludes from consideration of the limitations of federal court jurisdiction those claims of irregularity of state election procedures "'where state law provides a fair and adequate method for correcting such errors'" (Memo. at p. 9).

The Defendants conclude this area of discussion by stating that "without evidence that there was a deliberate and intentional removal of this word [duly] from the form to injure Plaintiffs in some way, there is no basis for a claim of negligence or a violation of the Constitution" (Memo. at p. 10). In addition to other substantive Plaintiff clarifications and rebuttals given above, the statement is false for the principles of systematic bias and pendent jurisdiction.

2. The Defendants Fail to Demonstrate that Plaintiffs Have Not Stated a Claim Against Defendant Richard Blumenthal:

In the context of a 28-page Complaint with its attachments and also other supporting pleadings of docket record, the Defendants again micro-focus on a portion of Count Two of the Complaint (at p. 26) to then refer to Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S.Ct. 1955 (2007) to say that "to survive a motion to dismiss a complaint must plead 'enough facts to state a claim for relief that is plausible on its face'" (Memo. at p. 10).

Before looking farther, the Plaintiffs take the opportunity to present the full text of Count 2 as it appears in the Complaint:

> That Attorney General Richard Blumenthal and those under his direct authority has 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.

With that reference, is important to understand that Bell Atlantic Corp. deals with a matter of an alleged antitrust conspiracy involving a defendant that is a private corporation. A focus of that case is that while circumstantial evidence is sometimes sufficient for stating a claim, where the claim is of a private conspiracy, there must be more than a mere showing of parallel conduct which could be explained by lawful independent self-interested conduct (at p. 5). The present is fully distinguished in that the rather large body of circumstantial evidence involves a vast history of state government officials (and others) acting in concert in a manner that disregards a person's constitutional rights and is oppressive [See quote from Krulewitch v. United States, 336 U.S. 440, 445-48, 69 S.Ct. 716, 719-20 fn. 4 (1949) at Complaint, Para. 31, quote from State v. Murphy, 124 Conn. 554, 564, 1 A.2d 274 at Motion for Preliminary Injunction; #4, pgs. 5 – 6 and discussion in Motion for Preliminary Injunction, p. 4 of the first known statute dealing with conspiracy, a 1285 statute of Westminster the Second which is directed at government lawyers]. Also, a claim of systematic bias or a claim of federal constitution does not require a showing of agreement. Further, a reason for the limitation discussed of Bell Atlantic Corp. is consideration of the amounts of resources which are frequently required for extensive discovery which is typical in an antitrust case. As is apparent from the Plaintiffs' draft Report of Parties' Rule 26 Planning Meeting (as is attached to the Plaintiffs' Opposition of September 6, 2010 to Defendants' Motion for Relief from Discovery Planning Conference Requirement), what the Plaintiffs have initially contemplated for discovery is minimal. Also for the present, the Plaintiffs have provided much more than minimal circumstantial evidence or conclusory claims in support of the existence of an institutionalized, interagency governmental conspiracy (See Complaint at Paras. 11 – 16,

19 – 30, 32 – 37, 40 – 41, 45, 47; Plaintiffs' Motion for Preliminary Injunction; #4 at pgs. 6 – 9 and its Affidavit; and above particularly at Background and Preliminary Matters.).

