

STATE OF CONNECTICUT  
STATE ELECTIONS ENFORCEMENT COMMISSION

In Re: September 11, 2007 Primary,  
Bridgeport

File No. 2008-004

FINDINGS AND CONCLUSIONS

The Commission initiated this complaint pursuant to General Statutes § 9-7b (a) (1) at its January 16, 2008 meeting based upon potential findings of election law violations in *Christopher Caruso v. City of Bridgeport, et al.*, and *Toyka Simmons-Cook v. City of Bridgeport*, regarding the conduct of election officials during the September 11, 2007 Democratic primary in the City of Bridgeport.

After an investigation, the Commission makes the following findings and conclusions:

1. The Complaint was initiated by the Commission by unanimous motion at its January 16, 2008 meeting based upon a presumption that the trial court concluded that election laws were violated in *Christopher Caruso v. City of Bridgeport, et al.*, and *Toyka Simmons-Cook v. City of Bridgeport*, two cases brought concerning the conduct of election officials during the September 11, 2007 Democratic primary in the City of Bridgeport. On October 24, 2007, the trial court issued a Memorandum of Decision in each of those matters.
2. Notably, the court made very few findings that election laws were violated in its written decisions pertaining to the cases referenced in paragraph 1 above, as the court found that such conclusions were not necessary to the disposition of those matters. Furthermore, the court stressed that this was the first time the optical scan voting machines and related system were used at a primary or election in the City of Bridgeport. The limited findings made by the court are discussed below.
3. In its *Caruso* Memorandum of Decision, the court set forth the standard for determining whether a new election should be granted pursuant to General Statutes § 9-329a. *Christopher Caruso, et al. v. City of Bridgeport, et al.*, Nos. CV074022915S, CV074022916S, 2007 WL 4577628, at \*2 (Conn. Super. Nov. 29, 2007). In doing so, the court adopted the standard set forth by the Connecticut Supreme Court in *Bortner v. Woodbridge*, 250 Conn. 241 (1999), that “there must either be (1) an error or errors in the rulings of an election official, or (2) a mistake in the count of the votes.” The court further concluded that the phrase, “ruling of an election official,” “must involve some act or conduct by the official that (1) decides a question presented to the official, or (2) interprets some statute, regulation or other authoritative legal requirement, applicable to the election process.” *Bortner v. Woodbridge*, 250 Conn. 241, 268 (1999).

4. The *Caruso* court determined that in order to recover under General Statutes § 9-329a, three distinct elements must be established: (1) “there must be a ruling of an election official”; (2) that was in error; and (3) but for the alleged error, the result of the election is seriously in doubt. *Id.* Significantly, the court indicated that “[r]eview under § 9-329a is not intended to cover any and all perceived mistakes or errors that occur in the primary election process.” *Id.* at 8.
5. The court organized Plaintiff’s allegations in *Caruso v. Bridgeport* pertaining to alleged violations leading up to the primary as follows:
  - (1) Failure to advertise for primary election, pursuant to General Statutes § 9-16;
  - (2) Failure to appoint polling place moderators twenty days in advance of primary, pursuant to General Statutes § 9-229 (a);
  - (3) Failure to appoint a head moderator twenty days in advance of primary;
  - (4) Failure to properly train and certify the head moderator, as required by General Statutes § 9-229 (a)-(c);
  - (5) The appointment of a Republican head moderator without exhausting the pool of Democratic moderators;
  - (6) Failure to notify the Caruso campaign of right to submit a list of designees for moderator positions;
  - (7) Failure to provide the names of moderators to the Municipal Clerk for public inspection and failing to provide Caruso campaign with a list when requested;
  - (8) The appointment of Republicans, rather than Democrats, as poll workers; and
  - (9) Failure to ensure that polling place positions be divided as equally as possible between the candidates.

6. General Statutes § 9-16, provides:

The registrars of voters in each town shall give notice of the time and place of each session for the admission of electors held pursuant to section 9-17 by publication in a newspaper published or circulated in such town not more than fifteen nor less than five days before each such session. Nothing herein shall require that such publication be in the form of a legal advertisement.

7. General Statutes § 9-229, provides in pertinent part:

(a) The registrars of voters in the several towns and, in towns where there are different registrars for different voting districts, the registrars of voters in such districts shall appoint the moderators of regular and special state and municipal elections in their respective towns or districts. For the purpose of providing a reserve group of persons who may serve as moderators, the registrars shall designate alternate moderators from among those persons chosen as official checkers, or machine tenders, in the following minimum numbers: In towns with one or more but not exceeding three voting districts, one alternate moderator; in towns with four or more but not exceeding eight voting districts, two alternate moderators; in towns

with more than eight voting districts, a number of alternate moderators equal to one-fourth of the number of voting districts rounded off to the nearest multiple of four. In case the registrars fail to agree in the choice of a moderator or alternate moderator, the choice shall be determined between such registrars by lot. In the case of a primary, the registrar, as defined in section 9-372, shall so appoint such moderators and alternate moderators. Moderators and alternate moderators shall be appointed at least twenty days before the election or primary. The registrars shall submit a list of the names of such moderators and alternate moderators to the municipal clerk, which list shall be made available for public inspection by such clerk. Each person appointed to serve as moderator or alternate moderator shall be certified by the Secretary of the State in accordance with the provisions of subsection (c) of this section, except as provided in subsection (d) of this section or section 9-436.

