DOCKET NO. HHD-CV-22-6160145-S	:	SUPERIOR COURT
ROBERT V. STEFANOWSKI, ET. AL	:	JUDICIAL DISTRICT OF HARTFORD
VS	:	AT HARTFORD
MARK F. KOHLER, SECRETARY OF THE STATE OF CONNECTICUT, ET. AL	:	September 15, 2022

MEMORANDUM OF DECISION ON MOTION TO DISMISS (#115), MOTION TO STRIKE (#107), AND APPLICATION FOR INJUNCTION (#100.37)

Before the court is the motion for temporary injunction by the plaintiffs, Robert Stefanowski (Stefanowski), Laura Devlin (Devlin), Lawrence De Pillo, Joseph J. Podchaiski, and Cynthia McCorkindale.[1] Stefanowski is the Republican candidate for Governor of the State of Connecticut and also sought the endorsement for Governor by the Independent Party of Connecticut (IPC). Devlin, the Republican candidate for Lieutenant Governor of the State of Connecticut, also sought the endorsement of the IPC for that position. The defendants are Mark F. Kohler, Secretary of the State of Connecticut (Secretary), the IPC, and Michael Telesca, the party chair of the IPC. The plaintiffs complain that on August 23, 2022, at the IPC caucus for election of candidates for statewide offices, the IPC and Telesca violated the IPC Rules and Bylaws (Bylaws) in the manner in which the process was conducted resulting in the nomination of Michael Hotaling and Stuart Beckett for the offices of Governor and Lieutenant Governor, rather than Stefanowski and Devlin, who sought a cross-endorsement from the IPC. After a hearing held and memoranda of law considered, the court denies the plaintiffs' motion for injunction.

[1] The plaintiffs are collectively referred to herein as the plaintiffs.

COMPLAINT AND PROCEDURAL HISTORY

The following procedural history and facts are relevant to this decision. On September 1, 2022, the plaintiffs filed a three-count complaint in which they (1) allege that the IPC failed to follow the Bylaws in violation of General Statutes § 9-374; (2) claim a violation of General Statutes § 9-324; and (3) seek a declaratory judgment relative to these violations. The plaintiffs seek injunctive relief and request that Hotaling and Beckett be removed from the ballot for the November 8, 2022, state election.[2]

In the first count, the plaintiffs allege that the IPC failed to follow the Bylaws in violation of § 9-374,[3] in three ways. First, ranked-choice voting was utilized, which the plaintiffs purport is a violation of Article 3, Section 5 of the Bylaws.[4] Second, Telesca impermissibly voted a second time to break a purported tie between Stefanowski and Hotaling, and third that Telesca and the Independent Party violated Article 3, Section 5 of the Rules and Bylaws when they endorsed Hotaling for the Office of Governor although he failed to achieve 51 percent of the votes cast at the caucus.

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[2] The plaintiffs do not request that Stefanowski and Devlin be placed on the IPC ballot.

[3] General Statutes § 9-374 provides in relevant part: "In the case of a minor party, no authority of the state or any subdivision thereof having jurisdiction over the conduct of any election shall permit the name of a candidate of such party for any office to be printed on the official ballot unless at least one copy of the party rules regulating the manner of nominating a candidate for such office has been filed in the office of the Secretary of the State at least one hundred eighty days before the nomination of such candidate. In the case of a minor party, the selection of town committee members and delegates to conventions shall not be valid unless at least one copy of the party rules regulating the manner of making such selection has been filed in the office of the Secretary of the State at least sixty days before such selection is made. A copy of local party rules shall forthwith be also filed with the town clerk of the municipality to which they relate. Party rules shall not be effective until sixty days after the filing of the same with the Secretary of the State."

[4] Article 3, Section 5 of the Bylaws provides in relevant part: "Independent Party candidates for statewide public offices . . . will be determined at the first state caucus of the year. The State Central Committee will nominate one candidate for each state wide office through majority vote at a State Central Committee meeting at a State Caucus . . . All registered members of the party with voting eligibility . . . in attendance may vote for one of the nominated candidates for each office. The candidate for each office who receives 51% of the votes at the state caucus will be the nominee of the party. If there are three or more candidates for an office and no one gets at least 51% of the votes then the candidate with the lowest number of votes shall be removed from the candidates list and a new vote will take place until a candidate receives 51% or more of the vote. . . . The State Central Committee shall fill any statewide office left vacant by the statewide caucus or for any other reason that a vacancy occurs by a simple majority of its members at a meeting called for that purpose." Joint Exhibit 1.

In the second count, the plaintiffs assert a claim pursuant to General Statutes § 9-324,[5] which permits any candidate who claims they are aggrieved by any ruling of an election official in connection with any election for Governor to bring such a complaint to any judge of the Superior Court. They claim aggrievement by the failure of the Secretary to reject the IPC's illegal endorsement of Hotaling and entitlement to injunctive relief preventing the Secretary from providing town clerks with Hotaling and Beckett's names as IPC candidates for Governor and Lieutenant Governor on the November 8, 2022, general election ballots.

In the third count, the plaintiffs seek a declaration that the IPC violated its Bylaws when nominating candidates for Governor and Lieutenant Governor. The plaintiffs also seek declarations that the IPC failed to nominate any candidate for Governor and Lieutenant Governor in accordance with the Bylaws and that Telesca improperly cast multiple votes in violation of the Bylaws.

On September 7, 2022, the IPC and Telesca filed their opposition to the motion for injunction in which they argue that the plaintiffs failed to prove clearly that they are entitled to relief and that extreme or serious injury will result from a denial of the injunction. The IPC and Telesca argue that ranked-choice voting has been used consistently since 2010, including in 2018 when Stefanowski received the IPC's endorsement for Governor, without complaint by Stefanowski or any party member. The IPC and Telesca also argue that the bylaws are silent on what to do in the event of a tie and that the plaintiffs unreasonably delayed filing this action. In their view, when the caucus ended in a tie, there was no provision for a revote and thus the nomination was vacant or unfilled, allowing the State Central Committee of the Independent

[5] General Statutes § 9-324 provides in relevant part that "[a]ny elector or candidate who claims that such elector or candidate is aggrieved by any ruling of any election official in connection with any election for Governor [or] Lieutenant Governor . . . may bring such elector's or candidate's complaint to any judge of the Superior Court" for adjudication.

Party of Connecticut (SCC) to make the nomination. In their September 12, 2022, reply, the plaintiffs argue that there was no vacancy to be filled by the SCC as the bylaws require continuous rounds of voting until a candidate receives 51 percent of the vote. They also argue that the Bylaws do not state that a vote by the SCC or the chairman gets to cast a deciding vote.