In the Legal Discussion Section III-B above, the Plaintiffs made judicial notice to a 41-page Affidavit which Plaintiff Book presented to this District Court on September 9, 2009 in Ethan Book Jr. v. Kimberly Parks and City of Bridgeport Police Department et al., Case No. 3:09-cv-0472 (AVC). Limited portions of that extensive Affidavit dealing with systematic bias and deliberate indifference stemming from the state legislature is attached hereto as Exhibit 6 (at p. A-15). Certain sections are given highlighted discussion. During about 1992, Book was in conversation with then Attorney Howard Owens (formerly a state senator representing portions of Trumbull and Bridgeport; now a Superior Court Judge). There was discussion between them of the time period of the late 1980's when Book would occasionally appear before public sessions of the General Assembly to speak about issues of the activities of the CRRA. Book pointed out that rarely were there opposing comments to his public statements although his proposed positions were rarely adopted. To that, Attorney Owens responded by saying that "[t]he word around the Capitol was that we weren't supposed to respond to you because you knew what you were talking about" (at Para. 17). Then there is a detailed description of an incident occurring in Stamford, CT on May 20, 2005. That was one where Book was peaceably and lawfully attempting to transport several high school students from Fairfield to their high school prom. However, upon approaching the Italian American Center in Stamford, they were met by multiple uniformed officers of the Dept. of Motor Vehicles (DMV). Although there was no apparent issue of unlawful conduct in the course of that transportation, the DMV officials (who were accompanied by one known "inspector" of the Dept. of Transportation and multiple officers of the Stamford Police Department) ordered Book to remain at the location. In what was later reported as about ten telephone calls from several state officials and two police officers to the parent of one of the students, the officials attempted to encourage, coerce and cajole the parent into driving about 25 miles from Fairfield to Stamford to make a formal complaint. Then after failing that, without any proper cause, the officials advised the student passengers that they would not return with Book after the prom as had been originally arranged. No citation was issued to Book! In fifteen years of successful

operation of his limousine service business, Book had rarely experienced and never observed to others such extreme unlawful, unconstitutional and oppressive conduct.[4] The above can be considered together with other information described and referenced above including the detail found in the Complaint wherein, just prior to the trial in 2001 in Stamford Superior Court, Public Defender Thomas West reportedly commented to an acquaintance that the attorneys in Stamford Court and the Stamford judges intended to see Book convicted as he has been a thorn to the state in other forums (Para. 20). Thus, the Plaintiffs have more than satisfied the threshold requirements for stating-a-claim!

The Defendants comment that "[t]here is nothing in the Complaint that links or alleges that Attorney General Blumenthal has had any relevant role in the actions of the Secretary of State in filing the Certificate of Endorsement for Linda McMahon . . ." (Memo. at p. 11). The 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 also comment that "[t]here is nothing in the Complaint that links or alleges that Attorney General Blumenthal . . . has any interaction with state elections officials regarding Plaintiffs' senate campaign" (Memo. at p. 11). Again, the Defendants err!

---

[4] It is noted also that at Para. 42 of Exhibit 6, there is mention of a letter which Book sent to Governor Rell in October of 2005. The letter raised the same concern as is emphasized of Count Two regarding Defendant Blumenthal. This background further supports a claim of deliberate indifference for the issues having been "'known, obvious and commented upon . . . for years'" [quoting from Benjamin v. Fraser, 343 F.3d 35, 51 (2nd Cir. 2003)].

Either for Defendant Blumenthal directly or through various acting in privity with him,[5] such a link is alleged.

The Defendants are partially correct that the Plaintiffs allege that Defendant Blumenthal, or his subordinates, filed motions to dismiss in several cases brought by Plaintiff Book over the years (Memo. at p. 11). However, contrary to their assertion, those cases are very much related to various issues of the present. In addition, the issue that Book raises is not simply that Defendant Blumenthal had filed motions to dismiss but rather *the degree of expansive and even meritless arguments made in those pleadings* (Complaint, Paras. 23 – 24, 27 – 30).

There is also the Defendants' observation that "[t]here is also an allegation that Mr. Blumenthal declined to respond to a letter from Plaintiff Ethan Book" (Memo. at p. 11). The statement is correct! For best understanding, the Plaintiffs provide here the full text of the second paragraph of the letter:

> Has the [Office of the Attorney General] had a specific role with officials of the [Department of Corrections] with regard to me? If so, considering the role of the OAG in representing the state in various matters of civil litigation initiated by me, matters including my federal civil suit against the CRRA, several state court actions such as mine against the State Treasurer and the Ethics Commission, several claims made with the Claims Commissioner, and several court proceedings involving the Dept. of Revenue

