

NO: MMX-CV13-5008261-S : SUPERIOR COURT
JOHN KILIAN : JUDICIAL DISTRICT OF
MIDDLESEX
v. : AT MIDDLETOWN, CONNECTICUT
LINDA BETTENCOURT : OCTOBER 15, 2013

BEFORE THE HONORABLE JULIA L. AURIGEMMA, JUDGE

A P P E A R A N C E S :

Representing the Plaintiff:

Self-represented party

Representing the Defendant:

ATTORNEY BRIGG SMITH
Office of the General Counsel
City of Middletown
245 DeKoven Drive
Middletown, Connecticut 06457

Also present:
ATTORNEY KORI TERMINE WISNESKI
Deputy General Counsel
City of Middletown

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(Court opens at 9:32 a.m. Preceding unrelated proceedings not required for transcription.)

THE COURT: All right. Unfortunately, I would take Securitas first, but you only have one side here, so I will take the Kilian and Bettencourt. Will counsel and parties please state your names for the record?

THE PLAINTIFF: John Kilian, plaintiff.

ATTY. SMITH: Brigg Smith, General Counsel for the City of Middletown. Along with me, Your Honor, is Deputy General Counsel, Kori Termine Wisneski on behalf of the City of Middletown and defendant, Linda Bettencourt, Town of Middletown.

THE COURT: All right. And, Mr. Kilian, you are not represented by counsel. Is that correct?

THE PLAINTIFF: Correct.

THE COURT: And this is an application for order of mandamus. The applicant may proceed.

THE PLAINTIFF: Yes, Ma'am, Your Honor. Do you have the complaint in front of you?

THE COURT: Yes, I do.

THE PLAINTIFF: Okay. So I just would like to review the complaint here. As a participant in the Realistic Balance Party caucus that nominated candidates for various municipal offices held August

THE COURT: Excuse me. Excuse me, Sir.

THE PLAINTIFF: Yes?

THE COURT: Can we put this -- Mr. Kilian under oath, please?

THE PLAINTIFF: Certainly.

J O H N K I L I A N,

called as a witness, having been duly sworn by the Clerk, testified as follows:

THE CLERK: If you could please state your name, spelling your last name, and give your current address for the record.

THE PLAINTIFF: John Kilian, K-i-l-i-a-n, 210 Ridge Road, Middletown, Connecticut.

THE CLERK: Thank you.

THE COURT: All right, Sir. Go ahead.

THE PLAINTIFF: So, yes. Again, I was a participant in the Realistic Balance Party on August 27th, nominated various municipal candidates. Defendant, Linda Bettencourt, is the Town Clerk here in the City of Middletown and has sole statutory responsibility for the acceptance of certified lists of candidates by minor parties as well as major parties and for the transmittal of that list to the Secretary of State for inclusion in the November ballot.

On August 28th, a day after the -- within the statutory deadline, "the Realistic Balance Party filed and the Town Clerk accepted a list of candidates for the November, 2013 election. This list was filed and accepted in the same manner and method as had occurred in previous years."

At this point, I'd like to enter -- I have the nomination from 2011. I think it would be relevant to present that.

THE COURT: Okay.

(Pause)

THE COURT: Show it to counsel first, please.

ATTY. SMITH: No objection, Your Honor.

THE COURT: Okay. All right. Do you have what was filed this year?

THE PLAINTIFF: Certainly.

THE COURT: Could you enter that, too?

THE PLAINTIFF: Yes. I actually filed that ahead of time.

ATTY. SMITH: No objection, Your Honor.

THE COURT: All right.

THE PLAINTIFF: Okay. So we were on part three here. Now, this -- this --

THE COURT: Okay. Now, you filed this. This is Exhibit 2.

THE PLAINTIFF: Yes.

THE COURT: And it was accepted you say.

THE PLAINTIFF: Yes.

THE COURT: And then, what happened?

THE PLAINTIFF: And then what happened, "At the time of the filing, the Realistic Balance Party and its candidates..." -- and I have a clerical error here in the complaint -- "...and on information and belief,

the Town Clerk of..." -- Middletown, not East Hampton, "...were unaware that the relevant statutory section, *C.G.S. §9-452*, had been amended in 2011 to require that candidates sign the certified list of candidates presented to the Town Clerk."

Okay. "The plaintiff relied upon the acceptance of their certified list by the Town Clerk, and therefore, took no further action to amend or modify their filing prior to the filing deadline.

