

Who's to Blame?

By CHARLES D. RAY

If you watch only for the music, *The Blues Brothers* is a pretty good movie. It features Cab Calloway, Ray Charles (my obvious favorite), Aretha Franklin, James Brown, and John Lee Hooker in addition to "The Band." As an aside to the music, there are the curious efforts of Carrie Fisher's character to assassinate Joliet Jake for what, it turns out, was his disappearance from the wedding alter. As Carrie stands over Jake near the end of the film, Jake offers an all-time classic "don't blame me" rant: "I ran outta gas. I had a flat tire. I didn't have enough money for cab fare. My tux didn't come back from the cleaners. An old friend came in from outta town. Someone stole my car. There was an earthquake, a terrible flood, locusts. It wasn't my fault! I swear to God!"

A three-justice panel of the Supreme Court (Justices McDonald, Alexander, and Dannehy) faced a "don't blame me case" (without the rant) in *Whitnum Baker v. Secretary of the State*, 350 Conn. 753 (2024). The issue was whether the defendant had properly rejected the plaintiff's registration as a write-in candidate for the 2024 election for the Third District's representative in the United States Congress. The defendant determined that the registration was untimely and, therefore, in violation of Sections 9-373a and 9-265 of the General Statutes, which govern write-in candidacies. The plaintiff sought an injunction to direct the defendant to accept the registration, claiming that her untimely registration was the fault of the defendant and not her. The case began and ended in the Supreme Court, as the panel rejected the plaintiff's claim.

The problem, as it turns out, was in a cover letter that the defendant provided to prospective write-in candidates. The actual registration form indicated that it needed to be submitted by no later than 4:00 p.m. on October 7, 2024. In the defendant's cover letter, which accompanied the form, the applicant was advised to "carefully peruse" Section 9-373a and again indicated that the registration form

had to be submitted by no later than 4:00 p.m. on October 7th. The cover letter also quoted Section 9-373a, which, in the version set forth in the letter, required that the registration be submitted by no later than "four o'clock p.m. on the fourteenth day preceding the election." The plaintiff attempted to file her registration on October 15, 2024, which was more than 14 days prior to the November 5th election.



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The defendant rejected the registration because Section 9-373a had been amended by the legislature to take into account the start of early voting in elections. Thus, at the time the plaintiff sought to file, Section 9-373a actually set the deadline as no later than 4:00 p.m. “on the fourteenth day preceding the commencement of the period of early voting at the election . . .” Early voting began on October 21, 2024. If the deadline for filing was missed, “the registration shall be void.”

In the original action before the Supreme Court, the plaintiff argued that the October 7th deadline should not apply to her “because of the ‘confusion’ occasioned when she was ‘given wrong information by someone on the [defendant’s] staff’” The Secretary argued to the contrary and also claimed that the Court lacked jurisdiction under § 9-323. As to the Court’s jurisdiction, the claims were that the action was moot, election day having already

passed, and the plaintiff was not “aggrieved” for purposes of § 9-323. The panel concluded that the action was not moot, as allowing the plaintiff to register as a write-in candidate would have the effect of validating any write-in votes that may already have been cast for her and, if the number of those votes put the result of the election in doubt, a new election might have been in order. As to aggrievement, the panel held that because the plaintiff alleged a colorable claim that the late registration was the result of incorrect information emanating from the defendant, the defendant’s refusal to accept the plaintiff’s registration rendered the plaintiff aggrieved under § 9-323.

On the merits of the claim, the panel identified the core issue as “whether a court has equitable discretion to provide a prospective write-in candidate with relief from a mandatory statutory provision, when her noncompliance resulted from erroneous guidance given by the election official charged with the administration of the statutory scheme.” According to the panel, the language of § 9-373a is “mandatory in nature and plainly and unambiguously affords the defendant no discretion to accept an untimely filed registration form, given that it contains the hallmark of negative words that expressly invalidate untimely registrations.”

A curious reader might wonder why, if the Secretary has no discretion to accept a late filing and the governing statute renders late filed registrations “void,” a court has any power to invoke equity and provide a remedy even if the late filing was the result of “erroneous guidance” from the Secretary. The Court’s prior decision in *Butts v. Bysiewicz*, 298 Conn. 665 (2010) provided guidance to the panel. But that guidance was only in the form of a footnote that states: “Some jurisdictions have concluded that, in extraordinary circumstances, courts can excuse a failure to comply with mandatory filing deadlines for declarations of candidacy due to (1) an action by the state, particularly election officials, causing the late filing, or (2) the impossibility of compliance.” In support of

this proposition, the Court in *Butts* relied on decisions from Alaska, Florida, Vermont, Washington, and New Jersey. In *Butts*, however, the circumstances in which the Court said equity may apply were not implicated and the Court expressed “no opinion as to whether courts would have authority to extend filing deadlines under such extraordinary circumstances.”

Based on the *Butts* footnote, the panel in *Whitnum Baker* assumed, but without deciding, that a Connecticut court would have the authority to override a mandatory filing deadline “when that noncompliance was caused by the action of an election official.” From where that authority might emanate is left unexplained, because the panel concluded that the plaintiff’s failure to timely file her registration was caused by her own inaction and not by the action of an election official. In support of that conclusion, the panel relied on the fact that both the registration form and the Secretary’s cover letter both noted that the filing deadline was October 7th. The panel also relied on the fact that 29 other write-in candidates had met that deadline and the plaintiff’s was the lone application that was rejected as untimely. Finally, the plaintiff conceded at the panel’s hearing that she had failed to read the deadline on the materials issued by the Secretary. As such, the panel rather easily concluded that the plaintiff failed to demonstrate that she had exercised any due diligence in terms of reconciling the inconsistent due dates apparent in the Secretary’s cover letter.

Based on the panel’s analysis and conclusion, it will likely be some time, if ever, before the Court is forced to explain how judicial equity can override a clearly stated mandatory deadline enacted by the legislature. A rant worthy of Jake may be what it takes. ■



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