---

[5] The Complaint and related pleadings are clear that various including Fairfield Republican Town Committee Chairman James Baldwin, Republican Party Delegate Tim Lenox and editors of the Connecticut Post have even recently acted in privity with Def. Blumenthal (Complaint at Paras. 35 at p. 19A and 35 – 37 at pgs. 20 and 21; Plaintiffs' Mot. for Preliminary Injunction; #4 at pgs. 8 – 9 and its Affidavit at Paras. 5 – 8). It is relevant here that the Pinkerton doctrine provides that a conspirator can be held liable for the actions of his co-conspirators [See also State v. Martinez (2006) 900 A.2d 485, 278 Conn. 598.]. In addition, the Plaintiffs hereby assert that District Judges including Janet Bond Arterton and Peter C. Dorsey have acted in privity with Def. Blumenthal (Complaint at Paras. 27 and 28 and Plaintiffs' Mot. for Articulation; #8 at p. 4, Item #4), that subsequent to action of District Court Judge Dominic Squatrito to act in privity with Joseph Lieberman, a political ally of Def. Blumenthal (Complaint at Para. 16). Further, it must be remembered that U.S. Senators vote on the budgets for the federal Judicial Department. Finally, on this date, the Plaintiffs received of the State Comptroller information regarding payments made by the State to the law firm of Phelon, Squatrito, Fitzgerald, Dyer & Wood (See Plaintiffs' Mot. of August 22, 2010 for Reconsideration of Court Ruling to Deny Mot. for Preliminary Injunction, its Exhibit 5 at p. A-9.). From July 1987 through June of 1997, a total of $216,412 was paid to the firm. *This information has important relevance to the issues of this case!*

> Services, among other matters, is there not a potential conflict of interest for providing to the DOC legal counsel pertaining to me? Has the OAG had a role in influencing the DOC considerations for agency action which would normally be considered to be outside of DOC purview? Further, did the OAG exercise influence over other state officials to the effect of the state pursuing the petty misdemeanor action against me in Stamford Court?

Simply for the established legal principle of a negative pregnant, Defendant Blumenthal's non-response to the substantive and relevant letter implies actionable conduct. However, one can add to the implications of the unanswered letter a similar but non-characteristic non-response of DOC officials to parallel questions, the extreme excuse for the DOC acting commissioner to decline to answer to parallel questions, and also the actions of the DMV of 2000 then under the assigned legal counsel of presumed Assistant Attorney General Charles Walsh (Complaint at Paras. 25 - 26). Such a pattern of non-responses and even evasion of the questions legally suggest systematic bias, intentional constitutional deprivation, deliberate indifference and a conspiracy of silence [Rickets v. City of Hartford, 74 F.3d 1397 (2nd Cir. 1996)]. Thus, the substance of the communication, the lack of response and the contexts suggest more than a plausibility of actionable conduct of Defendant Blumenthal. Therefore, the Plaintiffs have provided much more than mere circumstantial evidence of parallel conduct of lawful activities, a higher threshold for stating a claim for an antitrust conspiracy, a threshold which is not required for other kinds of claims such as are made for the present.

The Defendants further comment that "[a]pparently based on these assertions the complaint concludes that 'Mr. Blumenthal and/or officials under his authority abuse their position to attempt to influence officials of state agencies and state courts" (Memo. at p. 11). Actually for the numerous, substantive clarifications given above including other detail such as is found at the Complaint at Paragraphs 25 and 26, the statement is correct and on this, the Plaintiffs have fully stated a claim!

However, the Defendants go on to say that "[o]n its face, therefore, the Complaint alleges that the Attorney General has filed motions to dismiss and that this constitutes attempting to influence state courts against the Plaintiffs" (Memo. at p. 11). Not so! What the Plaintiffs allege is that Defendant Blumenthal's long-term pattern of presenting expansive,

unprofessional and meritless arguments with various motions to dismiss is but one factor of several by which it can be reasonably inferred that he and those under his direct supervision abuse their positions to influence citizens such as Plaintiff Book who has legitimate federal claims against the state or state officials.

