



**SUPREME COURT**  
**STATE OF CONNECTICUT**

SC 20737

BARRY LEE COHEN

v.

NANCY ROSSI ET AL.

**RULING**

PER CURIAM. The city and town of West Haven held its most recent mayoral election on November 2, 2021. Following the election results, in which the Democratic mayoral candidate, Nancy Rossi, appeared to have won, an automatic recanvass occurred on November 7, 2021, due to the closeness of the race. The certified election results following the recanvass confirmed that Rossi won the election. Specifically, the results indicated that Rossi received 4275 votes and that the Republican mayoral candidate, Barry Lee Cohen, received 4243 votes, a difference of 32 votes. On November 15, 2021, the plaintiff, Barry Lee Cohen, brought this action pursuant to General Statutes § 9-328, challenging the results of the mayoral election. The defendants are Rossi; Patricia C. Horvath, in her official capacity as the city clerk of West Haven; Jo Ann Callegari, in her official capacity as the Republican registrar of voters of West Haven; Sherri Lepper, in her official capacity as the Democratic registrar of voters of West Haven; George M. Chambrelli IV, in his official capacity as the head moderator of the election; and Catherine Conniff, in her official capacity as the head absentee ballot moderator of the

election. The plaintiff asserted that the West Haven election officials failed to adequately comply with various statutory requirements regarding absentee ballots. The plaintiff asked the trial court to issue a writ of mandamus either to set aside the results of the mayoral election or to hold a special election.

The trial court held a hearing over the course of five months with the presentation of evidence spread over six days. After the plaintiff rested his case, the defendants orally moved to dismiss for failure to make a prima facie case pursuant to Practice Book § 15-8. The trial court issued a memorandum of decision on February 14, 2022, denying the defendants' motion to dismiss. Thereafter, the defendants presented evidence. The parties filed simultaneous posttrial memoranda on April 27, 2022, the plaintiff filed a reply memorandum on May 11, 2022, and the defendants filed a surreply memorandum on May 25, 2022. On June 24, 2022, the trial court issued a memorandum of decision in which it concluded that the West Haven election officials had failed to strictly comply with certain statutory requirements pertaining to absentee ballots during the mayoral election.

Nevertheless, the court concluded that the plaintiff had failed to establish that the results of the election were seriously in doubt. Accordingly, the trial court denied the plaintiff's requested relief and rendered judgment for the defendants.

Thereafter, the trial court transmitted questions of law and a finding of facts to the Chief Justice in accordance with General Statutes § 9-325. The questions of law were thereafter certified by this court.

On appeal, the plaintiff contends that (1) the trial court's inclusion of the fourteen "same day" absentee ballots in the vote count created disparate treatment amongst similarly situated absentee ballots, (2) the trial court erroneously concluded that the fourteen "same day" ballots substantially complied with General Statutes § 9-140c (a), in the absence of any statutory compliance by the municipal clerk, (3) the plain language of General Statutes § 9-140b limits the retrieval of absentee ballots from the secure drop boxes to the municipal clerk, (4) the trial court erred in concluding that the affidavit of delivery and receipt required by § 9-140c (j) is secondary to the municipal clerk's endorsement, (5) the trial court erred in concluding that the absentee ballots belonging to Carmela A. Armino, Terry Rose Carlington, Eric D. Holland, and Lenora Tomporowski substantially complied with § 9-140b (a), (6) the trial court erred in concluding that the eight absentee ballot outer envelopes found in the West Haven vault that were missing from the absentee ballot log were returned to the clerk's office in substantial compliance with § 9-140b (a), and (7) the trial court erred in concluding that the results of the election were not in serious doubt and that there was no mistake in the vote count. The defendants disagree with each of the plaintiff's claims and contend that the trial court properly denied the plaintiff's requested relief because the plaintiff failed to meet his burden of proving by a preponderance of the evidence that the results of the mayoral election were seriously in doubt.

After closely and thoroughly examining the briefs and appendices, and after careful consideration of the parties' arguments, we conclude that the judgment of

the trial court should be affirmed. Although we agree with the trial court that "the evidence presented show[ed] a concerning lack of overall compliance with statutory guidelines by [West Haven] election officials," we also agree with the trial court that the plaintiff failed to satisfy his burden of proving by a preponderance of the evidence that the results of the mayoral election were seriously in doubt.

The trial court's judgment is affirmed.

A full opinion will follow that will supersede this ruling. The full opinion will constitute the official opinion of the court.<sup>1</sup>

October 4, 2022

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<sup>1</sup>This ruling may not be used or cited as precedent. Moreover, the time for filing any post appeal motions, including a motion for reconsideration, will run from the date that the full opinion is officially released.