"After the statutory deadline, the Town Clerk notified the plaintiff that the nomination's certification would be partially rejected because some of the individual candidate signatures were not on the document with the exceptions being the officers of the caucus who signed the nominations. The Town Clerk's decision to reject the certification was based solely on the technical language of *C.G.S. §9-452* requiring candidate's signatures to be on the certified list.

"Candidates have come to the town hall and signed documents declaring their wish to be nominated by the Realistic Balance Party..." I have those documents that have been received by the city as well.

THE COURT: So, okay. The people on this list, it looks like there's two from -- or maybe four, from the Working Families Party. Is that correct? And

are they on --

THE PLAINTIFF: I'm going to review it; going to review it myself.

THE COURT: Are they on the Working Family ballot also?

THE PLAINTIFF: They were on petitions to be on the Working Family Party line, but they were --

THE COURT: Okay. So they're --

THE PLAINTIFF: -- but they were not approved by the Working Families Party.

THE COURT: Oh.

THE PLAINTIFF: So the means by which they would be -- their addresses and what have would be already on file.

THE COURT: Okay. And then, so -- and then, Sheila Daniels, Brian Kaskel --

THE PLAINTIFF: Linda Szykowitz, those are all endorsed Republicans.

THE COURT: So they're already on the Republican ballot?

THE PLAINTIFF: They're on the Republican line and they have -- later they withdrew consideration for being on the Realistic ballot, so they're not in play here.

THE COURT: Okay. So, at issue, to get on to the Realistic Balance ballot is you, John Kilian --

THE PLAINTIFF: I'm all -- I am approved. I am

an officer. I signed this document.

THE COURT: Oh, you're approved? Okay.

THE PLAINTIFF: Yes.

THE COURT: And so is Mr. Carroll.

THE PLAINTIFF: So is Mr. Carroll and Stephen Devoto and Stephen Smith are the Planning and Zoning candidates who wish to be on and I have their written consent here that I'd like to submit that was submitted after it became known that it was required.

THE COURT: So are you viewing this as -- how are you viewing it? We have a non-attorney representing, apparently, someone other than himself. Is that correct?

THE PLAINTIFF: No. I am representing myself, Ma'am, Your Honor.

THE COURT: But you're already on the ballot. Right?

THE PLAINTIFF: I am on the ballot.

THE COURT: So we have a -- this is -- really has nothing to do with election law. It has something to do with court and the bar association rules, basically.

ATTY. SMITH: I think, Your Honor, you've nailed it. You've probably put it better than I could. The first issue, I think, before the Court before we get to any of this is, I mean, because the standing issue, one, and the standing issue is he is already

on the ballot. There's no doubt about that.

To the extent that Mr. Kilian then is purporting to represent someone who is not on the ballot, might not be on the ballot --

THE PLAINTIFF: Objection. I'm not purporting to --

THE COURT: Excuse -- please let him finish.

THE PLAINTIFF: Yep.

ATTY. SMITH: Then we do have an unauthorized practice of law problem as well. So, in either event, I think standing is a problem and subject matter jurisdiction, therefore, I think is a problem before we even get to the merits that Mr. Kilian would like to discuss.

We can discuss those, too, but I think subject matter jurisdiction, frankly, is lacking in this case
<sentence deleted from excerpt>

THE PLAINTIFF: Your Honor, if I may counter the assertion that I'm attempting to represent others? I am representing myself in this complaint. I am spelling out the damages to myself that would allow then me to represent myself pro se, not so I --

THE COURT: But you don't need representing because you're already on the ballot. Right?

THE PLAINTIFF: No. I would say that -- and that's spelled out in the complaint. The damages to me extend beyond simply a matter of whether or not I

obtained the ballot, but my voting rights as an elector, and these are held up by both sections of the code and State Supreme Court cases that give a elector participating in a nomination process voting rights. And these voting rights are impacted by the action of the city. If I may submit to you my brief on my standing?

THE COURT: Okay.

(Pause)

<unofficial exhibit on standing>
One Man Standing

Nielsen v. Kezer was a Connecticut State Supreme court case that decided which of two opposing nominations would be placed on the ballot for the "A Connecticut Party." The state central committee had its candidate, a local caucus convened by a sole elector in the Assembly District had another. The court ruled that the outcome of the local caucus must be recognized in order to maintain the lone elector's right to vote.