(b) The Secretary of the State shall (1) request registrars of voters to volunteer to serve as instructors for moderators and alternate moderators, (2) select registrars from among such volunteers to serve as such instructors, (3) establish a curriculum for instructional sessions for moderators and alternate moderators, (4) establish the number of such instructional sessions, provided at least one such instructional session shall be held in each congressional district in each calendar year, (5) train the instructors for such sessions, and (6) certify moderators and alternate moderators. The curriculum for such instructional sessions shall include, without limitation, procedures for counting and recording absentee ballots, "hands on" training in the use of voting machines, and the duties of a moderator in the conduct of a primary and election. The secretary may employ assistants on a temporary basis within existing budgetary resources for the purpose of implementing the provisions of this section. Such assistants shall not be subject to the provisions of chapter 67. The instructors shall conduct instructional sessions for moderators and alternate moderators in accordance with their training by the Secretary of the State and the curriculum for such sessions. Any elector may attend one or more of such instructional sessions. Each instructor shall provide the Secretary of the State with the name and address of each person who completes such a session.

(c) The secretary shall conduct certification sessions for moderators and alternate moderators each year at times and places to be determined by said secretary, provided at least eight such sessions shall be held each calendar year and at least one such session shall be conducted prior to every primary. The secretary shall certify each person who successfully completes an instructional session conducted in accordance with the provisions of subsection (b) of this section and an examination administered by the secretary, as eligible to serve as moderator or alternate moderator at any election or primary held during the time such certification is effective. Any such certification made on or after October 1, 1993, shall be effective for four years from the date of such certification. Only those persons who attend and are thereby certified at such session shall be eligible to serve as moderators on election or primary day, except as provided in subsection (d) of this section or section 9-436.

8. The court determined that Allegation 1, regarding the Registrar's failure to advertise the election pursuant to General Statutes § 9-16, failed as it did "not fall within the definition of a ruling." Furthermore, the court concluded that Allegation 7, regarding the Registrar's failure to provide the names of Moderators to the town clerk's office for public inspection pursuant to General Statutes § 9-229 (a), failed as it did not reach a decision pertaining to a question or the interpretation of a statute by the Registrar. Finally, the court concluded that Plaintiff Caruso failed "to establish any evidence that but for the failure to properly advertise the upcoming primary or provide a list for public inspection at least twenty days in advance of the primary, the results of the primary might have been different." The court therefore concluded that claims regarding Allegations 1 and 7 as described in paragraph 5 above "must fail." *Id.* at 4.
9. The Commission concludes, based on the court's conclusions detailed in paragraph 8 above, that a presumption of a finding of election law violations by the court pertaining to Allegations 1 and 7 is not supported, and therefore the Commission will take no further action pertaining to the aforementioned allegations.
10. Turning to Allegation 2, as is detailed in paragraph 5 above, the plaintiff alleged that there was a failure to appoint polling place moderators twenty days in advance of the primary, pursuant to General Statutes § 9-229 (a).
11. General Statutes § 9-229 (a), provides:
  - (a) The registrars of voters in the several towns and, in towns where there are different registrars for different voting districts, the registrars of voters in such districts shall appoint the moderators of regular and special state and municipal elections in their respective towns or districts. For the purpose of providing a reserve group of persons who may serve as moderators, the registrars shall designate alternate moderators from among those persons chosen as official checkers, or machine tenders, in the following minimum numbers: In towns with one or more but not exceeding three voting districts, one alternate moderator; in towns with four or more but not exceeding eight voting districts, two alternate moderators; in towns with more than eight voting districts, a number of alternate moderators equal to one-fourth of the number of voting districts rounded off to the nearest multiple of four. In case the registrars fail to agree in the choice of a moderator or alternate moderator, the choice shall be determined between such registrars by lot. In the case of a primary, the registrar, as defined in section 9-372, shall so appoint such moderators and alternate moderators. Moderators and alternate moderators shall be appointed at least twenty days before the election or primary. The registrars shall submit a list of the names of such moderators and alternate moderators to the municipal clerk, which list shall be made available for public inspection by such clerk. Each person appointed to serve as moderator or alternate moderator shall be certified by the Secretary of the State in

accordance with the provisions of subsection (c) of this section, except as provided in subsection (d) of this section or section 9-436.

