

SUPREME COURT OF CONNECTICUT

Keeley v. Ayala, 328 Conn. 393

179 A.3d 1249 (2018) · No. SC 20029; SC 20040 · Decided April 3, 2018

SUMMARY

The Connecticut Supreme Court reviewed a challenge to the results of a Bridgeport Democratic municipal primary involving alleged absentee-ballot improprieties. The court held that partisan individuals could not direct a police officer to retrieve absentee ballots, that certain unpostmarked ballots were not mailed as required by statute, and that supervised absentee voting at a nursing home failed to comply with applicable requirements. Although the trial court applied the burden of proof incorrectly, the Supreme Court affirmed the order for a new primary because substantial statutory violations left the reliability of the election results seriously in doubt.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Palmer, J.
JURISDICTION	Connecticut
DECIDED	April 3, 2018
DOCKET	SC 20029; SC 20040
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiff challenged the results of a municipal Democratic special primary under General Statutes § 9-329a. The Superior Court found substantial absentee-balloting violations, invalidated ballots, and ordered a new special primary. The defendants pursued both a certified reservation of questions under § 9-325 and an appeal from the judgment.
STANDARD OF REVIEW	The court reviewed statutory interpretation de novo or plenary; underlying factual findings for clear error; and the ultimate determination whether statutory violations seriously undermined election reliability as a mixed question of fact and law subject to plenary review.
PRECEDENTIAL VALUE	Published precedential opinion

PARTIES

Jeanette Herron, Santa I. Ayala, James Mullen, Thomas Errichetti,
Charles D. Clemons, Jr. v. Robert T. Keeley, Jr.

TOPICS

absentee voting

election contests

election administration

statutory interpretation

appellate procedure

PRACTICE AREAS

election law

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municipal law

remedies

QUESTIONS PRESENTED

1. Whether General Statutes § 9-140b prohibits a party official or candidate from directing a police officer to retrieve absentee ballots from electors and deliver them to the town clerk.
2. Whether twelve absentee ballots bearing stamps but lacking postmarks were 'mailed' within the meaning of General Statutes § 9-140b (c).
3. Whether supervised absentee balloting at Northbridge Health Care Center complied with General Statutes §§ 9-159q and 9-159r.
4. Whether the trial court improperly allocated the burden of proof in determining that the reliability of the special-primary result was seriously in doubt.

HOLDINGS

1. General Statutes § 9-140b requires the absentee voter, rather than a partisan third party, to select or appoint an authorized designee to return the ballot. The fourteen ballots retrieved and returned by a police officer at the direction of partisan individuals were not returned in substantial compliance with the statute and were properly invalidated.
2. The trial court did not clearly err in finding that twelve stamped but unpostmarked absentee ballots were not sent by the United States Postal Service and therefore were not 'mailed' within the meaning of § 9-140b (c). The ballots were properly invalidated.
3. The statutes governing mandatory supervised absentee balloting at institutions do not require town officials to notify institutional residents that supervised balloting will occur or to approach residents to determine whether they want absentee-ballot applications. The absence of those actions did not establish a statutory violation.
4. Because the twenty-six properly invalidated absentee ballots exceeded Herron's eighteen-vote margin over Keeley, the reliability of the special-primary result was seriously in doubt, and a new special primary was required under § 9-329a.

KEY QUOTATIONS

“Accordingly, the return of ballots in a manner not substantially in compliance with § 9-140b will result in their invalidation, regardless of whether there is any proof of fraud.” (328 Conn. 411; 179 A.3d 1261)

“Because the number of absentee ballots properly invalidated by the trial court is greater than Herron's eighteen vote margin of victory over the plaintiff, however, the court correctly determined that the results of the November 14, 2017 special primary had been placed seriously in doubt, thereby necessitating that a new special primary be conducted.” (328 Conn. 428; 179 A.3d 1269)

FACTUAL BACKGROUND

A November 14, 2017 Bridgeport Democratic special primary produced an eighteen-vote margin between winning candidate Jeanette Herron and plaintiff Robert T. Keeley, Jr. Fourteen absentee ballots were retrieved from voters and delivered by a police officer at the direction of partisan individuals, and twelve additional ballots arrived at city hall without postmarks under circumstances suggesting they had not been sent through the United States Postal Service. The trial court invalidated those twenty-six ballots, while also finding statutory violations in supervised absentee balloting at a nursing home. The Supreme Court upheld the invalidation of the twenty-six ballots but rejected the nursing-home claim.

PROCEDURAL HISTORY

After irregularities in an earlier Bridgeport Democratic primary, the parties stipulated to vacate that primary and hold a special primary. The plaintiff then challenged the November 14, 2017 special-primary results based on absentee-ballot collection, mailing, and supervised-balloting practices. The trial court sustained all three claims and ordered a new special primary. The Supreme Court of Connecticut affirmed the order, agreeing that fourteen ballots collected at the direction of partisan individuals and twelve ballots lacking postmarks were invalid, but rejecting the challenge to supervised absentee balloting at Northbridge.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The case was remanded for any further proceedings the trial court deemed appropriate and consistent with the opinion; the order requiring a new special primary remained in effect.

CASES CITED

- Simmons-Cook v. Bridgeport, 285 Conn. 657, 941 A.2d 291 (2008)
- Bortner v. Woodbridge, 250 Conn. 241, 736 A.2d 104 (1999)
- Wrinn v. Dunleavy, 186 Conn. 125, 440 A.2d 261 (1982)
- Hardin v. Montgomery, 495 S.W.3d 686 (Ky. 2016)
- Dombkowski v. Messier, 164 Conn. 204, 319 A.2d 373 (1972)
- Gonzalez v. State Elections Enforcement Commission, 145 Conn. App. 458, 77 A.3d 790 (2013), cert. denied, 310 Conn. 954, 81 A.3d 1181 (2013)
- Caruso v. Bridgeport, 285 Conn. 618, 941 A.2d 266 (2008)
- State v. Ouellette, 295 Conn. 173, 989 A.2d 1048 (2010)

- Price v. Independent Party of CT-State Central, 323 Conn. 529, 147 A.3d 1032 (2016)
- Rawls v. Progressive Northern Ins. Co., 310 Conn. 768, 83 A.3d 576 (2014)
- Lyme Land Conservation Trust, Inc. v. Platner, 325 Conn. 737, 159 A.3d 666 (2017)
- In re Coviello v. Knapp, 91 App. Div. 3d 868, 937 N.Y.S.2d 305 (2012)

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