SUPREME COURT

OF THE

STATE OF CONNECTICUT

S.C. 19010

REPUBLICAN PARTY OF CONNECTICUT
PLAINTIFF-APPELLANT

v.

DENISE W. MERRILL, SECRETARY OF THE STATE
DEFENDANT-APPELLEE

BRIEF OF THE PLAINTIFF-APPELLANT
REPUBLICAN PARTY OF CONNECTICUT
WITH ATTACHED APPENDIX

ATTORNEYS FOR THE PLAINTIFF-APPELLANT, REPUBLICAN PARTY OF CONNECTICUT:

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TABLE OF CONTENTS

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STATEMENT OF THE ISSUES

I. IS THE COMPLAINT BARRED BY SOVEREIGN IMMUNITY?

II. DOES GENERAL STATUTES § 9-249a REQUIRE THAT THE REPUBLICAN PARTY'S CANDIDATES FOR OFFICE BE PLACED ON THE FIRST LINE OF THE BALLOTS FOR THE NOVEMBER 6, 2012 ELECTION?

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TABLE OF AUTHORITIES

Cases

Statutes

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Public Acts

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Other Materials

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NATURE OF THE PROCEEDINGS AND STATEMENT OF FACTS

Connecticut law requires that the political parties who had a gubernatorial candidate in the last election be given priority in the listing of the parties on the ballots for subsequent elections and provides a specific order in which the parties shall appear. General Statutes § 9-249a requires that the political party whose gubernatorial line polled the most votes during the preceding gubernatorial election be placed on the first line of the ballots for the subsequent elections. The statute is entitled "Order of parties on ballots," and specifically states, in relevant part:

> The names of the parties shall be arranged on the ballots in the following order: (1) The party whose candidate for Governor polled the highest number of votes in the last-preceding election; (2) Other parties who had candidates for Governor in the last-preceding election, in descending order, according to the number of votes polled for each such candidate...

General Statutes § 9-249a. The statute's focus is on the *political parties*.

The last preceding election for Governor took place on November 2, 2010. According to the Statement of Vote certified by the Secretary of the State, the 2010 gubernatorial election resulted in the following votes:

1. 560,874 votes were cast for Tom Foley on the Republican Party's line on the ballots for the 2010 gubernatorial election.

2. 540,970 votes were cast for Dan Malloy on the Democratic Party's line on the ballots for the 2010 gubernatorial election.

3. 26,308 votes were cast for Dan Malloy on the Working Families Party's line on the ballots for the 2010 gubernatorial election.

4. 17,629 votes were cast for Thomas E. Marsh on the Independent Party's line on the ballots for the 2010 gubernatorial election.

See Reservation Stipulation; 2010 Statement of the Vote.

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There is no dispute that the Republican Party's line on the ballot for the 2010 gubernatorial election polled the most votes. However, contrary to General Statutes § 9-249a, the defendant, Denise W. Merrill ("Merrill"), the Secretary of the State, intends to place the Democratic Party on the first line of the ballot for the 2012 general election. See Complaint, para. 21.

On August 9, 2012, the plaintiff, Republican Party of Connecticut ("Republican Party"), brought the instant action seeking a declaratory judgment and injunctive relief in that, as a result of the 2010 gubernatorial election results, General Statutes § 9-249a requires that the Republican Party be listed first on the ballots for the November 6, 2012, general election. On August 14, 2012, the trial court (*Graham, J.*) reserved the following two questions for advice to the Appellate Court: (1) "Is the complaint barred by sovereign immunity?;" and (2) "Does General Statutes § 9-249a require that the Republican Party's candidates for office be placed on the first line of the ballots for the November 6, 2012 election?" Trial Court's Reservation dated 8/14/12. On August 17, 2012, this Court granted the Republican Party's motion to transfer this Reservation and issued an expedited briefing and argument scheduling order.

ARGUMENT

I. THIS ACTION IS NOT BARRED BY SOVEREIGN IMMUNITY

This action is not barred by sovereign immunity because: (1) count one of the complaint seeks a declaratory judgment; and (2) Merrill is acting in excess of her statutory authority by refusing to list the parties on the ballots for the November 6, 2012, election in the order that is required by General Statutes § 9-249a.

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The doctrine of sovereign immunity is based on common law and provides that "the state cannot be sued without its consent." Nelson v. Dettmer, 305 Conn. 654, 661 (2012). There are, however, exceptions to this rule:

> [T]he sovereign immunity enjoyed by the state is not absolute. There are exceptions: (1) when the legislature, either expressly or by force of a necessary implication, statutorily waives the state's sovereign immunity ... (2) when an action seeks declaratory or injunctive relief on the basis of a substantial claim that the state or one of its officers has violated the plaintiff's constitutional rights ... and (3) when an action seeks declaratory or injunctive relief on the basis of a substantial allegation of wrongful conduct to promote an illegal purpose in excess of the officer's statutory authority.

Columbia Air Services, Inc. v. Department of Transportation, 293 Conn. 342, 349 (2009). In Horton v. Meskill, 172 Conn. 615, 624 (1977), this Court explained that sovereign immunity normally should not bar suits seeking declaratory and injunctive relief. Generally, "the state cannot use sovereign immunity as a defense in an action for declaratory or injunctive relief." Bloom v. Gershon, 271 Conn. 96, 97 (2004); see also Miller v. Egan, 265 Conn. 301, 327 (2003). This Court clarified in Gold v. Rowland, 296 Conn. 186, 212 (2010), that an action seeking injunctive relief will not be barred by sovereign immunity if it seeks to show that the defendants acted in excess of their statutory authority or have acted in a way that violates the state or federal constitutions.

A. The Instant Declaratory Judgment Action Is Not Barred By Sovereign Immunity

This action seeks a *declaration* as to the meaning of General Statutes § 9-249a. Thus, the doctrine of sovereign immunity does not apply.

General Statutes § 52-29 provides for declaratory judgment actions and states:

> Superior Court may declare rights and legal relations. (a) The Superior Court in any action or proceeding may declare rights and other legal relations on request for such a declaration, whether or not further relief is or could be claimed. The declaration shall have the force of a final judgment.

(b) The judges of the Superior Court may make such orders and rules as they may deem necessary or advisable to carry into effect the provisions of this section.

(Emphasis added.) General Statutes § 52-29. "[T]he statute authorizing the Superior Court to render declaratory judgments is as broad as it well could be made." Horton v. Meskill, 172 Conn. at 626-627. This Court may declare the meaning of General Statutes § 9-249a in the context of this reservation without determining what, if any, relief may be provided against the State as result of that declaration.

As a practical matter, sovereign immunity is not applicable in the context of this type of action. For example, in McCoy v. Commissioner of Public Safety, 300 Conn. 144 (2011), the plaintiff brought a declaratory judgment action against the Commissioner of Public Safety to determine whether a conviction for violating General Statutes § 14-227a falls within the motor vehicle exception to the definition of a criminal "offense" as defined in General Statutes § 53a-24(a). This Court was not barred by sovereign immunity from concluding that a second conviction within ten years for driving while intoxicated does not fall into the "motor vehicle violation" exception to the definition of a "criminal offense."