They further comment that "the Attorney General is obligated by Conn. Gen. Stat., Sec. 3-125 to represent the State of Connecticut and its agencies and officials in 'all legal matters in which the state is an interested party'" (Memo. at p. 11). However, even that statute specifies (1) that he "shall be sworn to the faithful discharge of his duties", (2) that is role is one of "general supervision", and also (3) that an explicit exception to the general principle cited by the Defendants is where "the official acts and doings of said officers are called in question" [Compare with the State Claims Act which allows for liability against a state officer for conduct which is "wanton, reckless or malicious"; Conn. Gen. Statutes, Sec. 4-165(a).]. In addition, as the Plaintiffs discuss in their letter of September 1, 2010 to Defendant Blumenthal (Exhibit 7 at A-21), the established principles of statutory construction require that "[t]he meaning of a statute shall . . . be ascertained from the text of the statute itself and its relationship to other statutes" [quoting State v. Boysaw, 99 Conn.App. 358, 362-363, 913 A.2d 1112 (2007)]. Also, as is further explained in the Plaintiffs' letter of September 1, 2010, Conn. Gen. Statutes, Sec. 3-125 is to be contemplated together with other important provisions such as the Connecticut Constitution, Art. 1, Sections 1 and 2, the Connecticut Rules of Professional Conduct, and the oath of office with which Defendant Blumenthal was sworn in 1990. That oath as is found in Conn. Gen. Statutes, Sec. 1 – 25 follows:

> You do solemnly swear (or affirm as the case may be) *that you will support the Constitution of the United States, and the Constitution of the State of Connecticut, so long as you continue a citizen thereof;* and that you will faithfully discharge, according to law, the duties of the Office of the Attorney General to the best of your abilities; so help you God. (italics added)

Further, again with reference to Krulewitch v. United States, 336 U.S. 440, 445-48, 69 S.Ct. 716, 719-20 fn. 4 (1949) (Complaint at Para. 31), conduct which is otherwise lawful can be unlawful simply for its effect to be oppressive.

The Defendants then vainly attempt to bolster their unfounded arguments by saying that "[r]epresenting an agency or official often includes the obligation to file pleadings including motions to dismiss if merited" (Memo. at p. 11). However, they do not and they cannot assert that there is an obligation for Defendant Blumenthal to file motions to dismiss where such action is not merited or to include their pleadings extremes of factual or legal argument which are not merited.

The Defendants further comment that "[t]he fact that the courts in question have granted the motions to dismiss is a strong indication that they are merited" (Memo. at p. 12). That statement is patently absurd! The Plaintiffs assert that the first step in review of the merit of actions of Defendant Blumenthal and/or his subordinates is consideration of the specific examples which are presented by the Plaintiffs. The Complaint contains detailed information and discussion of the conduct of presumed Assistant Attorney General Charles Walsh in representing state interests in the 1995 federal court lawsuit of Book v. CRRA et al. (Complaint at Para. 23). The Plaintiffs give particular detail as to the meritless arguments made by Attorney Walsh in his Motion to Dismiss of defective service of the complaint, of statutes of limitations and of plaintiff standing. The error of such positions should be apparent to a reasonably intelligent observer from what is described in the Complaint. The Defendants don't specifically address these particular matters (nor do they address the related issue of the lack of compliance with the State Personnel Act in the agency decision to hire Attorney Walsh). Other glaring error is described of Assistant Attorney General Philip Miller in Book v. Norcott et al. (Complaint at Para. 28). As is explained, the limited scope of the Rooker-Feldman doctrine which he referenced simply does not encompass the facts which are apparent of that case. Attorney Miller either knew or should have known of such error when he made his arguments in his motion to dismiss. Such errors cannot be glossed over with an attempt to justify them on the basis that "the courts in question have granted the motions", particularly where there are glaring unaddressed and related issues as are raised in the present of systematic biases and also where there are unresolved issues of the appearance of potential conflicts of interest for the administering judges (See Plaintiff Book's letter of May 5, 2009 to President Barack Obama provided as Exhibit 6 to Plaintiffs' Motion of August 22, 2010 for

Reconsideration of Court Ruling to Deny Motion for Preliminary Injunction; also Complaint at Para. 16; Plaintiff Book's letter to Defendant Blumenthal of January 24, 2010 which is part of Exhibit 5 of Plaintiffs' Motion of August 22, 2010 for Reconsideration; and Plaintiffs' Motion for Articulation; #8, at p. 4, Item 4.).