Excerpt from Nielsen v. Kezer, section IV:

It has long been held that the right to vote is a "fundamental political right, because preservative of all rights." Yick Wo v. Hopkins, 118 U.S. 356, 370, 6 S. Ct. 1064, 30 L. Ed. 220 (1886); see also Cousins v. Wigoda, 419 U.S. 477, 489, 95 S. Ct. 541, 42 L. Ed. 2d 595 (1975); Reynolds v. Sims, 377 U.S. 533, 562, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964). **Because the right "must be recognized in any preliminary election that in fact determines the true weight a vote will have";** 85*85 Gray v. Sanders, 372 U.S. 368, 380, 83 S. Ct. 801, 9 L. Ed. 2d 821 (1963); **"[a]ll procedures used by a State as an integral part of the election process must pass muster against the charges of discrimination or of abridgment of the right to vote."** Moore v. Ogilvie, 394 U.S. 814, 818, 89 S. Ct. 1493, 23 L. Ed. 2d 1 (1968); see also Tashjian v. Republican Party of Connecticut, 479 U.S. 208, 227, 107 S. Ct. 544, 93 L. Ed. 2d 514 (1986); United States v. Classic, 313 U.S. 299, 318, 61 S. Ct. 1031, 85 L. Ed. 1368 (1941).
<end of section IV excerpt>

By failing to fulfill the outcome of this year's Realistic Balance nomination caucus, by declining to place the names of willing candidates duly nominated by this caucus on the ballot, my rights to vote in this process is abridged by the City.

Further support for the standing of a lone elector claiming to be aggrieved by a ruling of an election official in connection with an election for municipal office can be found in Sec 9-328:

Excerpt of Sec 9-328

Sec. 9-328. Contests and complaints in election of municipal officers and nomination of justices of the peace. **Any elector or candidate claiming to have been aggrieved by any ruling of any election official in connection with an election for any municipal office** or a primary for justice of the peace, or any elector or candidate claiming that there has been a mistake in the count of votes cast for any such office at such election or primary, or any candidate in such an election or primary claiming that he is aggrieved by a violation of any provision of sections 9-355, 9-357 to 9-361, inclusive, 9-364, 9-364a or 9-365 in the casting of absentee ballots at such election or primary, **may bring a complaint to any judge of the Superior Court for relief therefrom.**

Sincerely,

John Kilian
Realistic Balance Party Elector in 2013 municipal nomination
caucus.

<end of unofficial exhibit on standing>

THE COURT: Any comments on 9-328?

ATTY. SMITH: Yes, Your Honor. There is a recent case; actually, it was last week out of Easton, Judicial District of Fairfield, and Judge Bellis made observations on 9-328. *<sentences deleted from excerpt>*

... (page deleted from excerpt)

A little different statute's at issue here; It's §9-452, Your Honor and, frankly, it was changed in 2011 to avoid precisely the problem that we're faced with here which is what happens when you've got candidates who are conscripted unknowingly into service as we've had here. We've actually had candidates who said we don't actually want to be on the Realistic Balance Party ticket; thank you, very much. And, so, that statutory change occurred in 2011 to make that clarification.

... (Paragraph deleted from excerpt)

So I think, you know, as we're, sort of, now talking about the merits a bit, that's where the merits lead us. But, again, I think you avoid the notice issue under 9-328 entirely if we get to the standing issue and say that there's just not a fight to be had here.

<parapt deleted from excerpt>

THE COURT: Okay. So the candidates at issue

are everyone on the ballot except Mr. Carroll and Mr. Kilian. Is that correct?

THE PLAINTIFF: No, Your Honor. The only two candidates who are seeking to remain and have filed consent paperwork are the Planning and Zoning candidates, Smith and Devoto.

THE COURT: And what do you mean by "consent paperwork?"

THE PLAINTIFF: I have a copy here.

<unofficial copies of S.Devoto and S. Smith consent
filing>

<end of unofficial copies of S.Devoto and S. Smith
consent filing>

THE COURT: Okay.

THE PLAINTIFF: And furthermore, Your Honor, I want to address the term "conscriptio" used by Counsel. I have evidence to counter that argument as well. That certainly erodes my credibility.

THE COURT: Okay. So, if I understand this correctly, the Realistic Balance Party submitted this nomination sheet.

THE PLAINTIFF: Yes.

THE COURT: And is it correct that everyone listed on this sheet except Mr. Carroll, Mr. Kilian, Mr. Devoto, and Mr. Smith said they did not wish to be on this sheet? Is that correct?

THE PLAINTIFF: That's -- at this current time, yes. This has evolved over -- originally, the other counselors were on board and, over time during this process, they subsequently withdrew. The Republicans that were cross-endorsed all pulled out en masse.