Similarly, in American Promotional Events, Inc. v. Blumenthal, 285 Conn. 192 (2008), this Court was able to interpret Connecticut's pyrotechnics laws, General Statutes §§ 29-356 and 29-357, in the context of a declaratory judgment action that had been brought by a fireworks distributer against the Attorney General. Most recently, in Pereira v. State Board of Education, 304 Conn. 1 (2012), this Court addressed a dispute over the requirements of General Statutes § 10-223e, which sets forth the circumstances under which the state board may authorize a reconstitution of the local board of education. Sovereign immunity did not prevent this Court from resolving the parties' disputes over the

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meaning of the statutes in McCoy, American Promotional, or Pereira. Likewise, the instant declaratory judgment action is not barred by sovereign immunity.

In fact, in Connecticut Association of Health Care Facilities, Inc. v. Worrell, 199 Conn. 609, 616 (1986), this Court explained that a declaratory judgment action is a particularly appropriate vehicle through which an organization or group may seek judicial relief that would benefit its membership. In Worrell, the plaintiff health care associations brought an action against the Commissioner of Mental Health seeking a declaratory judgment that the Department of Mental Health was required to accept as a patient any person committed to a state hospital under the applicable statutes. In concluding that the declaratory judgment action against the Commissioner was proper, this Court noted that public policy supported the permitting of such declaratory judgment actions as an effective vehicle through which to resolve such disputes. Id. at 617-618.

An action for a declaratory judgment against a state actor is the most efficient and effective way to resolve questions of statutory or constitutional interpretation. Here, the Republican Party seeks a declaration that General Statutes § 9-249a requires that its candidates be listed on the first line of the ballots for the November 2012 election. This Court is not barred by sovereign immunity from determining the meaning of the statute.

B. An Exception To Sovereign Immunity Applies To This Lawsuit Because It Alleges That Merrill Is Acting In Excess Of Her Statutory Authority

Even if the doctrine of sovereign immunity were implicated in this case, the instant action satisfies the third exception to the doctrine because, by failing to comply with General Statutes § 9-249a, Merrill is acting in excess of her statutory authority.

The reasoning behind the "excess of statutory authority" exception to sovereign immunity has been explained by this Court as follows:

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> Sovereign immunity rests on the principle and on the hazard that the subjection of the state and federal governments to private litigation might constitute a serious interference with the performance of their functions and with their control over their respective instrumentalities, funds and property... Because a court may tailor declaratory and injunctive relief so as to minimize any such interference, and in order to afford an opportunity for voluntary compliance with the judgment, actions that seek injunctive or declaratory relief against a state officer acting in excess of statutory authority or pursuant to an unconstitutional statute do not conflict with the policies underlying the doctrine of sovereign immunity.

(Internal citations and quotation marks omitted.) Miller v. Egan, 265 Conn. 301, 314 (2003). The exception does not apply to judgments for money damages, because such damages cannot be fashioned in a similarly unobtrusive manner. Id. at 315-321. However, actions for declaratory and injunctive relief can be fashioned in a way that minimizes interference with the executive function and, as such, are generally not barred by sovereign immunity when there is an allegation that the state official's actions are not in conformity with a statute.

The exception to sovereign immunity for suits alleging that a state official is acting in excess of statutory authority was discussed in Weaver v. Ives, 152 Conn. 586 (1965). In that case, this Court considered an action brought by nine landowners against the Highway Commissioner, seeking to enjoin him from constructing a highway through a public park. Id. The Court held that the suit was not barred by sovereign immunity:

> The principle that the sovereign cannot be sued without its consent does not prohibit a suit for injunctive relief against one of its officers.... Since the gravamen of the plaintiffs' complaint is that the defendant is acting illegally and in excess of his statutory authority, the action is not to be treated as one against the state requiring the consent of the state before it can be maintained.

Weaver, 152 Conn. at 591.

In Savage v. Aronson, 214 Conn. 256, 264–66 (1990), this Court had before it an action seeking to enjoin the defendant Commissioner of Income Maintenance from reducing the period of eligibility for emergency housing for Aid to Families with Dependent

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Children recipients. The action alleged that the state official was violating General Statutes §§ 17-85, 17-82d, and 17-38a(a) as well as violating the plaintiff's constitutional rights. While rejecting sovereign immunity on the basis of the allegation of a constitutional violation, the Court in Savage also suggested that a complaint that alleged that the state actor failed to comply with a statutory obligation would be sufficient to invoke the excess of statutory authority exception to sovereign immunity. Id. at 264-265.

Savage's discussion of the excess of statutory authority exception was cited with approval in Unisys Corporation v. Department of Labor, 220 Conn. 289 (1990). There, the plaintiff brought an action against the Department of Administrative Services and the Department of Labor, seeking to enjoin the State from awarding a purchase contract. The plaintiff alleged that the defendants' requests for proposals for the purchase of equipment did not comport with the competitive bidding requirement set forth in General Statutes § 4a-57. This Court quickly dismissed the State's sovereign immunity claim:

> Second, the defendants raise the shield of sovereign immunity. This claim has no merit. Although suits against an officer or a department of the state, as in the present case, are in effect against the state; Sentner v. Board of Trustees, 184 Conn. 339, 342, 439 A.2d 1033 (1981); sovereign immunity does not bar suits against officials of the state who act in excess of their statutory authority, as the plaintiff alleges herein. Savage v. Aronson, 214 Conn. 256, 264, 571 A.2d 696 (1990).

Unisys Corp. v. Department of Labor, 220 Conn. at 697-698. This Court also applied the excess of statutory authority exception in Pamela B. v. Ment, 244 Conn. 296 (1998), where it concluded that the plaintiff's claim that the defendants' actions violated General Statutes § 46b-129 was not barred by sovereign immunity. Id. at 328–330.

Miller v. Egan, 265 Conn. 301 (2003), clarified that as long as the plaintiff alleges a violation of state law and is not making a claim for money damages, the third exception to

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sovereign immunity applies. By way of background, in Antinerella v. Rioux, 229 Conn. 479 (1994), this Court rejected a sovereign immunity claim in a suit against the defendant high sheriff on the grounds that the defendant was alleged to have exceeded his statutory authority by dismissing the plaintiff in violation of public policy, even though the plaintiff was making a claim for money damages. Id., 419–93. Similarly, in Shay v. Rossi, 253 Conn. 134 (2000), this Court rejected a sovereign immunity defense to a suit brought by parents and children seeking money damages against officers and employees of the Department of Children and Families, because the complaint alleged that the state officials acted in excess of their state authority. Id., 168.