12. General Statutes § 9-329a, provides in pertinent part:

- (a) Any (1) elector or candidate aggrieved by a ruling of an election official in connection with any primary held pursuant to (A) section 9-423, 9-425 or 9-464, or (B) a special act, (2) elector or candidate who alleges that there has been a mistake in the count of the votes cast at such primary, or (3) candidate in such a primary who alleges that he is aggrieved by a violation of any provision of sections 9-355, 9-357 to 9-361, inclusive, 9-364, 9-364a or 9-365 in the casting of absentee ballots at such primary, may bring his complaint to any judge of the Superior Court for appropriate action. In any action brought pursuant to the provisions of this section, the complainant shall file a certification attached to the complaint indicating that a copy of the complaint has been sent by first-class mail or delivered to the State Elections Enforcement Commission. If such complaint is made prior to such primary such judge shall proceed expeditiously to render judgment on the complaint and shall cause notice of the hearing to be given to the Secretary of the State and the State Elections Enforcement Commission. If such complaint is made subsequent to such primary it shall be brought, not later than fourteen days after such primary, or if such complaint is brought in response to the manual tabulation of paper ballots, described in section 9-320f, such complaint shall be brought, not later than seven days after the close of any such manual tabulation, to any judge of the Superior Court.
- (b) Such judge shall forthwith order a hearing to be held upon such complaint upon a day not more than five nor less than three days after the making of such order, and shall cause notice of not less than three days to be given to any candidate or candidates in any way directly affected by the decision upon such hearing, to such election official, to the Secretary of the State, the State Elections Enforcement Commission and to any other person or persons, whom such judge deems proper parties thereto, of the time and place of the hearing upon such complaint. Such judge shall, on the day fixed for such hearing, and without delay, proceed to hear the parties and determine the result. If, after hearing, sufficient reason is shown, such judge may order any voting machines to be unlocked or any ballot boxes to be opened and a recount of the votes cast, including absentee ballots, to be made. Such judge shall thereupon, if he finds any error in the ruling of the election official, any mistake in the count of the votes or any violation of said sections, certify the result of his finding or decision to the Secretary of the State before the tenth day following the conclusion of the hearing. Such judge may (1) determine the result of such primary; (2) order a change in the existing primary schedule; or (3) order a new primary if he finds that but for the error in the ruling of the election official, any mistake in the count of the votes or any violation of said sections, the result of such primary might have been different and he is unable to determine the result of such primary.
- (c) The certification by the judge of his finding or decision shall be final and

conclusive upon all questions relating to errors in the ruling of such election official, to the correctness of such count, and, for the purposes of this section only, such alleged violations, and shall operate to correct any returns or certificates filed by the election officials, unless the same is appealed from as provided in section 9-325. In the event a new primary is held pursuant to such Superior Court order, the result of such new primary shall be final and conclusive unless a complaint is brought pursuant to this section. The clerk of the court shall forthwith transmit a copy of such findings and order to the Secretary of the State.

...

13. The court found pertaining to Allegation 2 that the Registrar conceded she had “purposely extended the deadlines [to appoint polling place moderators] as a result of the new optical scan voting technology and paper ballots that were used in this election for the first time.” However, the court was “not persuaded that the decision [to extend the deadline] was improper.” *Id.* While the court determined that this decision by the Registrar was a “ruling,” it nevertheless found that the ruling failed to satisfy the third prong that the court found necessary to recover under General Statutes § 9-329a, which is a showing by the preponderance of the evidence that as a result of such ruling “the results of the primary might have been different, and that the court is unable to determine the outcome.” *Id.* at 5.
14. The Commission concludes based on the court’s conclusions detailed in paragraph 13 above, that a presumption of a finding of election law violations by the court pertaining to Allegation 2 is not supported, and therefore the Commission will take no further action pertaining to this allegation.
15. The Commission turns to Allegation 6, as detailed in paragraph 5 above, regarding the Registrar’s failure to notify the Caruso campaign of right to submit a list of designees for moderator positions, pursuant to General Statutes § 9-436 (e).
16. General Statutes § 9-436 (e), provides:  
  