On September 7, 2022, the IPC and Telesca filed a motion to strike the complaint in its entirety for failure to join an indispensable party, Beckett, in violation of Practice Book § 11-3.[6] The IPC and Telesca argue that Beckett is an indispensable party because as the proposed nominee for the IPC he has a direct interest in the judgment and his substantive rights and interests will be necessarily and materially affected by its outcome. The plaintiffs argue that Beckett's presence is not necessary to proceed to a decree, or to do complete and final justice.

On September 7, 2022, the Secretary filed a motion to dismiss on the ground that the court lacks subject matter jurisdiction. The Secretary asserts that he has no statutory authority to undertake an independent inquiry into an intraparty nomination process that precedes the filing of the certificate of nomination. In his view, the role of the Secretary following the certification by a minor party of a nominated candidate, as provided in General Statutes § 9-452,[7] is to simply receive a timely and complete certification, act as its repository and thereafter mail the appropriate ballot, reflecting the nomination of the party's candidacy, to the town clerks of this state. See General Statutes § 9-462.[8] Because this is a ministerial duty not of the character of a

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[6] Practice Book § 11-3 provides that "[a]s set forth by Section 10-39, the exclusive remedy for nonjoinder of parties is by motion to strike."

[7] General Statutes § 9-452 provides in relevant part: "All minor parties nominating candidates for any elective office shall make such nominations and certify and file a list of such nominations, as required by this section, not later than the sixty-second day prior to the day of the election at which such candidates are to be voted for. . . . If such certificate of a party's nomination is not received by the Secretary of the State or clerk of the municipality, as appropriate, by such time, such certificate shall be invalid and such party, for purposes of sections 9-460, 9-461 and 9-462, shall be deemed to have neither made nor certified any nomination of any candidate for such office."

[8] General Statutes § 9-462 provides: "On September fifteenth in each year when a state election . . . the Secretary of the State shall mail to each town clerk a list of the names of all duly nominated candidates for state and district offices to be filled at such election, filed in his office prior to such date, for whom an elector may vote, with the

"ruling" within the contours of § 9-324, the plaintiffs are not, argues the Secretary, "aggrieved by any ruling of any election official in connection with any election for Governor [or] Lieutenant Governor" and thus no subject matter jurisdiction obtains, depriving the court of subject matter jurisdiction over count two of the plaintiffs' complaint that alleges a violation of § 9-324. Moreover, the Secretary argues that the "[p]laintiffs' contention that actions of third parties at a minor party caucus transform the Secretary's ministerial act of placing a candidate on the ballot into a 'ruling' of an election official has no basis in logic, common sense, or statute." Mem. in Support of Mot. to Dismiss, # 116, p. 7.[9]

The court held a hearing on the application for injunction on September 8, 2022. Due the exigent nature of this case and a September deadline for the Secretary to submit nomination lists to town clerks, the court reserved its judgment of the motion to dismiss and proceeded with evidence and testimony on the motion for injunction. The Secretary objected to the court's reservation of judgment. Further facts and procedural history will be developed as required.

FINDINGS OF FACT

The court received a number of exhibits and heard testimony from Lawrence DePillo, a long-time independent party member, Cynthia McCorkindale, a member of the Independent Party Town Committee and Chair of the Bethel Independent Party Town Committee, and Michael Telesca.[10] Additionally, the parties submitted a stipulation of facts.

As the trier of fact, the court must weigh the evidence and determine the credibility of witnesses. *Connecticut Light & Power Co. v. Proctor*, 324 Conn. 245, 259, 152 A.3d 470 (2016).

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respective party designation of each of such candidates. Forthwith after the results of the primaries for state and district offices are tabulated, the Secretary of the State shall mail to each town clerk in the district the names of all duly nominated candidates for such offices, with the respective party designation of each of such candidates."

[9] In his motion to dismiss, the Secretary argues the plaintiffs' action is barred because of laches due to its unreasonable delay in bringing the present action. The IPC and Telesca also assert laches in their objection to the granting of injunctive relief.

[10] All three were authorized under the Bylaws to vote at the party caucus.

"[I]t is the exclusive province of the trier of fact to weigh the conflicting evidence, determine the credibility of witnesses and determine whether to accept some, all or none of a witness' testimony." (Emphasis omitted; internal quotation marks omitted.) *Palkimas v. Fernandez,* 159 Conn. App. 129, 133, 122 A.3d 704 (2015), quoting *Stein v. Tong*, 117 Conn. App. 19, 24, 979 A.2d 494 (2009). The court, mindful that the burden of proof in civil actions is on the plaintiff to prove the essential elements of his cause of action by a fair preponderance of the evidence; *Gulycz v. Stop & Shop Companies, Inc.*, 29 Conn. App. 519, 523, 615 A.2d 1087, 1089 (1992); makes the following factual findings.[11]

The IPC[12] is a political party within the State of Connecticut which has the attributes of a minor party.[13] The applicable Bylaws, as amended, of the IPC were filed with the Secretary on March 20, 2010.

Stefanowski and Devlin sought the 2022 nomination of the IPC for, respectively, the constitutional offices of governor and lieutenant. The Bylaws provide for a party caucus to be held no later than May 1 in even numbered years;[14] Bylaws, Art. 3, § 4; for the purpose of nominating candidates for statewide office. Id., Art. 3, § 5. Section 5 provides that the SCC of the IPC will nominate one candidate for each statewide office and party members may nominate additional candidates from the floor. The candidate for the applicable statewide office is selected

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[11] The courts findings are derived from the parties' Stipulation of Facts, # 118 as well as its findings upon receipt and consideration of the evidence and testimony. Other sources from which facts are derived are specifically referenced.

[12] See *Independent Party of CT-State Central v. Merrill*, 330 Conn. 681, 686-93, 200 A.3d 1118 (2019) for a thorough history, including intra-party friction, of the IPC. The IPC was first certified as a minor party in 2008. Id., 689.

[13] General Statutes § 9-372 (6) defines a "minor party" as "a political party or organization which is not a major party and whose candidate for the office in question received at the last-preceding regular election for such office, under the designation of that political party or organization, at least one per cent of the whole number of votes cast for all candidates for such office at such election . . . ."

[14] The court received uncontested testimony from Telesca, which it credits, that the IPC has never held a caucus before May 1 of any year; that caucuses are held in mid to late August and no objection to this timing has ever been raised.

by registered members of the IPC in attendance at the caucus. Section 5 further provides that "[t]he candidate for each office who receives 51% of the votes at the state caucus will be the nominee of the party. If there are three or more candidates for an office and no one gets at least 51% of the votes then the candidate with the lowest number of votes will be removed from candidates list and a new vote will take place until a candidate receives 51% or more of the vote." Id. The SCC "shall fill any statewide office left vacant by the statewide caucus or for any other reason that a vacancy occurs by a simple majority of [its] members at a meeting called for that purpose." Id. Ranked-choice voting was utilized for the 2018 IPC statewide party caucus when Stefanowski became the IPC nominee on the first ballot. See Defendant's Exhibit 1.