Both Antinerella v. Rioux, 229 Conn. 479, and Shay v. Rossi, 253 Conn. 134, were overturned by this Court in Miller v. Egan, 265 Conn. 301, only "to the extent that each of those cases hold that sovereign immunity does not bar monetary damages actions against state officials acting in excess of their statutory authority." Miller, 265 Conn. at 325. The Miller Court clearly articulated that "the exception to sovereign immunity for actions in excess of statutory authority or pursuant to an unconstitutional statute, applies only to actions seeking declaratory or injunctive relief, not to those seeking monetary damages." Id., 321. Notably the Court in Miller explained that "when a process of statutory interpretation establishes that the state officials acted beyond their authority, sovereign immunity does not bar an action seeking declaratory or injunctive relief." Id. at 327.

Because this case seeks a declaratory judgment and injunctive relief, and does not seek monetary damages, sovereign immunity is not a bar to this claim. Moreover, in order to determine whether Merrill's refusal to place the Republican Party on the first line of the 2012 ballots constitutes conduct in excess of statutory authority, this Court must

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necessarily consider the second reserved question and determine whether General Statutes § 9-249a requires that the Republican Party's candidates be placed on the first line of the ballots for the upcoming election.

II. GENERAL STATUTES § 9-249a REQUIRES THAT THE REPUBLICAN PARTY'S CANDIDATES FOR OFFICE BE PLACED ON THE FIRST LINE OF THE BALLOTS FOR THE NOVEMBER 6, 2012 ELECTION

General Statutes § 9-249a mandates that the parties be listed on the ballot in a specific order. The first party listed must be the party whose gubernatorial line polled the most votes in the last election. The relevant facts are undisputed: (1) 560,874 votes were cast for Tom Foley on the Republican Party's line on the ballots for the 2010 gubernatorial election; and (2) 540,970 votes were cast for Dan Malloy on the Democratic Party's line on the ballots for the 2010 gubernatorial election.

General Statutes § 9-249a is entitled "Order of parties on ballots." It provides:

> "[t]he names of the parties shall be arranged on the ballots in the following order: (1) The party whose candidate for Governor polled the highest number of votes in the last-preceding election; (2) Other parties who had candidates for Governor in the last-preceding election, in descending order, according to the number of votes polled for each such candidate;"

General Statutes § 9-249a. Because the Republican Party's candidate for Governor polled more votes than the Democratic Party's candidate for Governor, more votes than the Working Families Party's candidate for Governor, and more votes than the Independent Party's candidate for Governor, the statute requires that the Republican Party be listed on the top line of the ballots for the 2012 general election. This conclusion is supported by: (1) the plain meaning of General Statutes § 9-249a; (2) the Attorney General's 1939 Opinion addressing this issue in the context of the Baldwin-Cross 1938 gubernatorial election results; and (3) the historical development of the statutory scheme.

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A. The Plain Meaning Of General Statutes § 9-249a Requires That The Republican Party Be Listed First On The 2012 Ballots

As with all questions of statutory interpretation, this Court's review of the meaning of General Statutes § 9-249a is plenary. ATC Partnership v. Coats North America Consolidated, Inc., 284 Conn. 537, 545 (2007). In order to determine the meaning of the statute, this Court should first review its plain meaning:

> The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered.

General Statutes § 1-2z.

1. The text of the statute is clear and unambiguous

The plain text of General Statutes § 9-249a supports the Republican Party's position. The Republican Party's candidate for Governor polled 560,874 votes. The Democratic Party's candidate for Governor polled 540,970 votes. The Working Families Party's candidate for Governor polled 26,308 votes. The Independent Party's candidate for Governor polled 17,629 votes. The plain text of the statute provides, "[t]he party whose candidate for Governor polled the highest number of votes in the last-preceding election." The Republican Party's candidate for Governor polled a higher number of votes than any other party's candidate in the 2010 election. Consequently, General Statutes § 9-249a requires that the Republic Party be listed first on the ballots for the 2012 general election.

Notably, the purpose of General Statutes 9-249a is addressed in its title, "Order of parties on ballots." (Emphasis added.). The statute does not address individuals, but rather explains how the *political parties* should appear on the ballot. The plain meaning of this

statute is that the political party line that received the most votes in the gubernatorial column in the last election is to be placed on the first line of the ballots for the subsequent elections, followed in descending order by the other political parties that received votes for gubernatorial candidates.

Merrill's view that the Democratic Party is entitled to the first line of the ballots flies in the face of the plain text of General Statutes § 9-249a. The statute does not state: "[t]he names of the parties shall be arranged on the ballots in the following order: (1) the party whose candidate for Governor [was elected] in the last-preceding election; (2) [o]ther parties who had candidates for Governor in the last-preceding election, in descending order, according to the number of votes polled for each such candidate." Indeed, that would have been a very clear and easy way for the statute to provide for Merrill's approach. The statute also does not describe the first line as being afforded to: "the party of the Governor;" "the party whose candidate for Governor [won the last election];" "the party affiliation of the person elected Governor in the last election for that office;" or any other similar language that would focus on the results obtained by an individual rather than the political parties. Rather, the plain text of the statute requires that the votes recorded in each political party's respective gubernatorial column determine where the parties are to appear on the ballots for subsequent elections.

Because the Republican Party's candidate for Governor polled the most votes in the 2010 gubernatorial election, followed by the Democratic Party's candidate, the Working Families Party's candidate, and the Independent Party's candidate, General Statutes § 9-249a requires that the Republican Party be listed on the first line of the ballots for the 2012 general election.

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2. This Court should interpret General Statutes § 9-249a to produce sensible results and to avoid bizarre ones

"It is a fundamental principle of statutory construction that courts must interpret statutes using common sense and assume that the legislature intended a reasonable and rational result." Longley v. State Employees Retirement Commission, 284 Conn. 149, 171-172 (2007). In other words, "[s]tatutes are to be read as contemplating sensible, not bizarre, results." Bennett v. New Milford Hosp., Inc., 300 Conn. 1, 28 (2011). In this context, this Court has set forth the following three fundamental principles of statutory interpretation: (1) "it is axiomatic that those who promulgate statutes do not intend to promulgate statutes that lead to absurd consequences or bizarre results;" (2) "in construing a statute, common sense must be used and courts must assume that a reasonable and rational result was intended"; and (3) "if there are two asserted interpretations of a statute, we will adopt the reasonable construction over the one that is unreasonable." State v. Courchesne, 269 Conn. 622, 710 (2010).

The most sensible way to read General Statutes § 9-249a is that it requires that the parties be listed on the ballots in the order of the total votes received on each party's line for each party's gubernatorial candidate in the last preceding gubernatorial election. There were 19,904 more votes recorded on the Republican Party's line than were cast on any other party's line for a candidate for Governor in 2010. Reading the statute in this clear and simple manner leads to the indisputable conclusion that the Republican Party must be listed on the first line of the ballots for the 2012 general election. This is the most sensible way to read the statute.