(e) The registrar shall designate one of the moderators so appointed by the registrar to be head moderator or shall appoint as head moderator an elector who is not also moderator of a polling place and who shall be deemed a primary official. The registrar may also appoint a deputy head moderator to assist the head moderator in the performance of his duties. A deputy head moderator shall also be deemed to be a primary official. Each registrar's appointments of primary polling place officials, except moderators of polling places, and of designees to conduct supervised voting of absentee ballots pursuant to sections 9-159q and 9-159r shall be divided equally, as nearly as may be, between designees of the party-endorsed candidates and designees of one or more of the contestants, provided, if a party-endorsed candidate is a member of a party other than the one holding the primary, such primary officials, except voting machine mechanics, shall be enrolled party members of the party holding the primary. Names of designees and alternate designees for such positions shall be submitted in writing by party-endorsed candidates and contestants

to the registrar not later than ten days before the primary, except that names of designees and alternate designees for the position of moderator shall be so submitted not later than twenty-one days before the primary and, if such lists are not so presented, all such appointments shall be made by the registrar but in the above-mentioned proportion. The registrar shall notify all such candidates and contestants of their right to submit a list of designees under this section. Notwithstanding any other provision of this section, the registrar shall appoint as moderators only persons who are certified to serve as moderators or alternate moderators pursuant to section 9-229, unless there is an insufficient number of such persons who are enrolled members of the registrar's party in the municipality or political subdivision holding the primary, in which case the registrar may appoint a new moderator in accordance with section 9-229, but only to the extent of such insufficiency. Primary central counting moderators and absentee ballot counters shall also be deemed primary officials. No primary official shall perform services for any candidate at the primary on primary day.

17. Regarding Allegation 6, the court concluded that it need *not* determine whether the Registrar gave notice of a right to submit a list of designees, or what form of notice satisfies the statute, because it found that "the evidence indicates the Caruso campaign was in fact aware of its right to submit a list." Furthermore, the court determined that "since the purpose of § 9-436(e) is to ensure that parties are aware of their right to submit a list; if the party is in fact aware, without receiving actual notice, then the party is not aggrieved even if formal notice is not provided." *Id.*
18. The Commission concludes despite the court's conclusions detailed in paragraph 17 above, that a presumption of a finding of election law violations by the court pertaining to Allegation 6 was supported, by the record. Nevertheless, because the court determined that because the Caruso campaign was in fact aware of their right to submit a list of election officials to the Registrar, and subsequently did so, that the Commission will take no further action pertaining to this allegation.
19. The Commission turns to Allegation 9, regarding the Registrar's failure to ensure that polling place positions be divided as equally as possible between the candidates, and Allegation 8 pertaining to the appointment of Republicans, rather than Democrats, as poll workers, which are detailed in paragraph 5 above.
20. The court found Allegation 9, as is detailed in paragraph 5 above, to be "lacking." Specifically, the court rejected the claim that the shortage of Caruso poll workers could be traced "back to the [R]egistrar's failure to provide proper notice." Therefore, according to the court, to recover under General Statutes § 9-329a, "[Caruso] must establish the sufficiency of this claim in its own right." However, the court found that it was "not established that the insufficient number of Caruso poll workers was caused by an improper ruling made by the Registrar's office." Moreover, the court determined that the decision "to extend the deadline [was] the only perceived *Bortner* ruling made by an election official as to this issue, and was decidedly not improper, particularly because the [Caruso] campaign . . . benefited

from the extended deadline.” Finally, regarding the aforementioned Allegation 8, the court concluded that “based on the evidence presented, [Caruso had] not established that but for the lack of equal [party] representation at the polls the results of the election might have been different.” *Id.* at 6.

21. The Commission concludes based on the court’s conclusions detailed in paragraph 20 above, that the a presumption of a finding of election law violations by the court pertaining to Allegations 9 and 8 was not supported, and therefore the Commission will take no further action pertaining to these allegations.
22. The Commission turns to Allegation 3, regarding the Registrar’s failure to appoint a head moderator twenty days in advance of the primary and Allegation 4, pertaining to a failure to properly train and certify a head moderator, as required by General Statutes § 9-229 (a)-(c), which are detailed in paragraph 5 above.
23. The court found that Allegation 3, regarding the appointment of the head moderator, failed because while the evidence established “that a head moderator was not appointed at least twenty days in advance of the election,” Caruso nevertheless failed to present “any evidence to demonstrate that but for this late appointment, the election results might have been different, and the court is unable to determine the result.” Likewise, regarding the aforementioned Allegation 4 and the head moderator’s certification, the court found that Caruso “failed to offer any evidence that the head moderator’s lack of training had an effect on the outcome of the election.” In addition, the court pointed out that a representative from the Secretary of the State’s office testified at trial that “it is not improper for a registrar to provide training for an official in an emergency situation.” *Id.*
24. The Commission concludes, based on the court’s conclusions detailed in paragraph 23 above, that a presumption of a finding of election law violations by the court pertaining to Allegations 3 and 4 was not supported, and therefore the Commission will take no further action pertaining to the these allegations.
25. The Commission turns to Allegation 5, as detailed in paragraph 5 above, pertaining to the appointment of a Republican head moderator without exhausting the pool of Democratic moderators.