THE COURT: Okay. And, in prior years, a sheet with just a name without a signature was accepted?

THE PLAINTIFF: It was accepted this year for the major parties as well, Ma'am -- Your Honor, if you'd like to see those; I have those as well for this year's endorsement of the Republican and Democratic candidates. So would you care to -- find that relevant, I also have -- these were provided by

the clerk.

ATTY. SMITH: To the extent Your Honor is looking for a response, I would object on the basis of relevance and I don't know what certifications for major parties, which is a different part of the statute, *<sentences deleted from excerpt>*

THE PLAINTIFF: May --

THE COURT: So you object on what's the evidentiary ground?

ATTY. SMITH: It's completely irrelevant. I don't understand the purpose of either of these documents for the case in front of the Court which deals with a minor party if he's attempting to say that major parties followed a procedure, then we'd concede that; of course they do. It's a different part of the statute.

THE PLAINTIFF: It may be a different part of the statute that fails equal treatment under the law, Your Honor.

THE COURT: All right. Those -- I'll let them be admitted for what they're worth.

ATTY. SMITH: May I approach, Your Honor?

THE COURT: Yes. Are those his exhibits? Do you want these back? Okay. We've got lots of copies. There you go.

THE PLAINTIFF: And there's the matter of the conscription argument. This was an event well

attended by members of the Republican party as evidenced by this photo here. Several of the members of that party and the press were present, multiple members of the press that covered this, so there was no attempt at deception and that's what I'm seeking to counter with this evidence, that the characterization of conscription --

THE COURT: Are you objecting to the newspaper articles?

ATTY SMITH: I would. Can I take a look at them?

(Pause)

ATTY. SMITH: I would object on the grounds of hearsay.

THE COURT: All right.

THE PLAINTIFF: If I can just call --

THE COURT: Sustained.

THE PLAINTIFF: -- witnesses to -- can I call a witness to support this photograph and the members --

THE COURT: Are they here right now?

THE PLAINTIFF: Yes. Stephen Devoto is here. He's the gentleman in this photograph here. He can confirm the identities of other people in this photograph and that this was taken at the caucus.

THE COURT: Okay. I'm not sure that's really relevant, Sir, so I don't think we need that.

THE PLAINTIFF: Okay.

THE COURT: And are you off -- were these signed letters exhibits? Did you offer these?

THE PLAINTIFF: Yes -- Smith and Devoto.

THE COURT: Okay.

THE PLAINTIFF: So, on the matter of standing, Ma'am, I've presented you the -- Your Honor, the State Supreme Court case, Nielsen versus Kezer as well as the statute there. I think I've already shown that there's sufficient harm to the fortune to the Realistic Balance Party of which I'm a participating elector.

I would like to continue in my complaint if you feel that I have standing to do so. As well as the 14th Amendment due process I've not, at this point, received anything in writing explaining why these names were removed from the ballot. This may be the only opportunity to get a formal explanation.

THE COURT: The problem, Sir, is that you -- you can represent yourself --

THE PLAINTIFF: Yes.

THE COURT: -- as on -- being on the ballot which isn't necessary because you're already on. You're not an attorney so you can't represent in court the Realistic Balance Party --

THE PLAINTIFF: Correct.

THE COURT: -- or the two gentlemen that are at issue here, Mr. Devoto and Mr. Smith.

THE PLAINTIFF: Yes. I'm representing myself as an elector --

THE COURT: Right.

THE PLAINTIFF: -- and I believe the Nielsen versus Kezer case shows that even one elector has a voting right that must be protected and cannot be abridged. And, also, the statute does not specify that they have to be a party or a nominee. It says, specifically, an elector can seek grievance against an election official, explicitly in the code. So I'm an elector in the Realistic Balance. My voting right has been nullified. That is my standing.

THE COURT: And what do you say to that?

ATTY. SMITH: Several things, Your Honor. I think first of all, to the extent that he's looking to rely on 9-328, I believe that's precluded under 10-3 of the *Practice Book*. <Sentences deleted from excerpt>

I think the Court properly characterized it. What's at issue is his ability to represent himself as a member of the Realistic Balance Party and he is on the ballot. No one is contesting that. The distinction, too, that I would draw as to Msrs. Devoto and Smith, Mr. Devoto is listed on the ballot under the Democratic ticket, so he would be cross-endorsed and, although he has indicated after the September 4th statutory deadline that he'd like also

to be included as a Realistic Balance Party candidate, he is on the ballot, too.