What is clear of the facts of this lawsuit is that Defendant Blumenthal does *not* enjoy absolute immunity from suit. Rather he enjoys *merely qualified immunity*. Suitable reference is Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). Relevant portions of that important decision follow:

> We therefore hold that government officials performing *discretionary* functions, *generally are shielded from liability* for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. . . .
>
> Where an official could be expected to know that certain conduct would violate statutory or constitutional rights, *he should be made to hesitate*; and a person who suffers injury caused by such conduct may have a cause of action . . . . (at pgs. 818 – 819; italics added).

For the factual and legal discussion provided here, it is apparent that Defendant Blumenthal and/or his subordinates should have been made to hesitate, also that the Plaintiffs have suffered substantial injuries caused by such conduct. With further reference to Burch v. Pioneer Credit Recovery, Inc., 551 F.3d 122 (2nd Cir. 2008), the Plaintiffs have provided much more than mere "labels and conclusions, and a formulaic recitation of the elements of a cause of action . . . ." Thus, the Defendants have fully failed to demonstrate that the Plaintiffs have not stated a claim against Defendant Blumenthal.

3. The Defendants Fail to Demonstrate that Plaintiffs Have Not Stated a Claim Against Defendants Slossberg and Spallone:

The Defendants make specific reference to a portion of the Complaint which discusses these Defendants (Para. 33) and to Count Three which asserts a claim against them (Memo. at p. 12). For proper reference, the Plaintiffs provide here the actual text of Count Three:

> That Defendants Slossberg and Spallone erred in not having reasonably and timely addressed specific and formal pleadings which Book properly presented to the 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.

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).

Clearly, the Plaintiffs have presented much more than mere "'bald assertions and conclusions of law" and they have fully presented "'enough facts to state a claim for relief that is plausible on its face'" (referring to Memo. at p. 12). As is quoted above under Legal Standards, a "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)".

5. The Defendants' Argument that the Plaintiff's Demand for Mandamus Relief Is Moot Is Meritless:

The Defendants say that "Plaintiffs sought an order of mandamus postponing the August 10, 2010 primary election" and that considering that the date has passed, the demand for relief is moot (Memo. at p. 12). The Defendants' contention is both factually and legally incorrect!

The Complaint is explicit that the Plaintiffs seek "a mandamus to order that the State of Connecticut *suspend or* postpone the Primary Election for the Republican candidate for the U.S. Senate scheduled for August 10, 2010" (at p. 27; italics added). When drafting the Complaint, the Plaintiffs were very conscious that possible delays in obtaining favorable court action might require that the results of the scheduled Primary Election be suspended such that a new election be ordered. This is precisely what is contemplated in Pestrak v. Ohio Elections Commission, 670 F.Supp. 1368, 1378 (S.D. Ohio 1987) wherein the court affirms that ordering a new general election "is not beyond the equity powers of a federal court" [citing Donohue v. Board of Elections of State of New York, 435 F.Supp. 957 (E.D.N.Y. 1976) which discusses that elements of fraud in an election process can be a basis for ordering a new general presidential election; same case having been mentioned also in the Plaintiffs' Notice of Intent of August 4, 2010 to Present Motion for Preliminary Injunction]. Such a situation was also contemplated in Caruso v. City of Bridgeport, 285 Conn. 618, 630 (2008). Thus, for the type of repeated, misleading micro-focus which the Defendants have made on this point, even without the proper clarification made above, it is clear that the occurrence of an election is not the type of event for which its mere occurrence moots review and correction of substantive errors. This is additionally true where the types of errors raised pertain to the validity of action to which that occurrence relies [Barclays Bank of New York v. Ivler, 9 Conn.App. 446, 447-48, 519 A.2d 1216 (1987) which discusses that vesting of title pursuant to a transfer can be deemed to be invalid where there is a lack of jurisdiction resulting from action taken in variation with operative stay provisions].