26. The court concluded that Caruso's reading of General Statutes § 9-436 was "incorrect." Specifically, the court found that while the statute "requires the Democratic registrar to exhaust the pool of available Democrats before appointing a Republican to the role of moderator," it did "not require" the same procedure for the appointment of a head moderator. The court concluded that even if the facts could be read "to support the finding of a ruling," it was nevertheless "not improper." Therefore, the court concluded that Allegation 5 above failed "as a result of the lack of evidence that but for the appointment of the Republican head moderator, the outcome of the primary might have been different, and [the] court is unable to determine the result." *Id.* at 6-7.
27. The Commission concludes, based on the court's conclusions detailed in paragraph 26 above, that a presumption of a finding of election law violations by the court pertaining to Allegation 5 is not supported, and therefore the Commission will take no further action pertaining to this allegation.
28. Following its analysis of pre-primary alleged violations, the court addressed violations that allegedly occurred *during* the election. Specifically, the court organized Plaintiff's aforementioned allegations in *Caruso v. Bridgeport* as follows:
- (1a) The polls were understaffed;
  - (2a) Election officials acted in more than one capacity;
  - (3a) The Registrar failed to prepare inactive voter lists and distribute copies to the polls on election day; and
  - (4a) Poll workers instructed voters to vote for Caruso's opponent and failed to open the polls on time.
29. The Commission turns to Allegation 1a, as detailed in paragraph 28 above, alleging that the polls were understaffed.
30. The court rejected Allegation 1a and Plaintiff's claim that the law prohibited "understaffing" at the polls. Specifically, the court found that Allegation 1a was "unsupported by any statutory authority that grants the [R]egistrar the ability to cancel the election in the event that it is understaffed." Furthermore, the court noted that "admittedly, some poll workers did not report for duty as established on primary day, including some persons previously designated by the [Caruso campaign]." *Id.* at 7. Moreover, rather than establishing that the results might have been different, the overwhelming evidence, according to the court, "...demonstrated that the election results were not affected, despite small problems occurring at the polls." Finally, the court found that "[Caruso had] not sustained his burden of establishing that but for the understaffing of the polls, the results might have been different and the court [was] unable to determine the outcome." *Id.*
31. The Commission concludes based on the court's conclusions detailed in paragraph 30 above, that a presumption of a finding of election law violations by the court

pertaining to Allegation 1a is not supported, and therefore the Commission will take no further action pertaining to this allegation.

32. Turning to Allegation 2a, detailed in paragraph 28 above, regarding understaffing of the polls that allegedly lead to election officials acting in more than one capacity.
33. The court rejected Allegation 2a that because in several instances election officials either worked in dual capacities or certified results in more than one capacity, the results of the primary were suspect. Specifically, the court concluded with regard to Allegation 2a that there was “no evidence submitted to establish that but for the involvement of election officials in multiple roles, the result of the election might have been different and the court [was] unable to determine the result.” *Id.*
34. The Commission concludes based on the court’s conclusions detailed in paragraph 33 above, that the Commission’s presumption of a finding of election law violations by the court pertaining to Allegation 2a was not supported, and therefore the Commission will take no further action pertaining to this allegation.
35. Turning to Allegation 3a, and the Registrar’s alleged failure to prepare inactive voter lists and distribute copies to the polls on Election Day.
36. The court concluded that Allegation 3a, regarding a failure by the Registrar’s office to prepare and provide inactive voter lists to each polling place at the primary failed because it was “insufficiently proven.” In addition, the court found that it did not hear “evidence of a single voter that was unable to vote as a result of the absence of an inactive voter list.” *Id.* at 8.
37. The Commission concludes, based on the court’s conclusions detailed in paragraph 36 above, that its presumption of a finding of election law violations by the court pertaining to Allegation 3a was not supported, and therefore the Commission will take no further action pertaining to this allegation.
38. Turning to Allegation 4a detailed in paragraph 28 above and pertaining to poll workers allegedly instructing voters to vote for Plaintiff’s opponent and their failing to open the polls on time.
39. The court concluded that Allegation 4a, as detailed in paragraph 38 above, did not “fall with the definition of a ruling under *Bortner*.” Furthermore, that Plaintiff had “failed to submit evidence of even one voter changing their vote as a result of the instructions given at the polls.” Likewise, the claims arising from the late opening of the polls at Longfellow School, or a translator potentially instructing voters how to vote, the court found, did “not rise to the level of actions that could overturn the results of an election.” *Id.*