I would also point the Court to what the Court in the Easton case did. To the extent -- and there were four candidates there who had missed by I think an even more technical non-conformity, the deadline. The Court said, Look, this is, you know, potentially Draconian but you're not without recourse. Until October 22nd, you have the ability to go to the Secretary of the State and to apply as a write-in candidate.

<paragraph deleted from excerpt>

THE PLAINTIFF: Your Honor, I think that counsel's already making arguments against my case outside of the standing argument. *<sentence deleted from excerpt>* My case is that I'm here as an elector of the Realistic Balance Party. He's not on the line that I voted to put him on.

And, furthermore, as far as the deadline goes, I have communication here from the clerk to Stephen Devoto saying, after the deadline, that he would be on the Realistic Balance Party line. I'd like to enter that if I may. I have both the sender and the receiver here to confirm this communication.

THE COURT: The letter from Mr. Devoto?

THE PLAINTIFF: From the Clerk to Mr. DeVoto.

THE COURT: Oh. All right. You can enter that.

<unofficial text of email, Bettencourt to DeVoto>

<unofficial text of email, Bettencourt to DeVoto>

From: **Bettencourt, Linda** <Linda.Bettencourt@middletownct.gov>

Date: Mon, Sep 16, 2013 at 2:31 PM

Subject: Ballot Order

To: "Devoto, Stephen" <dermomyotome@gmail.com>

Stephen,

I received notice from the Secretary of State's Office this a.m. that after additional research, they have determined that the Working Families Party will go above the Realistic Balance Party (CGS 9-249a). Basically, because WF had a candidate for governor, they will be on line 3 of the ballot, Realistic Balance on line 4. I've attached the statute. You will be 18B & 18D, Stephen Smith is 17D.

Linda

<end of unofficial text of email, Bettencourt to DeVoto>

Do you -- have you seen that, Attorney Smith?

ATTY. SMITH: Just now, Your Honor.

(Pause)

ATTY. SMITH: By way of clarification, Your Honor, this appears to be the order on which candidates would be listed on the ballot as opposed to -- parties would be listed on the ballot as opposed to actual --

THE PLAINTIFF: Incorrect, Your Honor.

ATTY. SMITH: -- decision to put people on the ballot.

THE PLAINTIFF: This plainly states the position and the candidates appearing on the ballot, on the Realistic. The D designates the fourth line for the Realistic Balance. That's showing the column, meaning the office and the person in that office, if I may?

ATTY. SMITH: I have no objection to the document. I just -- I don't think it stands for the proposition that Mr. Kilian is arguing.

THE COURT: All right. So, other than this standing issue, is it the town's position that if Mr. Devoto and Mr. Smith had signed this Exhibit 2, that they would be on the ballot?

ATTY. SMITH: That's correct. If they had conformed to 9-452, had signed it, included their address, I believe, was the other requirement of

9-452.

THE COURT: So the town knows that they agreed to be on the Realistic Balance ballot?

ATTY. SMITH: I think -- our position was and remains we don't have the ability to violate the statute.

<paragraph deleted from excerpt>

THE COURT: But you said before that the purpose of the amendment to 9-328 was to ensure that people don't get on ballots when they don't want to be and, now, we know Mr. Devoto and Mr. Smith do want to be and they've sent some sort of signature in.

ATTY. SMITH: Correct. And, Your Honor, I would say again that, even taking that as substantial compliance with 9-452, we do not see our ability as elected officials and appointed officials as representatives of the town to allow that in under 9-452. We just don't see our ability to do that.

<sentence deleted from excerpt...>

One is Butts versus Bysiewicz and the other is Caterbone versus Bysiewicz *<sentences deleted from excerpt...>* And the Court said, Yeah, that's pretty Draconian, but that's what the statute requires. It's mandatory. There's no wiggle room here.

Similarly, in Butts, *<sentences deleted from excerpt>*

And, again --

THE PLAINTIFF: Your Honor, *<phrase deleted from excerpt>* objection. The case of Easton concerns a different part of the statute and is truly not relevant. I do have other cases --

THE COURT: Could you let him finish, please? Go ahead.

ATTY. SMITH: Thank you, Your Honor. And I would say just to pick up on the point Mr. Kilian is making, yeah, they are different parts of the statute. There's 9-452 at issue here. There was 9-453o, *sub(b)* at issue in Easton, and there was 9-388 at issue in Butts and Caterbone.