Indeed, to read the statute in any other manner would lead to bizarre results. For example, if a candidate were cross-endorsed by two parties and elected Governor, then

under an interpretation that the votes should be aggregated when received on more than one line of the ballots, both parties who endorsed the candidate could claim that its candidate received the most votes and the corresponding right to the first line on the ballot. However, General Statutes § 9-249a expressly provides: "[t]he party whose candidate for Governor polled the highest number of votes in the last-preceding election" shall be listed first on the ballots. (Emphasis added.) The statute refers only to a singular party and does not contemplate multiple parties being entitled to the first line of the ballot.

Another bizarre result that would occur under Merrill's interpretation is in the situation where the major parties cross-endorse the gubernatorial candidate. Because General Statutes § 9-253 permits cross-endorsements, it is not inconceivable for a gubernatorial candidate to be cross-endorsed by the Republican Party and the Democratic Party. Cf. Patton v. Democrat Town Committee of Willington, 253 Fed.Appx. 129, 130-131 (2nd Cir. 2007). In that situation, Merrill's interpretation of the statute would produce the bizarre result of making it impossible to know under General Statutes § 9-249a whether the Republican Party or the Democratic Party would be entitled to the first line of the ballots. A more sensible reading of the statute is one that is not affected by cross-endorsements of gubernatorial candidates, one that looks only to the total number of votes recorded for each party's candidate on that party's line, where the party that polled the most gubernatorial votes on its line on the ballot is entitled to the first line of the ballots in succeeding elections.

It is a cardinal rule of statutory construction that statutes are to be read in a manner that would yield sensible, and not bizarre, results. The only sensible way to read General Statutes § 9-249a is that it requires that the party that recorded the most votes on its line

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for its gubernatorial candidate in the last election be listed on the first line of the ballots for the subsequent elections.

3. Statutes must be read in a manner to produce a harmonious body of law

Another rule of statutory construction is "the presumption that the legislature, in amending or enacting statutes, always is presumed to have created a harmonious and consistent body of law." (Internal quotation marks omitted) In re Judicial Inquiry Number 2005-02, 293 Conn. 247, 262 (2009).

Prior to May 2011, the general statutes contained two statutes that governed the order of the parties on the ballots. General Statutes § 9-249a (Rev. 2011) applied to machine ballot labels and General Statutes § 9-279 (Rev. 2011) addressed "Paper Ballots."[1] The latter provided:

> **Sec. 9-279. Form of ballot.** The ballot shall be two and one-quarter inches in width or as many times such width as is necessary to contain the names of all candidates nominated and the instructions for which provision is herein made and proper blank spaces to write in names not printed on the ballot. ... Each column shall be headed by the name of the party the candidates of which are listed therein, in type not smaller than eighteen point, and shall be arranged in the order prescribed by law. ... The names of candidates shall be arranged in such order as the Secretary of the State directs, **precedence being given to the candidates of the party which polled the highest number of votes for Governor at the last-preceding regular election for such office, and so on in descending order.**

[1] In 2011, the legislature passed Public Act 11-20 which made a number of amendments to the election laws in order to reflect the change from the use of voting machines with levers to ballots read by optical scan voting machines. The Public Act repealed several of the statutes that specifically addressed paper ballots, including General Statutes § 9-279. It also amended General Statutes § 9-249a to replace "ballot label" and "machines" with "ballots" in order to reflect the change from machines to ballots read by optical scan voting machines.

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(Emphasis added.) General Statutes § 9-279 (Rev. 2011). General Statutes §§ 9-271 (Rev. 2011) and § 9-272 (Rev. 2011), permitted the use of paper ballots for certain referenda and circumstances where machines would not be able to handle the number of candidates.

General Statutes § 9-279 (Rev. 2011) clearly refers to the "party" which polled the highest number of votes for Governor. It would, of course, be an absurd result to interpret General Statutes § 9-279's prescription for the order in which the parties were to appear on paper ballots differently than General Statutes § 9-249a's prescription for the order in which the parties were to appear on machine ballot labels. See State v. Lutters, 270 Conn. 198, 211 (2004) ("it is a familiar principle of statutory construction that where the same words are used in a statute two or more times they will ordinarily be given the same meaning in each instance."). In order to interpret General Statutes § 9-249a (Rev. 2011) harmoniously with General Statutes § 9-279 (Rev. 2011), both statutes must have required that the parties be arranged on the ballot in the same order. This would only occur under the interpretation of General Statutes § 9-249a that is being advanced by the plaintiff.

B. The Republican Party's Position Is Supported By A 1939 Attorney General Opinion Which Addressed This Very Issue

2010 did not mark the first time in Connecticut history that a candidate for Governor was cross-endorsed. The same situation occurred in the 1938 gubernatorial contest between Raymond E. Baldwin and Wilbur L. Cross. Former Chief Justice Baldwin was the Republican Party's candidate for Governor and Wilbur Cross was the Democratic Party's candidate. In addition, Baldwin was cross-endorsed by a third-party called the "Union Party." On the Republican Party line of the ballot, Baldwin received 227,191 votes for Governor. See 1938 Statement of Vote. On the Democratic Party line of the ballot, Cross received 227,549 votes, surpassing the Republican Party line by 358 votes. Id. However,

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Baldwin received an additional 3,046 votes on the Union Party line. Baldwin was declared Governor by a total of 2,688 votes. Id.

The question presented in this case was also raised as a result of the 1938 election. Then-Secretary of the State Sara B. Crawford sought an opinion from then-Attorney General Francis A. Pallotti as to the answer to the following question: "[D]ue to the fact that the Governor was elected at the last general election by the combined votes polled by two parties, which major party shall, therefore, be placed in the first column of election ballots to be used in coming elections?" Attorney General Opinion (Mar. 22, 1939), 1939-1940 Biennial Report of the Attorney General, p. 230. The Attorney General concluded that the *party* that polled the most votes for their gubernatorial candidate, not the party whose candidate won the election, was entitled to the first line of the ballots for the 1939 election:

HARTFORD, March 21, 1939.

HON. SARA B. CRAWFORD
SECRETARY OF STATE,
STATE CAPITOL,
HARTFORD, CONNECTICUT.

Dear Madam: – This is to acknowledge receipt of your letter of March 17, 1939, in which you ask my opinion as to the interpretation of that part of Section 587 of the General Statutes, Revision of 1930, as it relates to the arrangement of the names of political parties on election ballots. The question is – due to the fact that the Governor was elected at the last general election by the combined votes polled by two parties, which major party shall, therefore, be placed in the first column of election ballots to be used in coming elections? Before passing upon this question, let us take up the matter of the election of the Governor and other State officers.

Article XXX of the Amendments to the Connecticut Constitution provides in part as follows:

"In the election for governor, lieutenant-governor, secretary, treasurer, comptroller, and attorney-general, the person found by the general assembly, in the manner provided in the fourth article of the constitution of this state, to

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have received the greatest number of votes for each of said offices respectively, shall be declared by said assembly to be elected."

Section 633 of the General Statutes, following the provision in the foregoing Amendment, provides as follows:

"STATE OFFICERS; PLURALITY. In the election for governor, lieutenant-governor, secretary, treasurer, comptroller and attorney general, the persons receiving the highest number of votes shall be declared elected."