In July of 2022, Stefanowski informed the IPC SCC of his intention to seek the nomination and cross-endorsement of the IPC for the November 8, 2022, general election. In his letter, Stefanowski indicated his assumption "that the caucus process will be run in accordance with the Independent Party of CT Rules and Bylaws filed with the Connecticut's Secretary of State." Joint Exhibit 2, p. 1. On August 5, 2022, Margaret O'Brien, Chair of the IPC Waterbury Town Committee, requested information regarding the manner in which the caucus was to be held including how the actual votes be cast and counted. See Joint Exhibit 5. Telesca responded on that date that, relevantly, ranked-choice voting as provided by the Bylaws would be utilized. See Joint Exhibit 6. After meeting with Telesca and John Mertens, a member of SCC, by letter dated August 18, 2022, Stefanowski informed Telesca and Mertens that ranked-choice voting was, in his campaign's view, contrary to Article 3, Section 5 of the Bylaws, which required multiple votes if no candidate received 51 percent of the votes, and requested that the IPC follow the voting process as required by its Bylaws. Joint Exhibit 8. Prior to the caucus, the SCC,

pursuant to Article 3, § 5, of the Bylaws, nominated Hotaling and Beckett for the offices of governor and lieutenant governor.

The IPC caucus was held on August 23, 2022. A flyer was distributed to the attending IPC registered members that explained that the ranked-choice voting process, in use since 2012, would be employed. The ranked-choice procedure to be used was one in which members were asked to indicate their preference for the candidates by placing either the number one, two or three, next to the candidate's name. Ballots with a number one for each candidate were to be totaled. "If a candidate receives a 1 on more than 50% of the ballots, they are the winner. If no candidate receives more than 50%, we move to VOTING ROUND 2 [in which] [t]he candidate receiving the lowest total of '1' is eliminated, and the ballots of the eliminated candidate will be redistributed to the second-choice candidate on each ballot (the candidate with a '2'). If a candidate now has more than 50% of the ballots, they are the winner. If no candidate has more than 50%, the process is continued (VOTING ROUND 3, etc.) until a candidate exceeds 50%." Joint Exhibit 9.

At the caucus, Stefanowski, Hotaling and Ernestine Holloway, an IPC member, were nominated and seconded for the office of governor. Devlin and Beckett were nominated for lieutenant governor in conjunction with Stefanowski and Hotaling, respectively. Telesca advised the audience that the IPC would conduct the vote process according to the ranked-choice voting procedure outlined in the flyer. Only Hotaling and Holloway's names were pre-printed on the ballots that were distributed to IPC members, requiring members to write Stefanowski's name on the ballot. Telesca cast a ballot during the first round of voting at the caucus. The first round of voting produced seventy-nine votes for Stefanowski/Devlin, seventy-five votes for Hotaling/Beckett and four votes for Holloway. Rather than holding a second vote, the four first

preference votes for Holloway, all of which identified Hotaling as the second choice, were reallocated to Hotaling, leaving a tie of seventy-nine votes each for each candidate. Telesca announced to the members that there was a tie and that according to the Bylaws, he had the authority to cast the tie breaking vote. Later, he added that he was voting for the candidate endorsed by the SCC and that Hotaling and Beckett would receive the party's nominations for Governor and Lieutenant Governor, respectively. The court credits Telesca's testimony that he believed he was acting in accordance with the wishes of the SCC.

On August 24, 2022, the IPC filed with the Secretary certificates of endorsement of Hotaling/Beckett. The court finds that a meeting of the SCC was held shortly after August 24, 2022, in which the SCC voted unanimously to ratify Telesca's actions in declaring the nominations in favor of Hotaling and Beckett. On August 25, 2022, counsel for Stefanowski's campaign, Attorney Peter Martin,[15] sent a letter to the Secretary in which he objected, on behalf of the Stefanowski campaign, to the IPC's nomination of Hotaling and requested that the Secretary reject the endorsement filed by the IPC and decline to print Hotaling's name on the official ballot as the endorsed candidate of the IPC. In his letter, Attorney Martin identified, inter alia, the party's failure to comply with its own Bylaws by nominating a candidate who did not achieve 51 percent of the vote at the caucus, using ranked-choice voting and Telesca's unlawful casting of a second vote to break a claimed tie. By letter dated August 25, 2022, the Secretary declined to reject the certificate of nomination filed by the IPC on the grounds that the Secretary's function "is limited to the receipt and filing of the certificate and does not extend to examining party rules, determining their validity, resolving disputes as to such rules, or enforcing their provisions." The present action followed.

[15] Attorney Martin was one of three counsel who represented the plaintiffs at the September 8, 2022, evidentiary hearing before the court.

MOTION TO DISMISS

"A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction." (Internal quotation marks omitted.) *MacDermid, Inc. v. Leonetti*, 310 Conn. 616, 626, 79 A.3d 60 (2013). "A court deciding a motion to dismiss must determine not the merits of the claim or even its legal sufficiency, but rather, whether the claim is one that the court has jurisdiction to hear and decide." (Internal quotation marks omitted.) *Hinde v. Specialized Education of Connecticut, Inc.*, 147 Conn. App. 730, 740-41, 84 A.3d 895 (2014).

"[A] motion to dismiss pursuant to Practice Book § 10-30 (a) (1) is the appropriate procedure for challenging subject matter jurisdiction." *Machado v. Taylor*, 326 Conn. 396, 401, 163 A.3d 558 (2017). "Subject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by the action before it. . . . [A] court lacks discretion to consider the merits of a case over which it is without jurisdiction . . . ." (Internal quotation marks omitted.) *Keller v. Beckenstein*, 305 Conn. 523, 531-32, 46 A.3d 102 (2012). "Any claim of lack of jurisdiction over the subject matter cannot be waived; and whenever it is found after suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the judicial authority shall dismiss the action." Practice Book § 10-33.

"[T]he plaintiff bears the burden of proving subject matter jurisdiction, whenever and however raised." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC v. New London*, 265 Conn. 423, 430 n.12, 829 A.2d 801 (2003). "[I]t is the burden of the party who seeks the exercise of jurisdiction in his favor . . . clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute. . . . It is well established that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged." (Internal quotation marks omitted.) *Financial Consulting, LLC*

v. Commissioner of Ins., 315 Conn. 196, 226, 105 A.3d 210 (2014). "Once the question of subject matter jurisdiction has been raised, cognizance of it must be taken and the matter passed upon before [the court] can move one further step in the cause; as any movement is necessarily the exercise of jurisdiction." (Internal quotation marks omitted.) *Schaghticoke Tribal Nation v. Harrison*, 264 Conn. 829, 839 n.6, 826 A.2d 1102 (2003).