40. The Commission concludes based on the court's conclusions detailed in paragraph 39 above, that its presumption of a finding of election law violations by the court pertaining to Allegation 3a was not supported, and therefore the Commission will take no further action pertaining to this allegation.
41. Following its analysis of alleged violations that occurred prior to and during the election, the court addressed violations that allegedly occurred *after* the close of the polls. The court organized the latter allegations as follows:
- (1b) Ballots were not immediately returned to the municipal clerk after voting and were ultimately returned in unsealed bags;
  - (2b) Tally sheets of each poll were not properly certified at each polling location at the end of the day; and
  - (3b) A representative of Caruso campaign was denied access to the room where the absentee ballot count was being conducted.
42. The Commission turns to Allegation 1b, detailed in paragraph 41 above, and pertaining to the allegation that ballots were not immediately returned to the municipal clerk after voting and were ultimately returned in unsealed bags.
43. The court concluded, with regard to Allegation 1b, that the failure to return bags of ballots to the municipal clerk did not establish "evidence of a ruling under *Bortner*." Furthermore, it determined that "even though [Caruso] submitted testimony to establish that at least two poll workers forgot the ballots at the polls and had to be escorted back to retrieve the ballots, he [did] not establish that this mistake might have changed the result of the election." The court found that while the decision of the head moderator to accept ballots that were left unattended "may qualify as a ruling," Allegation 1b still failed because "there [was] no evidence that the ballots were tampered with during the time they were unattended, or before they were sealed." The court concluded that the delay in retrieving the ballots could not be shown to have "impacted [the] results of the election in any way." *Id.*
44. The Commission concludes based on the court's conclusions detailed in paragraph 43 above, that a presumption of a finding of election laws violations by the court pertaining to Allegation 1b is not supported, and therefore the Commission will take no further action pertaining to this allegation.
45. Turning to Allegation 2b detailed in paragraph 41 above and pertaining to the allegation that tally sheets of each poll were not properly certified at each polling location at the end of the day.

46. The Commission notes that the court considered several claims related to the failure to certify the tally sheets “including the use of pencil by election officials, and the fact that several election officials signed the results in multiple capacities due to previously discussed staffing issues.” *Id.* at 8-9.
47. The court concluded that the claim regarding the use of the pencil and detailed in paragraph 46 above did not fall within the purview of § 9-329a as the petitioner failed “to cite any statutory authority requiring the use of ink to complete the checklist at each poll.” *Id.*
48. Additionally, the court rejected the aforementioned Allegation 2b involving a claim of aggrievement “by the decision of election officials to certify the results and sign in multiple capacities is also inadequately proven.” Specifically, it found “no evidence of a question presented to an election official, or a statute interpreted,” as it related to this claim and therefore the claim failed “because the [Caruso had] not established that but for the improper certification, the results would have been different.” *Id.*
49. The Commission concludes based on the court’s conclusions detailed in paragraph 46 through 48 above, regarding flawed certification of checklist and results above, that the a presumption of a finding of election law violations by the court pertaining to Allegation 2b is not supported, and therefore the Commission will take no further action pertaining to this allegation.
50. The Commission turns to Allegation 3b, detailed in paragraph 41 above, and pertaining to the allegation that a representative of Caruso campaign was denied access to the room where the absentee ballot count was being conducted.
51. General Statutes § 9-147a, provides:
- (a) At any election, primary or referendum all absentee ballots shall be counted in the respective polling places except when counted at a central location. Any election official serving in a polling place may observe the counting of absentee ballots at that polling place.
- (b) At any election, primary or referendum, all absentee ballots may be counted at a central location designated by the registrars of voters in writing to the municipal clerk at least twenty days before the election, primary or referendum, which location shall be published in the warning for the election, primary or referendum. If unaffiliated electors are authorized under section 9-431 to vote in the primary of either of two parties, absentee ballots may not be counted at a central location unless both parties decide to have central counting and designate the same room for such central counting. If such designation of a central location has been made, the ballots shall not be counted in any polling place but all absentee ballots shall be

separated, counted, tallied, placed in depository envelopes and returned by voting district. Any member of the public may observe the counting of absentee ballots at such central location.

52. The court did conclude that the decision to make the Caruso campaign worker leave the absentee ballot count was an “improper ruling under Bortner.” However, it also determined that regarding the aforementioned Allegation 3b that “no evidence was submitted to establish that this ruling might have affected the outcome of the election and the court [was] unable to determine the result.” Finally, the Court found that the Caruso worker’s “mere absence” from the room where absentee ballots were being counted was “insufficient to establish the high burden required to order a new primary.” *Id.* at 9.
53. The Commission concludes based on the court’s conclusions detailed in paragraph 52, that the removal of a Caruso campaign worker from the absentee ballot count did not satisfy the requirements of General Statutes § 9-147a. However, consistent with the court’s aforementioned conclusions, the Commission also concludes that there was not sufficient evidence to conclude that this violation would have changed the results of the primary. The Commission notes that the Caruso campaign worker was permitted as a “member of the public” pursuant to § 9-147a (b) to remain during the absentee ballot count. Nevertheless, in consideration of the court’s final rulings in these matters, the Commission declines to take further action regarding this matter.
54. The court in its *Simmons-Cook* Memorandum of Decision considered a single allegation that the election officials conducting a recanvass after the primary made rulings which prevented Plaintiff Toyka Simmons-Cook from having a representative official appointed to participate in the recanvass on her behalf as is required by General Statutes § 9-445. *Toyka Simmons-Cook v. Bridgeport*, No. CV074022308, 2007 WL 3380135, (Conn. Super. Oct. 24, 2007) .
55. General Statutes § 9-445, provides:

Forthwith after a primary for nomination to a municipal office or for election of members of a town committee, or forthwith upon tabulation of the vote for a state or district office by the Secretary of the State when the plurality of an elected or nominated candidate over the vote for a defeated candidate receiving the next highest number of votes was either (1) less than a vote equivalent to one-half of one per cent of the total number of votes cast at the primary for the office or position but not more than one thousand votes, or (2) less than twenty votes, there shall be a recanvass of the returns of the voting machine or voting machines used in such primary for said office or position unless within one day after the primary, in the case of nomination to a municipal office or for election of members of a town committee, or prior to the time the Secretary of the State notifies the town clerk of state and district offices which qualify for an automatic recanvass, the defeated

candidate or defeated candidates, as the case may be, for such office or position file a written statement waiving the right to such recanvass with the municipal clerk in the case of a municipal office or town committee, or with the Secretary of the State in the case of a state or district office. In the case of a state or district office, the Secretary of the State, upon tabulation of the votes for such an office, shall notify the town clerks in the state or district, as the case may be, of the state and district offices which qualify for an automatic recanvass and shall also notify each candidate for any such office. When a recanvass is to be held, the municipal clerk shall promptly notify the moderator, as defined in section 9-311, who shall proceed forthwith to recanvass such returns of the office in question in the same manner as is provided for a recanvass in regular elections, except that the recanvass officials shall be divided equally, as nearly as may be, among the candidates for such office. In addition to the notice required under section 9-311, the moderator shall, before such recanvass is made, give notice in writing of the time and place of such recanvass to each candidate for a municipal office which qualifies for an automatic recanvass under this section. For purposes of this section, "the total number of votes cast at the primary for the office or position" means, in the case of multiple openings for the same office or position, the total number of electors checked as having voted in the primary in the state, district, municipality or political subdivision, as the case may be. When a recanvass of the returns for an office for which there are multiple openings is required by the provisions of this section, the returns for all candidates for all openings for the office shall be recanvassed. Nothing in this section shall preclude the right to judicial proceedings on behalf of such defeated candidate under any provision of this chapter.

56. The court did conclude that the plaintiff had failed to satisfy the third prong of the *Bortner* test, which requires the determination of but for causation resulting from the error by the defendant in not appointing plaintiff's choice for official counter. Specifically, the court indicated that "[a]lthough the petitioner should have been allowed to appoint an official counter, she ... failed to establish that but for her lack of an official counter, the election results might have been different and the court [was] unable to determine the result." *Toyka Simmons-Cook v. Bridgeport*, No. CV074022308, 2007 WL 3380135, at \* 7 (Conn. Super. Oct. 24, 2007) .
57. The Commission concludes based on the court's conclusions detailed in paragraph 56, that the failure to appoint Plaintiff Cook-Simmons' designee as counter at the recanvass did not satisfy the requirements of General Statutes § 9-445. However, consistent with the court's aforementioned conclusions, the Commission also concludes that there was insufficient evidence to conclude that this violation would have changed the results of the primary. The Commission notes that Plaintiff Cook-Simmons *was* permitted to appoint an official counter to the recanvass following the September 11, 2007 Bridgeport primary pursuant to § 9-445, and *was* denied the right to do so. Nevertheless, in consideration of the court's final rulings and under

these specific circumstances, the Commission declines to take further action regarding this matter.