It is apparent from the foregoing Amendment and Section of the General Statutes, that the election of one as governor, does not depend upon the greatest or highest number of votes received by a party, but upon the largest and highest number of votes which *he* receives in the election. In other words, it is the votes which he polls, over the other candidates for that office, which elects him, and this may be the result of having been a candidate of one or more parties, as was the case in the last election. This is also true in regard to the other officers mentioned above.

Now as to the instant question. Section 587 of the General Statutes, relating to the arrangement of parties on ballots, provides as follows:

"In addition to the official indorsement which shall appear on the back thereof, all ballots shall contain a list of candidates of the several political parties, which shall be printed in parallel columns. Each column shall be headed by the name of the party whose candidates are listed therein, and shall be arranged in such order as the secretary may direct, *precedence being given to the party which polled the highest number of votes for governor* at the last preceding general election for such office, and so on."

While we are considering Section 587, let us also consider, in connection therewith, Section 722 of the General Statutes, which relates to the placing of party names on voting machines, and which is of a kindred nature.

Section 722, in relation thereto, provides as follows:

"The names of the political parties shall be arranged on the machine either in columns or horizontal rows, *in the following order as determined by the number of votes received by each party* in the last general election. The name of the political party polling the largest number of votes for governor shall be first, and the party polling the next largest number of votes for the same office shall be second, and so on."

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In order to reach a conclusion on the instant question, it is necessary that we ascertain what the intention of the legislature was as gathered from the language used in both sections.

The fundamental rule for the construction of statutes is to ascertain the intent of the legislature. This intention must be ascertained from the act itself if the language is plain.

Hazzard v. Gallucci, 89 Conn. 196, 198.

The plain and obvious meaning is not to be departed from, for the purpose of instituting an inquiry into the supposed intention of the framers of the law. Such intention is to be collected from the words of the act, rather than presumed from that which does not appear in it. The law is to be interpreted according to the intention of the legislature apparent upon its face.

Linsley v. Brown, 13 Conn. 192, 195.

It is not allowable to interpret what has no need of interpretation.

Davis v. Ives, 75 Conn. 608, 611.

The question before a court is never what did the legislature actually intend in the first sense, but what intention has it expressed. It is always – "what is the meaning of what the legislator has said?" and not "what did the legislator actually mean to say?"... We are not at liberty to speculate upon any supposed actual intention of the legislature.

Lee Bros. Furniture Co. v. Cram, 63 Conn. 433, 438.

The intent of the legislature in the instant matter can be ascertained from the statutes themselves. It is evident, from these sections, that the legislature intended that preference be given to that party which has polled more votes for its candidate as governor than the other parties did for their respective candidates. It did not intend that preference be given to a party, which did not poll the largest number of votes, but whose candidate was elected with the votes received as an indorsed candidate of another party.

It is, therefore, my opinion that under Sections 587 and 722 preference must be given to that party which has polled the highest or largest number of votes for its gubernatorial candidate in the last general election.

Yours very truly,

FRANCIS A. PALLOTTI,
Attorney-General

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Attorney General Opinion (Mar. 22, 1939), 1939-1940 Biennial Report of the Attorney General, p. 230-232.

General Pallotti's opinion issued to the Secretary of State as to which political party should be placed first on the ballot when the Governor is elected through the combination of two separate lines on the ballot remains in full effect today. Just as they did in 1938, the general statutes in 2010 provided two statutes that addressed the order of the parties on the ballots. In 1938, as discussed in General Pallotti's opinion, the sections were 587 and 722, with the former addressing paper ballots and the latter addressing machine ballot labels. General Pallotti concluded that the two statutes needed to be read in connection with one another and to be afforded the same meaning because they addressed essentially the same subject matter. Thus, both sections 587 and 722 of the 1938 general statutes required that only those votes cast on each party's line be considered when determining the order of the parties on the ballot.

In 2010, as discussed supra, General Statutes § 9-249a (Rev. 2011) addressed machine ballot labels while General Statutes § 9-279 (Rev. 2011) addressed paper ballots. Notably, the language used in General Statutes § 9-279 (Rev. 2011) is substantially the same as the language found in Section 587 (Rev. 1930). The 2010 statute provided:

> The names of candidates shall be arranged in such order as the Secretary of the State directs, precedence being given to the candidates of **the party which polled the highest number of votes for Governor at the last-preceding regular election for such office, and so on in descending order.**

General Statutes § 9-279 (Rev. 2011). Similarly, the 1930 statute provided:

> Each column shall be headed by the name of the party whose candidates are listed therein, and shall be arranged in such order as the secretary may direct, precedence being given to **the party which polled the highest**

number of votes for governor at the last preceding general election for such office, and so on.

Section 587 (Rev. 1930).

As discussed in General Pallotti's opinion letter, General Statutes § 9-279 (Rev. 2011) can only be interpreted to mean "that preference be given to that party which polled more votes for its candidate as governor than the other parties did for their respective candidates. It [cannot be interpreted to mean] that preference be given to a party, which did not poll the largest number of votes, but whose candidate was elected with the votes received as an indorsed candidate of another party." Attorney General Opinion (Mar. 22, 1939), 1939-1940 Biennial Report of the Attorney General, p. 231-232. In other words, pursuant to General Statutes § 9-279 (Rev. 2011), the Republican Party is entitled to the first line of the paper ballots in each election held subsequent to the 2010 gubernatorial election. Moreover, General Statutes § 9-249a (Rev. 2011) must be read consistently with General Statutes § 9-279 (Rev. 2011) and, therefore, must similarly apply the results obtained by the *parties* in the prior gubernatorial election. This fact finds further support in the very title of General Statutes § 9-249a, "Order of parties on the ballots," which emphasizes that the focus of the statute is on the *parties*.

It is often said that history repeats itself. The 2010 election results were a repeat of the 1938 election in that the winner of the gubernatorial election needed to combine votes from different party lines in order to be elected. As aptly summarized in General Pallotti's opinion letter to the Secretary of State, the *party* that polled the most votes in the preceding gubernatorial election is entitled to the top line of the ballot. Just as the 1938 election resulted in the Democratic Party being placed on the first line of the 1939 election ballot,

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the 2010 election results require that the Republican Party be placed on the first line of the ballots for the 2012 election.

C. The Historical Context Of The Statutory Scheme Supports The Republican Party's Position That It Is Entitled To The First Line Of The 2012 Ballots

In the event that there is any doubt as to the meaning of General Statutes § 9-249a, it is put to rest by considering the statute in its historical context and reviewing what Connecticut law has long required with respect to the order in which the political parties are to appear on the ballot. See In re Judicial Inquiry Number 2005-02, 293 Conn. 247, 271-280 (2009) (considering predecessor statutes to determine meaning of grand jury statutes). This history makes clear that, as a result of the 2010 gubernatorial election, the Republican Party is required to be placed on the first line of the ballots for the 2012 election.