In the present case, the court elected to reserve its judgment on the motion to dismiss so as to timely hear the merits of the plaintiffs' motion for an injunction. The Secretary urged the court to stay the present hearing as to all counts until the issue of the court's subject matter jurisdiction as to the second count was resolved. The court's research has found no controlling authority, indeed no decision, that addresses whether a court may proceed to adjudicate other causes contained in a plaintiff's complaint to which no question as to its subject matter is present. In the present case, the parties and the court agree that the latter is possessed of subject matter jurisdiction over the first and third counts, which assert claims against the IPC and Telesca of statutory violations and a declaratory judgment, respectively.

This court concludes that under the facts of this case, where an expedited hearing is undertaken given the exigent circumstances present, i.e., the Secretary's mandatory obligation under General Statutes § 9-462 to mail by September 15, 2022, to each town clerk a list of the names of all duly nominated candidates for state and district offices to be filled in the present election, it may proceed to consider and adjudicate those causes of action contained within a complaint for which no question as to subject matter jurisdiction is present. The court discerns no reason why the potential jurisdictional infirmity of one count need delay adjudication of others over which it has jurisdiction. This is especially so in the context of the exigent circumstances related to this case. Accordingly, the court concludes that it has the authority to hear evidence on

those counts over which it has jurisdiction while reserving decision on that over which it may not.

The Secretary asserts in it motion to dismiss that he has no statutory authority to undertake an independent inquiry into an intraparty nomination process that precedes the filing of the certificate of nomination. In his view, the role of the Secretary following the certification by a minor party of nominated candidate, as provided in § 9-452, is to simply receive a timely and complete certification, act as its repository and thereafter to mail the appropriate ballot, reflecting the nomination of the party's candidacy, to the town clerks of this State. See General Statutes § 9-462. Because this is purportedly a ministerial duty not of the character of a "ruling" within the contours of § 9-324, the Secretary argues the plaintiffs are not "aggrieved by any ruling of any election official in connection with any election for Governor [or] Lieutenant Governor" and thus deprived of subject matter jurisdiction over count two of the plaintiffs' complaint that alleges a violation of § 9-324. The plaintiffs counter that because General Statutes § 9-374[16] requires a party, whether major or minor, to file timely its party rules with the Secretary before the latter may permit the name of the party-endorsed candidate for an office to be printed on the official ballot, this statute and General Statutes § 9-451,[17] which addresses the nomination by a minor party of a candidate for office, the legislature prohibits the Secretary from printing the name of a candidate on the official ballot where the candidate is not nominated pursuant to rules on file with the Secretary. The court agrees with the Secretary.

[16] See footnote 3.

[17] Section 9-451 provides that "[t]he nomination by a minor party of any candidate for office, including an office established after the last-preceding election, and the selection in a municipality by a minor party of town committee members or delegates to conventions may be made in the manner prescribed in the rules of such party, or alterations or amendments thereto, filed with the Secretary of the State in accordance with section 9-374."

The court's analysis begins with an examination of the relevant statutes. General Statutes § 9-324 provides in relevant part that "[a]ny elector or candidate who claims that such elector or candidate is aggrieved by any ruling of any election official in connection with any election for Governor [or] Lieutenant Governor . . . may bring such elector's or candidate's complaint to any judge of the Superior Court" for adjudication. Section § 9-324 appears in Chapter 149 of the General Statutes, which addresses contested elections and primaries. General Statutes § 9-323, "Contests and Complaints in Election of Presidential Electors, U.S. Senator and Representative," "Contests and Complaints in Election of Municipal Officers and Nomination of Justices of the Peace;" General Statutes § 9-328, "Contests and Complaints in Election of Municipal Officers and Nomination of Justices of the Peace," and § 9-329a, "Contests and Complaints in Connection with Any Primary," also appear in Chapter 149. These additional statutes contain nearly identical language authorizing any "elector or candidates who claims that he is aggrieved by *any ruling of any election official*" in connection with any election for the various positions to bring a complaint to a judge[18] for relief.

Our Supreme Court has interpreted the phrase "ruling of an election official" to require "some act or conduct by the official that (1) decides a question presented to the official, or (2) interprets some statue regulation or other authoritative legal requirement, applicable to the election process." (Internal quotation marks omitted.) *Arciniega v. Feliciano*, 329 Conn. 293, 302, 184 A.3d 1202 (2018) (applying standard to § 9-329a). See also *Price v. Independent Party of CT-State Central*, 323 Conn. 529, 536, 147 A.3d 1032 (2016) (applying the standard to § 9-

[18] Section 9-323 permits, in the case of a contest relative to presidential electors, congressional senators and representatives, complaints to be brought to any "judge of the Supreme Court." Redress is afforded by the other statutes to judges of the Superior Court.

323); *Bortner v. Woodbridge*, 250 Conn. 241, 268, 736 A.2d 104 (1999), abrogated on other grounds by *Arciniega v. Feliciano*, supra, 293 (applying the standard to § 9-328).

In *Wrotnowski v. Bysiewicz*, 289 Conn. 522, 958 A.2d 709 (2008), the Supreme Court addressed a claim pursuant to § 9-323 in which the plaintiff alleged the Secretary failed to verify that Barack Obama, the democratic nominee for the office of President of the United States, was a natural born citizen of the United States. The court held that because the election statutes neither require nor authorize the Secretary to verify the constitutional qualifications of a candidate for the office of president of the United State, the claim did not concern a "ruling of any election official," the plaintiff lacked standing and thus the court lacked subject matter jurisdiction over the claim. Id., 528-29. In *Reform Party of Connecticut v. Bysiewicz,* 254 Conn. 789, 794, 760 A.2d 1257 (2000), the Supreme Court addressed the refusal of the Secretary to place on the ballot either set of two competing nominees from a national convention that were certified to her by separate factions of the Reform Party, a minor party. The plaintiff, representing one of the factions, brought an action pursuant to § 9-323 against the Secretary claiming that she improperly refused to place upon the ballot any of the two Reform Party nominees. The court, *McDonald, J.*, recognized that, under the constitution of the national Reform Party, the national chairman was the presiding officer of the national convention. Id., 794. Because the Secretary was required to submit, pursuant to § 9-452,[19] a list of all duly elected nominees of a minor party upon receipt of a certificate *from the presiding officer of the nominating convention*, the Secretary was ordered to place on the ballot those electors certified by the presiding officer of the convention. Id., 795.

[19] See footnote 7.