However, even if the occurrence of such a primary election might otherwise result in mootness,

such a factor would not apply where there are collateral consequences [State v. Aquino, 89 Conn.App. 395, 399-401 (2005)] or where there is errors of the type which are "capable of repetition, yet evading review" [United States Parole Commission v. Geraghty, 445 U.S. 388, 398, 100 S.Ct. 1202, 1209, 63 L.Ed.2d 479 (1980)]. For the present, considering the full sets of facts and interrelated issues, this case is fully one for which there would be both collateral consequences as well as error of the type which is capable of repetition, yet evading review g(e.g., the respective general election is presently scheduled for November 2, 2010).

6. The Plaintiffs' Prayer for Mandamus Relief Is Fully Justified:

Although the Defendants made no mention in their late Motion to Dismiss of particular issues merit for the Plaintiffs request for mandamus, in the interests of judicial economy and expediting litigation, the Plaintiffs briefly discuss this important factor.

As is mentioned above, a federal court can review and intervene in a state election process where there is "willful conduct that undermines the organic processes by which candidates are elected" or 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" [quoting Shannon v. Jacobowitz, 394 F.3d 90, 96 (2nd Cir. 2005) (at p. 469) and Griffin v. Burns, 570 F.2d 1065, 1078 (1st Cir. 1978) (at p. 1268). Clearly, these considerations are well satisfied in the present!

Also, "[i]n cases in which injunctive relief is sought, amount in controversy may be measured by either value of rights sought to be gained by plaintiff or cost of enforcing that right to defendant" [Donohue, *supra.*, at p. 958]. Considering the interrelated and inherent issues of a long-term political cancer in state government, the substantial implications on the pending election process of claims against Defendant Blumenthal who is also a major party candidate for the U.S. Senate, the probable collateral consequences including of further injury to the Plaintiffs, of additional liability to the Defendants and also for great significance of the ability of the general public to fully understand and to get to know the Plaintiffs and their campaign

platform which has been undisputedly declared to be the platform of more depth and breadth than that of any other active candidate for the U.S. Senate (Plaintiffs' Motion for Preliminary Injunction; #4 at its Exhibit 12; additional information available), the value of rights sought to be gained by the Plaintiffs (also on behalf of the general public) is truly great in comparison with the cost of enforcing these matters to the Defendants. These factors should also be considered against the improper manner that subject candidate Linda McMahon has been actively promoting an elitist class political system (Complaint at Para. 38).

CONCLUSIONS

The Defendants have engaged in creative, wishful thinking and abusive litigation tactics with a view to evading reasonable responsibilities. With reference to proper limitations of the Eleventh Amendment and to established exceptions of the Pennhurst doctrine, the Plaintiffs have made sound arguable bases for subject matter jurisdiction. 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."* Regarding stating a claim, the Defendants have fully failed their burden to show that the Plaintiffs have not presented sufficient claims and information to survive their Motion to Dismiss. The Plaintiffs have presented claims that are susceptible to the interpretation that the Plaintiffs give. They have presented much more than a mere plausibility to their claims. This District Court therefore is required to draw inferences from these allegations in the light most favorable to the Plaintiffs, and construe the complaint liberally. In addition, there is no proper mootness issue to any portion of the Complaint. Further, In addition, the benefits to be received by the parties and the general public through the requested injunctive relief are far greater than the cost of enforcement.

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

Ethan Book
P.O. Box 1385
Fairfield, CT 06825
Tel. (203) 367-8779
newenglimo@aol.com

CERTIFICATION:

I hereby certify that a complete copy of the foregoing Plaintiffs' Opposition to Defendants' Motion to Dismiss was mailed by 1st class regular mail in accordance with Rule 5(b) of the Federal Rules of Civil Procedure on September 16, 2010 to the following:

Robert D. Snook
Office of the Attorney General
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
Robert.Snook@ct.gov

Also, this Motion has been presented to the legal representative of the Defendants electronically as well also to other potentially interested persons such as Christopher Healy, Linda McMahon, Rob Simmons and Peter Schiff, among others.

_____

Ethan Book