The 1902 statute made the following reference to parties appearing on the ballots:

> ... In addition to the official indorsement the ballot shall contain only the names of the candidates, the titles of the officers to be voted for, and the name of the political party issuing the same, which shall be printed thereon as "republican," "democratic," or "prohibition," as the case may be, or in the briefest practicable form for any other party than either of those, and without the word "party," and without any such word as "for" or "the," or any other word before or after the name of the party...

General Statutes § 1632 (Rev. 1902). The 1902 statute did not delineate the order in which the parties should appear. While the 1902 statute addressed paper ballots, the 1902 general statutes permitted towns, cities, and boroughs to use voting machines subject to certain requirements and approvals from the state board of voting machine commissioners. See General Statutes § 1728 - 1732 (Rev. 1902). The statutes also stated that the "rules and regulations [governing elections conducted by voting machines] shall conform, as nearly as may be, to the statutes governing elections held without voting machines."

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General Statutes § 1732 (Rev. 1902). Thus, the proposition that the statutory requirements for the order of the parties on the paper ballots should match the requirements for the order of the parties on the machine ballot labels is not only a matter of common sense, but finds support in our statutes dating as far back as 1902.

In 1903, the legislature adopted a public act entitled, "An Act Establishing a Board of Voting Machine Commissioners and Defining its Duties." The Act provided, *inter alia*, for the manner in which the political parties were to appear on the ballot labels of the voting machines:

> The portion of cardboard, paper, or other material, placed on the front of the machine, containing the names of the candidates, or a statement of a proposed constitutional amendment or other question or proposition to be voted on, shall be known in this act as a ballot label... The names of the political parties shall be arranged on the machine, either in columns or horizontal rows, in the order of size as determined by the number of votes received by each party in the last general election. **The name of the political party polling the largest number of votes for the head of the ticket shall come first, and that of the party polling the next largest number of votes for the same office shall come second, and so on.**

(Emphasis added.) 1903 Public Act, ch. 207.

The 1909 Public Act addressed both paper ballots and ballot labels for machines. In particular, Chapter 250 of the 1909 Public Act amended General Statutes § 1632 (Rev. 1902) as follows:

> Section 1632 of the general statutes is hereby amended to read as follows: All ballots used at elections held on the Tuesday after the first Monday in November and at all special elections held for the propose of electing officers voted for on said day shall be prepared by the secretary of the state and printed at the expense of the state... Each column shall be headed by the name of such party, and **shall be arranged in such order as the secretary may direct, precedence, however, being given to the party which polled the highest number of votes for governor at the last preceding general election for such office, and so on.**

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(Emphasis added.) 1909 Public Act ch. 250. The statute also provided that the names of the parties be listed in larger font than the names of the candidates, highlighting the separate consideration given to the parties themselves on the ballot:

> ...The titles of the officers voted for and the names of the candidates shall be printed upon the face of the ballots in black ink, and in type of uniform size and style. The name of the party shall be in larger type than that used for printing the titles of the officers and the names of the candidates, the sizes and styles of which type shall be the same throughout the ballot, and shall be prescribed by the secretary not less than thirty nor more than sixty days before any election held under these provisions.

Id. With respect to ballot labels on voting machines, the public act provided:

> That portion of cardboard, paper, or other material, placed on the front of the machine, containing the names of the candidates, or a statement of a proposed constitutional amendment or other question for proposition to be voted on, shall be known in this act as a ballot label.... The names of the political parties shall be arranged on the machine, either in columns or horizontal rows, in the order of size as determined by the number of votes received by each party in the last general election. **The name of the political party polling the largest number of votes for the head of the ticket shall come first, and that of the party polling the next largest number of votes for the same office shall come second, and so on**...

(Emphasis added.) 1909 Public Act ch. 262.

A 1913 public act, entitled "An Act concerning the Election of Senators and Representatives in the Congress of the United States and other Officials, amended General Statutes § 1632 (Rev. 1911) by, *inter alia*, removing the word "however" after the word "precedence" such that the statute read:

> All ballots used at elections held on the Tuesday after the first Monday in November and at all special elections held for the propose of electing officers voted for on said day shall be prepared by the secretary of the state and printed at the expense of the state... Each column shall be headed by the name of such party, and **shall be arranged in such order as the secretary may direct, precedence being given to the party which polled the highest number of votes for governor at the last preceding general election for such office, and so on.**

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(Emphasis added.) 1913 Public Act, ch. 219.

In 1915, the legislature amended the statute addressing ballot labels by, *inter alia*, referring to votes polled by a party for "governor" rather than "the head of the ticket":

> Section five of chapter 262 of the public acts of 1909 is amended to read as follows: That portion of cardboard, paper, or other material placed on the front of the machine, containing the names of the candidates, or a statement of a proposed constitutional amendment or other question or proposition to be voted on, shall be known in this act as a ballot label... The names of the political parties shall be arranged on the machine, either in columns or horizontal rows, in the following order as determined by the number of votes received by each part in the last general election. **The name of the political party polling the largest number of votes for governor shall be first, and the party polling the next largest number of votes for the same office shall be second, and so on.**

(Emphasis added.) 1915 Public Act, ch. 244.

The language used to prescribe how the parties were to appear on the ballots and on the machine ballet labels remained essentially the same, though the titles of the respective statutes changed in the 1918 general statutes. The 1918 general statutes contained the following two statutes governing ballots and ballot labels:

> **Sec. 576. Ballots how furnished; form.** All ballots used at elections held on the Tuesday after the first Monday in November and at all special elections held for the purpose of electing officers voted for on said day shall be prepared by the secretary of the state and printed at the expense of the state... Each column shall be headed by the name of such party, and **shall be arranged in such order as the secretary may direct, precedence being given to the party which polled the highest number of votes for governor at the last preceding general election for such office, and so on.**

(Emphasis added.) General Statutes § 576 (Rev. 1918).

> **Sec. 710. Ballot label.** That portion of cardboard, paper, or other material placed on the front of the machine, containing the names of the candidates or a statement of a proposed constitutional amendment or other question or proposition to be voted on, shall be known in this act as a ballot label... The names of the political parties shall be arranged on the machine, either in columns or horizontal rows, in the following order as determined by the

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number of votes received by each party in the last general election. **The name of the political party polling the largest number of votes for governor shall be first, and the party polling the next largest number of votes for the same office shall be second, and so on.**

(Emphasis added.) General Statutes § 710 (Rev. 1918).

As it relates to the order of the parties on the ballot, the 1930 revision of General Statutes § 576 replaced the phrase "[e]ach column shall be headed by the name of such party" with the phrase "[e]ach column shall be headed by the name of the party whose candidates are listed therein":

Sec. 587. Ballots; preparation; form. All ballots used at elections held on the Tuesday after the first Monday in November and at all special elections held for the purpose of electing officers voted for on said day shall be prepared by the secretary of the state and printed at the expense of the state... Each column shall be headed by the name of the party whose candidates are listed therein, and **shall be arranged in such order as the secretary may direct, precedence being given to the party which polled the highest number of votes for governor at the last preceding general election for such office, and so on.**

(Emphasis added.) General Statutes § 587 (Rev. 1930).