Of collateral, but important, significance is the observation by the court that "[q]uestions raised by [the competing party chair] concerning the make-up of the convention, the resolution of challenges to delegates and procedures of the convention are political questions left for the party to resolve. They may not be resolved by the courts. It is well established that, whenever possible, the internal determinations of a national political party are governed by the party and its rules and regulations, not by the intrusion of the court or the state." Id., 796. Moreover, "[t]he overriding consideration of this tribunal is to avoid engaging in deciding political questions while at the same time attempting to ensure that a national political party may present to the electorate its chosen candidates." Id., 794.

In the present case, the language of the same election statute at issue in *Reform Party of Connecticut v. Bysiewicz,* §§ 9-452, and § 9-324 (governing statewide elections), the counterpart to §9-323, neither require nor authorize the Secretary to verify the propriety of the certification of Hotaling and Beckett as nominees for governor and lieutenant governor by Telesca, the presiding officer of the IPC caucus. See *Wrotnowski v. Bysiewicz*, supra, 289 Conn. 528. Indeed, the obligation of the Secretary set forth in § 9-452 is limited to receiving the timely certification of such nominations and rejecting them if not timely received. "If such certificate of a party's nomination is not received [timely] by the Secretary . . . such certificate shall be invalid and such party . . . shall be deemed to have neither made nor certified any nomination of any candidate for such office." General Statutes § 9-452. In effect, the Secretary's function and authority is ministerial and is limited to, as suggested by the Secretary in his brief, to receipt of the certificate, acting as the repository thereof, and placing the nominated candidates certified by the presiding officer of the caucus on the ballots submitted to the town clerks. This ministerial duty does not represent a "ruling of an election official" because it is neither (1) a question presented

to the Secretary, nor (2) an interpretation of some statue, regulation, or other authoritative legal requirement, applicable to the election process. See *Arciniega v. Feliciano*, supra, 329 Conn. 302. Accordingly, the court concludes that it lacks subject matter jurisdiction over this claim, and the second count of the plaintiffs' complaint is dismissed.

MOTION TO STRIKE

The IPC and Telesca move, pursuant to Practice Book § 11-3,[20] to strike the entire complaint on the grounds that the plaintiffs failed to join an indispensable party, Beckett, as a party defendant.[21]

The court applies the familiar standard for a motion to strike that requires it to examine the legal sufficiency of the allegations of a complaint to state a claim upon which relief can be granted; *Fort Trumbull Conservancy, LLC v. Alves*, 262 Conn. 480, 498, 815 A.2d 1188 (2003); while accepting as true the facts alleged in the pleading and construing them in the manner most favorable to sustaining their legal sufficiency. *HSBC Bank USA, National Assn. v. Nathan*, 195 Conn. App. 179, 193, 224 A.3d 1173 (2020).

"The failure to give notice to or to join an indispensable party does not impact the court's subject matter jurisdiction." (Internal quotation marks omitted.) *Travelers Casualty & Surety Co. of America v. Netherlands Ins. Co.*, 312 Conn. 714, 735, 95 A.3d 1031 (2014). Where a potentially indispensable party is not named, "the court . . . must consider whether the

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[20] Practice Book § 11-3 provides in relevant part that "[a]s set forth in Section 10-39, the exclusive remedy for nonjoinder of parties is by motion to strike." Practice Book § 10-39 (a) (3) relevantly provides that: "(a) [a] motion to strike shall be used whenever any party wishes to contest . . . (3) [t]he legal sufficiency of any such complaint . . . or any count thereof, because of the absence of any necessary party or, pursuant to [General Statutes] Section 17-56 (b), the failure to join or give notice to any interested person . . . ." Practice Book § 17-56 (b) requires that persons who have an interest in the subject matter of a requested declaratory judgment that is direct, immediate and adverse to the interest of one or more the plaintiffs shall be made parties to the action or shall be given reasonable notice thereof.

[21] Notably, the defendants do not advance as a basis for the motion to strike the failure of the plaintiffs to name that Hotaling as a party. See Defs.' Mem. in Supp. of Mot. to Strike, # 108, p. 1 n.1.

adjudication of the action in the absence of the party would violate that party's right to defend its interests and offend fundamental tenets of due process." *Batte-Holmgren v. Commissioner of Public Health*, 281 Conn. 277, 288-89, 914 A.2d 996 (2007). "Parties have been termed indispensable when their interest in the controversy is such that a final decree cannot be made without either affecting that interest or leaving the controversy in such condition that its final disposition may be inconsistent with equity and good conscience." *Gaudio v. Gaudio,* 23 Conn. App. 287, 305-306, 580 A.2d 1212, cert. denied, 217 Conn. 803, 584 A.2d 471 (1990).

Similarly, the failure to give the notice required by Practice Book § 17-56 (b)[22] for declaratory judgments is non-jurisdictional but may implicate due process concerns. *Batte-Holmgren v. Commissioner of Public Health*, supra, 281 Conn. 289. Where, however, the interests of nonparties who may be interested in the declaratory judgment can be represented adequately by the current parties, and no interests of a potential party are left unprotected, no such due process concerns are implicated. Id., 290-91. This court discerns no rational reason why this qualification of the requirement of Practice Book § 17-56 (b) that persons with a "direct, immediate and adverse" interest to one or more of the plaintiffs should not apply to the doctrine of indispensable parties which serves an identical due process purpose, that of protecting the interests of the nonparty.

In the present case, the interests of Beckett are adequately served and protected by the IPC and Telesca who have an identical interest in ensuring that both Hotaling and Beckett are included on the ballot under the IPC line. Both seek, and benefit from, the candidacy and potential success of the ticket. Indeed, the IPC may possess a greater long-term interest in the

[22] Practice Book § 17-56(b) provides in relevant part that "[a]ll persons who have an interest in the subject matter of the requested declaratory judgment that is direct, immediate and adverse to the interest of one or more of the plaintiffs or defendants in the action shall be made parties to the action or shall be given reasonable notice thereof."

candidacy of Hotaling and Beckett given that the consequences of the absence of any nominee on the 2022 ballot for governor; see § 9-452; entails depriving the IPC of minor party status for the 2026 governor election,[23] the attendant direct access to the ballot through a caucus,[24] and would require the IPC and its 2026 candidate for governor and lieutenant to suffer the laborious and expensive petition process for such access.[25] Because the interests of Beckett are adequately protected by the IPC and Telesca, the motion to strike is denied.