<paragraphs deleted from excerpt>

So, again, although it seems Draconian, that's what the statute requires in the body of election law that interprets that statute says. This is mandatory. We don't have wiggle room and, as to Mr. Devoto, you already have a place on the ballot with the Democrats and, as to Mr. Smith, you have an ability to go to the Secretary of the State to seek write-in status which is something they observed in the Easton case as well.

THE PLAINTIFF: Your Honor, the Easton case concerned a part of 953 dealing with party designation and failure to reserve that spot on the ballot beforehand. That was the fatal flaw there. This is very different. This is much more similar to

the other cases concerning §952 that were stipulated in Westport and in this courtroom, like, in the East Hampton case last week. And I have copies of those stipulations regarding this statute that I'd like to submit.

THE COURT: I have those, Sir, already.

THE PLAINTIFF: You have those?

THE COURT: Yeah.

THE PLAINTIFF: Very good.

THE COURT: Anything else?

THE PLAINTIFF: May -- I -- complete my complaint?

THE COURT: You don't have to read it, Sir. I've read it.

THE PLAINTIFF: Oh, you've read it?

THE COURT: Yes.

THE PLAINTIFF: Okay. There is one item that I would like to withdraw, the handwritten note, No. 11. At the time of a Freedom of Information request being fulfilled, I saw a email that appeared at that time to be a nomination from the Working Families Party when, in actuality, on this 953 code it was in -- actually, the nomination took place at the Secretary of the State's so it's not available, so that I would admit is irrelevant.

THE COURT: Okay. Thank you. Mr. Smith.

ATTY. SMITH: Unless Your Honor has any other

questions for us, I have nothing else for the Court.

THE COURT: All right. Do you have any memo or anything of law on the standing issue?

ATTY. SMITH: I do not, but I can prepare one and submit it forthwith if the Court would like that.

THE COURT: Well, let me see. Mr. Kilian has cited Nielsen and Kezer, and do -- have you had a chance to review that case?

ATTY. SMITH: No, Your Honor.

THE COURT: Oh, okay. So your position with respect to standing is again?

ATTY. SMITH: If he's representing himself, as he must, there's no harm. He's on the ballot. If he's purporting to represent somebody else, there's a big problem because then he's engaging in the unauthorized practice of law. I think that's the beginning and the end of it.

THE COURT: So you don't agree with his interpretation of Kezer that any elector can, essentially, represent, I guess, other electors.

ATTY. SMITH: I don't think so, Your Honor, because -- and I would, actually -- there was, in doing the research to try to come to this decision, there was a case that Your Honor had actually decided some time ago, Dean versus Jepson.

<Paragraphs deleted from excerpt>

THE COURT: Was notice given to all those

entities by you?

THE PLAINTIFF: *<partial word deleted from excerpt>* Notice was given to the defendant for this writ of mandamus case.

THE COURT: That was the only --
<plaintiff response deleted from excerpt>

THE COURT: -- notice recipient.

THE PLAINTIFF: That's correct.

THE COURT: The City of Middletown?

THE PLAINTIFF: Yes.

THE COURT: All right.

THE PLAINTIFF: I can add that 328 reference in the Easton case, that was used -- they were seeking an injunction. Okay? I'm not seeking an injunction. I'm seeking a writ of mandamus. I'm citing 328 and the court cases, indicators of my standing as an elector being harmed by having my vote in my nomination process quashed.

THE COURT: Okay. All right. Well, if you would like to submit a brief, when would you like to do that by?

ATTY. SMITH: Soon, I suppose, as time probably is of the essence.

THE COURT: True.

ATTY. SMITH: I can do it within -- certainly, by the end of the week, Your Honor, and if you need it sooner than that, then I can do it sooner than

that, too.

THE COURT: So you can have it in by Friday?

ATTY. SMITH: Yes, Your Honor.

THE COURT: Okay. Thank you. And you can submit a further brief also by Friday, Mr. Kilian, if you want to. You don't have to because you've already submitted --

THE PLAINTIFF: I've already submitted a brief, yeah.

THE COURT: -- a brief brief already. All right.

THE PLAINTIFF: So are you saying we're going again on Friday?

THE COURT: No. No. I'll just review the briefs and then decide.

THE PLAINTIFF: You review the brief and decide. So I understand, so we're done?

THE COURT: Yes. Unless you had anything else to add.

THE PLAINTIFF: Just that the staff here has been very helpful and I appreciate my day in court.

THE COURT: Okay. Good. Thank you.

<paragraphs deleted from excerpt>