Sec. 722. Ballot label. That portion of cardboard, paper, or other material placed on the front of the machine, containing the names of the candidates or a statement of a proposed constitutional amendment or other question or proposition to be voted on, shall be known in this chapter as a ballot label... The names of the political parties shall be arranged on the machine, either in columns or horizontal rows, in the following order as determined by the number of votes received by each party in the last general election. **The name of the political party polling the largest number of votes for governor shall be first, and the party polling the next largest number of votes for the same office shall be second, and so on.**

(Emphasis added.) General Statutes § 722 (Rev. 1930).

In 1941, the legislature adopted statutes addressing straight and split tickets. With respect to the ballot, the legislature adopted the following statute:

Sec. 107f. Secretary of the state may prescribe forms. The secretary of the state may prescribe the type to be used in and the instructions to appear on

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> any ballot printed pursuant to the provisions of this chapter, for which no specific provision is contained in said chapter. The names of the parties **shall be listed in the straight ticket section of each ballot in such order as the secretary may direct, precedence being given to the party which polled the highest number of votes for governor at the last preceding general election for such office, and so on.** The names of candidates in the split ticket section **shall be arranged in such order as the secretary may direct, precedence being given to the candidates of the party which polled the highest number of votes for governor at the last preceding general election for such office, and so on.**

(Emphasis added.) General Statutes § 107f (1941 supp.)

The 1949 revision of the general statutes retained the 1941 statute which addressed the order of the parties on both the straight ticket and split ticket sections of the paper ballots, and renumbered it as General Statutes § 1042 (Rev. 1949). The revision also retained the manner in which the parties were to appear on the ballot labels from the 1930 revision, renumbering it as General Statutes § 1199 (Rev. 1949):

> **Sec. 1199. Ballot label.** That portion of cardboard, paper, or other material placed on the front of the machine, containing the names of the candidates or a statement of a proposed constitutional amendment or other question or proposition to be voted on, shall be known in this chapter as a ballot label... The names of the political parties shall be arranged on the machine, either in columns or horizontal rows, in the following order as determined by the number of votes received by each party in the last general election. **The name of the political party polling the largest number of votes for governor shall be first, and the party polling the next largest number of votes for the same office shall be second, and so on.**

(Emphasis added.) General Statutes § 1199 (Rev. 1949).

In 1951, the General Assembly passed a Special Act requiring that the Secretary of State "prepare a revision of the sections of the General Statutes relating to elections, primaries, caucuses and conventions for the purpose of consolidating and clarifying the same." 1951 Sp. Act No. 521. In 1953, pursuant to that act, the Secretary of State presented to the General Assembly a 221-page report entitled, "Proposed Revision of the

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Sections of the General Statutes Pertaining to Elections." The report identified the existing election laws and juxtaposed them with proposed revisions. The Secretary of State explained the purpose of the proposed revision in testimony before the Joint Standing Committee on Elections:

> This legislation is not a change in the meaning of any laws, it is a re-arrangement and re-codification of the existing laws. We were empowered to make only that kind of change by the last Legislature. I thought I would tell you what we did first, we took every section and two lawyers and I looked into every section and studied every word and where we thought it would be helpful and clarify the law by rearrangement or clarification we thought it over carefully. In connection with that I would like to pay tribute to Miss Bree and Miss Toro who I hope will take a bow and Mr. Keats who I know is too modest to stand and Miss Bree and Miss Toro consulted with the Attorney General and Legislative Commissioner. We did not intrude into the Legislative field in making changes in meaning only re organization...

Conn. Joint Standing Committee Hearings, Elections, 1953 Sess., p. 34, testimony of A. Leopold (March 5, 1953). The report included the proposed laws for the form of ballot labels for machines and for paper ballots. The proposed language for the order of parties on the ballot labels provided:

> **Sec. 1. Form of ballot label.** Ballot labels shall be printed in black ink, in plain clear type, and on clear white material of such size as will fit the machine and shall be furnished by the municipal clerk... The names of the political parties shall be arranged on the machine, either in columns or horizontal rows, ~~in the following order as determined by the number of votes received by each party in the last general election.~~ IN SUCH ORDER AS THE SECRETARY OF STATE MAY DETERMINE, PRECEDENCE BEING GIVEN TO THE PARTY WHOSE CANDIDATE FOR GOVERNOR POLLED THE HIGHEST NUMBER OF VOTES AT THE LAST PRECEDING ELECTION FOR SUCH OFFICE, AND SO ON IN DESCENDING ORDER. ~~The name of the political party polling the largest number of votes for governor shall be first, and the party polling the next largest number of votes for the same office shall be second, and so on.~~

(Alterations made to highlight changes). Leopold, Alice, Proposed Revision of the Sections of the General Statutes Pertaining to Elections (1953), at p. 133. This legislative history

makes clear that "[t]he name of the political party polling the largest number of votes for governor shall be first" was synonymous with "precedence being given to the party whose candidate for governor polled the highest number of votes."

The proposed language for the order of parties on the paper ballots also retained its essential character, though it was broken up into separate proposed sections for straight ticket and split ticket sections of the ballot:

> Sec. 6. Form of straight ticket section. The straight ticket section shall be two and one-quarter inches in width, and arranged therein vertically shall be the same number of two and on-quarter inch squares as there shall be parties entitled to a place on the ticket... The names of the parties **shall be listed in the straight ticket section of each ballot in such order as the secretary of state may direct, precedence being given to the party which polled the highest number of votes for governor at the last-preceding regular election for such office, and so on.**

(Emphasis added.) Leopold, Alice, Proposed Revision of the Sections of the General Statutes Pertaining to Elections (1953), at p. 148.

> Sec. 7. Form of split ticket section. The split ticket section shall be two and one-quarter inches in width or as many times such width as may be necessary to contain the names of all candidates nominated and the instructions for which provision is herein made and proper blank spaces to write in names not printed on the ballot... The names of the candidates in the split ticket section **shall be arranged in such order as the secretary may direct, precedence being given to the candidates of the party which polled the highest number of votes for governor at the last-preceding regular election for such office, and so on.**

(Emphasis added.) Leopold, Alice, Proposed Revision of the Sections of the General Statutes Pertaining to Elections (1953), at p. 149. The Secretary of State's 1953 revision was adopted with little discussion by the General Assembly. See 5 Conn. Gen. Assembly House, Pt. 5, 1953 Proceedings, p. 1931-1933; 5 Conn. Gen. Assembly Senate, Pt. 4, 1953 Proceedings, p. 1290-1292; 1953 Pubic Act No. 368.

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In 1957, the legislative commissioner prepared a revised edition of the general statutes. The order of parties on ballot labels for machines was placed in General Statutes § 9-250:

> **Sec. 9-250. Form of ballot label.** Ballot labels shall be printed in black ink, in plain clear type, and on clear white material of such size as will fit the machine and shall be furnished by the municipal clerk... The names of the political parties **shall be arranged on the machine, either in columns or horizontal rows, in such order as the secretary of state determines, precedence being given to the party whose candidate for governor polled the highest number of votes at the last-preceding election for such office, and so on in descending order**...