APPLICATION FOR INJUNCTION

Both temporary and permanent injunctions require that the moving party must establish: "(1) the plaintiff ha[s] no adequate legal remedy; (2) the plaintiff would suffer irreparable injury absent [the injunction]; (3) the plaintiff [is] likely to prevail . . . and (4) the balance of the equities favor[s] [issuing the injunction]." *Waterbury Teachers Assn. v. Freedom of Information Commission*, 230 Conn. 441, 446, 645 A.2d 978 (1994). "The remedy by injunction is summary, peculiar and extraordinary. An injunction ought not to be issued except for the prevention of great and irreparable mischief." (Internal quotation marks omitted.) *Connecticut Assn. of Clinical Laboratories v. Connecticut Blue Cross, Inc.*, Superior Court, judicial district of Fairfield, Docket No. 150720 (October 18, 1973, *Levine, J.*).

"The standard for granting a temporary injunction is well settled. In general, a court may, in its discretion, exercise its equitable power to order a temporary injunction pending final

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[23] General Statutes § 9-372 (6) defines a minor party as "a political party or organization which is not a major party and whose candidate for the office in question received at the last-preceding regular election for such office, under the designation of that political party or organization, at least one per cent of the whole number of votes cast for all candidates for such office at such election."

[24] See General Statutes § 9-379 which provides that "[n]o name of any candidate shall be printed on any official ballot at any election except the name of a candidate nominated by a major or minor party unless a nominating petition for such candidate is approved by the Secretary of the State as provided in sections 9-453a to 9-453p, inclusive."

[25] See General Statutes §§ 9-453a through 9-453u.

determination of the order, upon a proper showing by the movant that if the injunction is not granted he or she will suffer irreparable harm for which there is no adequate remedy at law. . . . A party seeking injunctive relief must demonstrate that: (1) it has no adequate remedy at law; (2) it will suffer irreparable harm without an injunction; (3) it will likely prevail on the merits; and (4) the balance of equities tips in its favor. . . . The plaintiff seeking injunctive relief bears the burden of proving facts which will establish irreparable harm as a result of that violation. . . . Moreover, [t]he extraordinary nature of injunctive relief requires that the harm complained of is occurring or will occur if the injunction is not granted. Although an absolute certainty is not required, it must appear that there is a substantial probability that but for the issuance of the injunction, the party seeking it will suffer irreparable harm." (Citations omitted; internal quotation marks omitted.) *Aqleh v. Cadlerock Joint Venture II, L.P.*, 299 Conn. 84, 97-98, 10 A.3d 498 (2010). Connecticut courts apply this standard for temporary injunctions in the context of election cases. See e.g., *Hrezi v. Merrill*, Superior Court, judicial district of Hartford, Docket No. CV-22-6156703-S, 2022 WL 3048386 (August 2, 2022, *Noble, J.*); *Fritz v. Uricchio*, Superior Court, judicial district of Middlesex, Docket No. CV-15-6014480-S, 2015 WL 9242213, *1 (November 20, 2015, *Domnarski, J.*) (61 Conn. L. Rptr. 307); *Jarjura for Comptroller v. State Elections Enforcement Commission*, 51 Conn. Supp. 483, 496, 4 A.3d 356 (2010); *Osorio Fuentes v. Smith*, Superior Court, judicial district of New Haven, Docket No. CV-04-0486751-S, 2004 WL 944513, *4 (April 12, 2004, *Arnold, J.*).

"More stringent standards, however, govern the issuance of mandatory injunctions. Unlike a prohibitory injunction—an order of the court that merely maintains the status quo by restraining a party from the commission of some act—a mandatory injunction is a court order that commands a party to perform some affirmative act. . . . Relief by way of mandatory

injunction is an extraordinary remedy granted in the sound discretion of the court [but] only under compelling circumstances." (Citation omitted; internal quotation marks omitted.) *Kent Literary Club of Wesleyan University at Middletown v. Wesleyan University*, 338 Conn. 189, 238-39, 257 A.3d 874 (2021).

The plaintiffs assert that they are entitled to a preliminary injunction because the party Bylaws of the IPC were not followed. In their view, the ranked-choice voting used at the caucus was contrary to the Bylaws, as was the certification of Hotaling and Beckett's nomination with only 51 percent of the vote and the failure to conduct an actual second round of balloting. The resulting nomination was, argue the plaintiffs, a disenfranchisement of their rights and those of other members of the IPC and the source of irreparable harm because party members who suffer what in their view is a blatant disregard of party rules will have no means to secure their franchise or hold party leaders accountable.

The IPC and Telesca advance the position that the Bylaws were followed because the SCC has the authority to fill any statewide office left vacant by the statewide caucus, and in the event the court finds the Bylaws were violated, a minor party is given substantial flexibility in making nominations and are not required to follow their rules. See General Statutes § 9-451. Finally, they assert the equities weigh in their favor.

The court agrees with the plaintiffs that the IPC caucus as it related to the nomination of nominees for governor and lieutenant governor was arguably not in accordance with its Bylaws. In the first instance, the Bylaws provide that a nominee of the party for any office must receive 51 percent of the vote of eligible[26] party members attending the caucus. This rule can present a

[26] Article 3, § 3, of the Bylaws confers eligibility to vote at a caucus on those IPC members registered with the IPC for a minimum of ninety continuous days prior to the state caucus.

conundrum if a nominee receives a majority of the vote but less than 51 percent.[27] Nevertheless, a plain reading of the party rules requires the successful nominee to have received 51 percent of the caucus votes. Moreover, the Bylaws provide for multiple actual votes in the event no candidate receives 51 percent of the caucus vote. Art. 3, § 5 provides that "[i]f there are three or more candidates for an office and no one gets at least 51% of the votes then the candidate with the lowest number of votes shall be removed from the candidates list and *a new vote* will take place until a candidate receives 51% or more of the vote." (Emphasis added.) Joint Exhibit 1.

Our Supreme Court has applied traditional contract law to determine the legal effect of bylaws. *Gianetti v. Norwalk Hospital*, 211 Conn. 51, 59, 557 A.2d 1249, 1253 (1989), holding modified by *Batte-Holmgren v. Commissioner of Public Health,* supra, 281 Conn. 277, on other grounds. Principals of contract interpretation may appropriately be applied to the present Bylaws. "If a dispute arises over the meaning of an ambiguous bylaw, it should be construed according to the rules applied when interpreting statutes, contracts and other written instruments." M. Ford, Connecticut Corporation Law & Practice (2d Ed. 2007 and Supp. 2019) § 3.01 (A), pp. 3-6. "When construing a contract, we seek to determine the intent of the parties from the language used interpreted in the light of the situation of the parties and the circumstances connected with the transaction . . . . [T]he intent of the parties is to be ascertained by a fair and reasonable construction of the written words and . . . the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract. . . . When only one interpretation of a contract is possible, the court need not look

[27] If Telesca's actions after the initial vote constitute an additional vote, then Hotaling's winning margin would have been 50.3 percent, or 80 votes out of a total of 159 (79 in favor of the Stefanowski/Devlin ticket plus 80 votes in favor of Hotaling/Beckett ticket), a figure less than 51%. This conundrum, wherein a candidate receives the majority vote but less than 51%, is self-imposed by the plain and unambiguous language of the Bylaws.

outside the four corners of the contract." (Internal quotation marks omitted.) *Grogan v. Penza*, 194 Conn. App. 72, 78, 220 A.3d 147 (2019).