58. On November 5, 2007, the Connecticut Supreme Court denied a motion to stay the trial court's opinion and postpone the November 6, 2007 general election in the City of Bridgeport. The Court determined that neither it "...nor the trial court had the authority to postpone the general election pursuant to § 9-329 under any circumstances." *Toyka Simmons-Cook v. City of Bridgeport, et al.*, (SC 18013). On February 26, 2008, the Connecticut Supreme Court determined that the plaintiff was not entitled to a new primary election, because she had not shown that the lower court was unable to determine the results of the primary based on a counting mistake. The opinion of the lower court was therefore affirmed. *Id.*
59. The trial court in the *Caruso* matter recognized that no election could ever be without its "detractors" and that over 8,500 people exercised their right to vote in the primary on September 11, 2007. *Caruso*, 2007 WL 4577628, at \*9. Consequently, the court concluded that it would be "an act of judicial overreaching to deprive the citizens of Bridgeport of the right to have the results of that primary election stand and be counted without clear reasons to do so." *Id.*
60. Furthermore, the court determined that only if "the will of the people of Bridgeport did not accurately and legally manifest itself in the results" or if the court was "unable to determine the outcome" would it grant a new election he seeks under General Statutes § 9-329a (b) (3). The court concluded that after it had "listened to all the testimony," that the "conduct of the election officials did not prevent a fair exercise of the people's right to vote in this primary, and therefore, "there is insufficient evidence to substantiate Caruso's claims that the interests of justice warrant a new primary." *Id.* at 9.
61. As noted by the court in *Caruso*, the September 11, 2007 primary was "...the first election using the new paper ballot system and optical scan voting technology, all under time constraints." Furthermore, the court noted that it was "possible that certain aspects of the primary were not as well managed as a fully staffed operation might have been." *Id.* Nevertheless, the court concluded that "the discrepancies were not sufficient to change the results of the primary of September 11, 2007." *Id.*
62. Notably, the Commission finds that contrary to its initial presumptions in authorizing an investigation of this matter, the trial court did not make significant findings of election law violations. The trial court consistently declined to determine whether a violation of election law occurred choosing instead to conclude that there was no evidence that the September 11, 2007 primary results did not reflect the will of the voters. Subsequently, the trial court's decisions were affirmed by the state's Supreme Court. *Toyka Simmons-Cook v. City of Bridgeport, et al.*, (SC 18013).

63. In addition, the investigation revealed that Office of the Secretary of State staff was consulted by Bridgeport's election officials throughout the day on September 11, 2007 and provided assistance to those officials as they attempted to administer a completely new voting system for the first time.
64. The Commission notes that in analyzing the extensive transcripts, it was determined that, while clearly not sufficient to affect the results of the primary, various election officials nevertheless possibly committed technical violations of provisions of General Statutes, Title 9. Furthermore, proving such violations would require additional investigation to substantiate any such claims.
65. The Commission stresses, that while it does not undervalue the importance of election officials being thorough and diligent in their exercise of their functions, it is concerned over the further expenditure of resources to investigate potential violations of rules for elections administration, when the courts, as well as events in Bridgeport, have since underscored weaknesses in Connecticut's elections administration, and have rendered plentiful potential remedies to these shortcomings, that are being or may be implemented both through legislation and rule making by the Office of the Secretary of the State.
66. The Commission further stresses that any potential violations by election officials in Bridgeport at the September 7, 2007 primary seem to be inadvertent error, and not systemic in nature. Of note, the Commission has historically treated these types of violations with clarifying and instructive henceforth orders to those individuals involved.
67. Based on the findings detailed herein, and the extensive resources committed to this investigation to date, the Commission has determined not to commit further resources to this investigation given the technical nature of possible violations; the finality of the Supreme Court's affirmation of the trial court's decisions; the current distance in time from any of the instances relating thereto; the possibility that the evidence in support of those potential violations may no longer exist; the fact that this was the first time the election officials were administering the optical scan voting system; and because there are currently efforts by this Commission, the Secretary of the State and the legislature to administratively and/or legislatively amend policies, procedures, regulations and statutes to remedy incongruities within election processes.
68. The Commission, in consideration of the extensive findings detailed above, and under these specific facts and circumstances, therefore declines to take any further action regarding the investigation it initiated by unanimous motion at its January 16, 2008 meeting based upon presumptions of elections law violations. The Commission nevertheless stresses that the record, upon review, provides ample evidence that the Registrars' of Voters and election officials at the September 7, 2007 primary, through acts and omissions, failed to administer this election and execute their duties pursuant to various provisions of General Statutes, Title 9, and the Commission's

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requisite authority to investigate and enforce any related violations of the aforementioned statutes is distinct and apart from the Superior Court's decisions regarding the same conduct detailed herein.

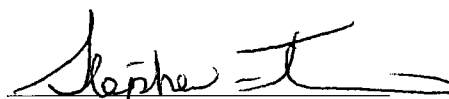
69. Finally, the Commission concludes that with regard to the conduct and administration of the September 11, 2007 Democratic Primary in the City of Bridgeport, and in light of the detailed and thorough treatment of that primary by the court in its *Christopher Caruso v. City of Bridgeport, et al*, and *Toyka Simmons-Cook v. City of Bridgeport* decisions, no further review or investigation into the conduct of election officials and circumstances surrounding the September 11, 2007 Democratic primary in the City of Bridgeport is warranted.

#### ORDER

The following Order is recommended on the basis of the aforementioned findings:

That the no further action be taken.

Adopted this 22<sup>nd</sup> day of June, 2011 at Hartford, Connecticut.

A handwritten signature in black ink, appearing to read "Stephen F. Cashman", with a long horizontal flourish extending to the right.

Stephen F. Cashman, Chairperson  
By Order of the Commission