(Emphasis added.) General Statutes § 9-250 (Rev. 1958). The order of parties on paper ballots was placed in General Statutes §§ 9-278 and 9-279:

> **Sec. 9-278. Form of straight ticket section.** The straight ticket section shall be two and one-quarter inches in width, and arranged therein vertically shall be the same number of two and on-quarter inch squares as there shall be parties entitled to a place on the ticket... The names of the parties **shall be listed in the straight ticket section of each ballot in such order as the secretary of state may direct, precedence being given to the party which polled the highest number of votes for governor at the last-preceding regular election for such office, and so on**...

(Emphasis added.) General Statutes § 9-278 (Rev. 1958).

> **Sec. 9-279. Form of split ticket section.** The split ticket section shall be two and one-quarter inches in width or as many times such width as may be necessary to contain the names of all candidates nominated and the instructions for which provision is herein made and proper blank spaces to write in names not printed on the ballot... The names of the candidates in the split ticket section **shall be arranged in such order as the secretary may direct, precedence being given to the candidates of the party which polled the highest number of votes for governor at the last-preceding regular election for such office, and so on.**

(Emphasis added.) General Statutes § 9-279 (Rev. 1958).

In 1976, the legislature adopted General Statutes § 9-249a. See P.A. 76-159. Up until that time, while the statutes explained how the parties who had gubernatorial

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candidates in the last election were to appear on the ballots, they were silent as to the order in which the parties without gubernatorial candidates in the last election should appear. The legislative history of the statute reveals that Public Act 76-159 was requested by the Secretary of the State's office as a way to take away any discretion from that office in designating the order that the parties would appear on the ballot labels.

During the committee hearings, Henry S. Cohn testified on behalf of the Secretary of the State's Office in support of the act and explained that the purpose of the statute was to ensure that "there will be no question" as to how the parties were to be listed on the ballots. See Conn. Joint Standing Committee Hearings, Elections, 1976 Sess., p. 13-14, testimony of H. Cohn (Feb. 18, 1976). During the Senate's consideration of the act, Senator Schwartz explained that the purpose of the statute was to mandate the manner in which the parties would appear on the ballots:

> The bill as it's written provides for a formal order of parties to be placed on the ballot. Presently [the] statute provides only for the [ ] placement of major parties that participated in the last general election and this bill takes the authority away from the Secretary of the State's Office and places the order of the ballot in the statutes.

19 Conn. Gen. Assembly Senate, Pt. 3, 1976 Proceedings, p. 1144, statements of Sen. Schwartz (April 13, 1976).

Public Act 76-159 also amended General Statutes § 9-250, in relevant part, as follows:

> The names of the political parties shall be arranged on the machines, either in columns or horizontal rows, [~~in the following order as determined by the number of votes received by each party in the last general election. The name of the political party polling the largest number of votes for governor shall be first, and the party polling the next largest number of votes for the same office shall be second, and so on in descending order~~] AS SET FORTH IN GENERAL STATUTES § 9-249a....

The legislature did not amend General Statutes §§ 9-278 or 9-279, which continued to provide for the order in which the parties were to appear on paper ballots.

In 1987, the legislature adopted Public Act 87-382 which repealed provisions of the general statutes related to straight and split ticket sections of ballots. Specifically, the public act repealed, inter alia, General Statutes § 9-278 and revised General Statutes § 9-279 to apply to ballots rather than the "split ticket section" of the ballot:

> **Sec. 9-279. Form of ballot.** The [~~split ticket section~~] BALLOT shall be two and one-quarter inches in width or as many times such width as is necessary to contain the names of all candidates nominated and the instructions for which provision is herein made and proper blank spaces to write in names not printed on the ballot. ... Each column shall be headed by the name of the party the candidates of which are listed therein, in type not smaller than eighteen point, and shall be arranged in the order prescribed by law....The names of candidates [~~in the split ticket section~~] shall be arranged in such order as the secretary of the state directs, precedence being given to the candidates of the party which polled the highest number of votes for governor at the last-preceding regular election for such office, and so on in descending order.

Public Act 87-382, sec. 31.

As discussed supra, in 2011, the legislature amended the election statutes to reflect the State's change from voting machines to paper ballots read by optical scan voting machines. As a result, General Statutes § 9-279, which addressed paper ballots used in special circumstances in which the voting machine was not properly suited, was repealed. Additionally, references to machines and ballot labels were removed from General Statutes § 9-249a, which was revised to apply to "ballots." Thus, General Statutes § 9-249a provides, in its current form:

> **Sec. 9-249a. Order of parties on ballots.** (a) The names of the parties shall be arranged on the ballots in the following order:
>
> (1) The party whose candidate for Governor polled the highest number of votes in the last-preceding election;

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(2) Other parties who had candidates for Governor in the last-preceding election, in descending order, according to the number of votes polled for each such candidate;

(3) Minor parties who had no candidate for Governor in the last-preceding election;

(4) Petitioning candidates with party designation whose names are contained in petitions approved pursuant to section 9-453o; and

(5) Petitioning candidates with no party designation whose names are contained in petitions approved pursuant to section 9-453o.

(b) Within each of subdivisions (3) and (4) of subsection (a) of this section, the following rules shall apply in the following order:

(1) Precedence shall be given to the party any of whose candidates seeks an office representing more people than are represented by any office sought by any candidate of any other party;

(2) A party having prior sequence of office as set forth in section 9-251 shall be given precedence; and

(3) Parties shall be listed in alphabetical order.

(c) Within subdivision (5) of subsection (a) of this section, candidates shall be listed according to the provisions of section 9-453r.

General Statutes § 9-249a.

Considering General Statutes § 9-249a in its historical context makes clear that, dating back to 1903, Connecticut law has always required that the *political party* whose gubernatorial line polled the most votes in the last election is required to be listed on the first line of the ballots for subsequent elections. The statute is unequivocal in its mandatory character. Because the Republican Party polled the most votes for its gubernatorial candidate during the 2010 election, it must be listed on the first line of the ballots for the November 6, 2012 general election.

CONCLUSION

For any or all of the reasons set forth herein, this Court should provide the following answers to the questions reserved for advice:

(1) "Is the complaint barred by sovereign immunity?;"

Answer: "No."

(2) "Does General Statutes § 9-249a require that the Republican Party's candidates for office be placed on the first line of the ballots for the November 6, 2012 election?"

Answer: "Yes."

Respectfully submitted,

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CERTIFICATION

The undersigned attorney hereby certifies that this brief complies with all provisions of Connecticut Rule of Appellate Procedure § 67-2.

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CERTIFICATION OF SERVICE

The undersigned attorney hereby certifies that, pursuant to Practice Book § 62-7, a copy of the Plaintiff-Appellant's Brief was mailed, first class postage prepaid, on August 27, 2012, to:

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