The court finds that the Bylaws plausibly provide for a different, additional, vote after an initial vote in which a nominee does not receive 51 percent of the first vote. Telesca opined in his testimony that the reallocation of the second-choice votes for Hotaling from the ballots which had listed Holloway as the first choice constituted a "new" vote. It likely does not. The reallocation of those votes was merely that, a reallocation permissible under ranked-choice voting but not contemplated by the applicable Bylaws. The adjective "new" that modifies "vote" clearly is in juxtaposition to an initial vote in which no candidate received at least 51 percent of the vote. "New" in this context, is appropriately defined as "having recently come into existence; being other than the former or old." Merriam-Webster's Collegiate Dictionary (11th Ed. 2003) (available online at https://www.merriam-webster.com/dictionary/new, last visited September 15, 2022). The reallocation of votes conducted by the IPC at its caucus was not a distinct vote, one "other than the former or old" vote. The proper procedure as mandated by the Bylaws would arguably have been for the IPC to have held another, new and additional, vote in which all eligible party members attending indicated by filling out a ballot that contained only the Stefanowski/Devlin and Hotaling/Beckett tickets, and voting for whichever+.
of the two was their preference for the offices. This process should have continued until a ticket obtained 51 percent of the vote. This was not done, and the court concludes that the use of the ranked-choice voting was plausibly in violation of the Bylaws.

The application of the Bylaws to the present facts results, however, in ambiguity. This is so because the Bylaws do not address a tie vote. The plaintiffs argue that the procedure it employed was proper under the Bylaws because the last sentence of Art. 3, § 5, authorizes the

SCC to "fill any statewide office left vacant by the statewide caucus or for any other reason that a vacancy occurs by a simple majority of [its] members at a meeting called for that purpose." The filling of the offices of governor and lieutenant governor was necessary in the present case, in the estimation of the plaintiffs, because a tie resulted from the first vote, the Bylaws are silent as to procedure following a tie and accordingly a vacancy occurred. This position ignores the potentiality of a vote resulting in a 51 percent vote margin or greater for either ticket following a second vote.[28] It is thus plausible that the procedure employed by the IPC was in violation of its Bylaws.

The plaintiffs would have the court end its analysis at the point that a violation of the Bylaws is found. They cite as authority for this proposition § 9-374 that requires party rules to be filed with the Secretary before a party endorsed candidate can be printed on the official ballot, and § 9-451. The latter provides that "[t]he nomination by a minor party of any candidate for office . . . *may* be made in the manner prescribed in the rules of such party, or alterations or amendments thereto, filed with the Secretary of the State in accordance with section 9-374." (Emphasis added.) The plaintiffs dispense with consideration of the work "may" employed in § 9-374 by reference to a summary of the procedure for office as a minor party drafted by the Office of Legislative Research. Office of Legislative Research, OLR Research Report: "Running for Office as a Minor Party or Petitioning Candidate and Establishing a Political Party" (October 11, 1995), available at https://www.cga.ct.gov/PS95/rpt/olr/htm/95-R-1135.htm (last visited September 14, 2022). The summary provides that "[a] minor party must nominate (pursuant to its party rules) its candidates for offices for which it qualifies." Id. In the plaintiffs' estimation, the

[28] The court does not address the possibility of a deadlocked caucus in which neither candidate received 51 percent or more of the vote after successive votes as that issue is not before it. Moreover, it is not the function of this court to rewrite the IPC Bylaws in order to address such possibilities.

use of the word "may" merely means that a minor party does not have to nominate a candidate and may simply chose not to do so. The court is not persuaded.

The OLR summary is clearly not a dispositive source for this court. It notably does not conduct any application of principals of statutory interpretation. Moreover, the summary does not address the significance of the use of "may" within the context of the statute, nor, importantly, does it consider the use of the word "shall" in § 9-382, which addresses the nomination process for major party nominees. Section 9-382 provides relevantly that "[t]he [major party] state or district convention . . . *shall*, in a manner conforming with applicable law and with the rules of the party calling such convention, choose a candidate for nomination to each of the state . . . offices." (Emphasis added.)

The use of the word "may" in the text of § 9-451 is significant because it serves as an indication that a statutory provision is directory rather than mandatory. "[T]he use of the term 'may' ordinarily does not connote a command. Rather, the word generally imports permissive conduct and the conferral of discretion." (Internal quotation marks omitted.) *DiLieto v. County Obstetrics & Gynecology Group, P.C.*, 310 Conn. 38, 47-48, 74 A.3d 1212 (2013). The difference in §§ 9-382 and 9-451 clearly identify two different levels of compliance with party rules. The IPC and Telesca emphasize this difference and advance the proposition that minor parties, such as the IPC, are afforded substantial statutory leeway in the conduct of their caucus relative to adherence to party rules.

General Statutes § 1-2z directs this court to examine the meaning of § 9-451 in respect to other relevant statutes. The former provides relevantly that "[t]he meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself *and its relationship to other statutes*." (Emphasis added.) "Section 1-2z counsels us to construe statutes in light of related

provisions, as we are guided by the principle that the legislature is always presumed to have created a harmonious and consistent body of law . . . . [T]his tenet of statutory construction . . . requires us to read statutes together when they relate to the same subject matter. . . . Accordingly, [i]n determining the meaning of a statute . . . we look not only at the provision at issue, but also to the broader statutory scheme to ensure the coherency of our construction." (Internal quotation marks omitted.) *Independent Party of CT-State Central v. Merrill*, 330 Conn. 681, 706, 200 A.3d 1118 (2019).

The plaintiffs' argument that the word "may" qualifies "whether a minor party chooses to put forth a candidate, or not;" Pls.' Mem. of Law in Supp. of their Appl. for a Prelim. Inj., September 1, 2022, # 103, p. 17; is unpersuasive on two grounds. The word "may" precedes "the manner prescribed in the rules of such party," indicating that it modifies that which it precedes. Moreover, the parallel construction of "may" as used in § 9-451 with the word "shall" in the parallel statute, § 9-382, would result in the absurd result that major parties would be *mandated* by statute to nominate a candidate for "each of the state or district offices."

Significantly, the statutory scheme applicable to major parties expressly mandates fidelity to the party rules for the nomination of candidates. General Statutes § 9-387 provides that "[t]he state rules of each party *shall* prescribe the manner in which any dispute as to the endorsement by such party of a candidate for state, district or municipal office or for town committee member, or as to the selection by such party of a delegate to a convention, including conflicting claims to such endorsement or selection, *shall* be resolved." No similar mandate appears in the statutes governing minor parties. Had the legislature desired to impose a mandate that minor parties must follow their rules, it clearly knew how to do so, but did not. See *Costanzo v. Plainfield*, 344 Conn. 86, 108-09, 277 A.3d 772 (2022) ("Had the legislature intended for a claim under the first

exception [to statutory municipal immunity] to require proof of more than negligence, it could have said so expressly, as it did in the second exception.")

Additional support for the conclusion that § 9-451 does not mandate strict adherence to party rules is found in a 2016 ruling of the State Elections Enforcement Commission (SEEC) addressing a complaint by Telesca in which he alleged violations of IPC party rules in connection with the 2016 caucus nominations by the IPC. *Complaint of Michael J. Telesca, Waterbury*, 2015 CT Elections Enf. Comm. Decs. LEXIS 13, at *7, (Dec. 20, 2017).[29] In its ruling dismissing Telesca's complaint of rule violations, the SEEC held that "General Statutes § 9-451 and its use of the word 'may,' indicates that the statute is permissive and therefore allows, but does not require, minor parties to administer a caucus strictly 'in the manner prescribed in the rules of such party,' which in turn provides some statutory leeway for the administration of party meetings. Therefore, the Commission concludes that pursuant to § 9-451 the IPC [Independent Party Committee] had the discretion as to whether or not it would implement its bylaws at Article 3, Section 3 pertaining to 'Voting Eligibility' and under the specific circumstances of the Caucus." Id., 4.

Further, the principles of separation of powers, as previously discussed, counsel great caution on the part of the judiciary when confronted with political questions. In *Nielsen v. Kezer*, 232 Conn. 65, 652 A.2d 1013 (1995), our Supreme Court addressed a claimed violation of state election laws upon the Secretary's refusal to certify him as an endorsed candidate of the A Connecticut Party (ACP), then a major party, based upon an alleged violations of party rules in the party's determination that the plaintiff's convention endorsement by the sole delegate,

[29] *Complaint of Michael J. Telesca* is not controlling but it nevertheless possesses the character of persuasive authority entitled to deference as the conclusion of an agency tasked with interpreting election statutes. "Courts grant an agency particular deference when it has expertise in a given area and a history of determining factual and legal questions similar to those at issue." *Celentano v. Rocque*, 282 Conn. 645, 653 (2007).

without a second, was invalid. The plaintiff alleged a violation of the ACP rules because a seconding motion was not required. The *Nielsen* court observed that "[p]olitical parties generally are free to conduct their internal affairs free from judicial supervision. . . . This common law principle of judicial restraint, rooted in the constitutionally protected right of free association, serves the public interest by allowing the political processes to operate without undue interference. . . . Because the nomination and endorsement of candidates for elective office are among the primary functions of political parties, [j]udicial intervention in [the selection of convention delegates] traditionally has been approached with great caution and restraint." (Citations omitted; footnote omitted; internal quotation marks omitted.) Id., 78-79. "Because the ACP was entitled to exercise broad discretion in resolving the question of whether Nielsen's nomination required a second, the trial court was not free to substitute its judgment for that of the party. Rather, the court was obliged to accept the party's rules interpretation unless that determination was irrational. Although the executive committee might *plausibly* have reached a contrary conclusion, we agree with the trial court that the committee's interpretation of the ACP rules and, accordingly, its resolution of the dispute was reasonable." (Emphasis added). Id, 82. Significantly, this holding occurred in the context of a *major* party's obligation pursuant to § 9-382, which contains the word "shall" relative to compliance with party rules, to comply with the rules of the party.

The conclusion that substantial discretion is conferred by our statutes on a minor party's fidelity to its own rules does not mean that their decisions regarding nominees are untrammeled. The judiciary retains the jurisdiction to disturb decisions related to intraparty nomination disputes where the action of the party's authority is "demonstrably unlawful or patently irrational." *Nielsen v. Kezer*, supra, 232 Conn. 80. In the present case, the ICP's nomination of

the Hotaling/Beckett ticket was not unlawful in the sense that it violated state statute. Although this court concluded that the actions of the ICP were plausibly not in conformance with its Bylaws, they were not irrational. As the defendants argued, the Bylaws contain no specific provision for breaking a tie, thus, while the ICP might plausibly have reached a contrary conclusion, its decision to nominate Hotaling and Beckett is within its discretion.

The statutory scheme for minor parties does impose a mandatory mechanism for the authoritative certification of a nominee. In *Reform Party of Connecticut v. Bysiewicz*, supra, 254 Conn. 789 our Supreme Court resolved a dispute as to which of two candidates for the office of President of the United States was the duly elected nominee of the Reform Party, which was in Connecticut a minor party. The Reform Party's national convention was riven by disputes between two rival factions who each nominated different candidates for the office of the President of the United States. Each faction certified their nominee to the Secretary who, confronted with two different certifications of nominees from the Reform Party, refused to place either on the ballot. The court, guided by General Statutes § 9-452,[30] concluded that the nominee certified by the presiding officer of the Reform Party national convention was the duly elected nominee. This was so because § 9-452 "requires the secretary of the state to mail to each town clerk a list of all duly elected nominees of a minor party...upon receipt of a certificate from *the presiding officer of the nominating convention.*" (Emphasis added). Id., 795. In the present case, there is no dispute that Telesca was the presiding officer of the 2022 IPC caucus and as such authorized by § 9-452 to certify Hotaling and Beckett as the IPC's nominees for Governor and

[30] See footnote 7.

Lieutenant Governor. Accordingly, pursuant to § 9-452, Hotaling and Beckett are the duly elected nominees of the IPC.[31]

The court again stresses that this conclusion does not impart unlimited or unilateral discretion in the presiding officer of a minor party to select the party's nominee. Adherence to party rules in a fashion that does not result in unlawful or irrational action is a prerequisite for a nominee to be considered "duly elected." This court holds, for the foregoing reasons, that Hotaling and Beckett are the duly elected nominees of the Independent Party of Connecticut for the offices of Governor and Lieutenant Governor,[32] and accordingly, the plaintiff's application for a temporary injunction is denied.

THE COURT

435707
Cesar A. Noble
Judge, Superior Court

[31] Because the court concludes that Hotaling and Beckett are duly elected it need not, and does not, address the claims of laches asserted by both the Secretary and the IPC and Telesca.

[32] This conclusion mandates the denial of the injunction because the plaintiffs have not proven that they are likely to prevail. *Waterbury Teachers Assn. v. Freedom of Information Commission*, supra, 230 Conn. 446.