DOCKET HHD-CV-10-6008194S	**:**	**SUPERIOR COURT**
SUSAN BYSIEWICZ	**:**	**JUDICIAL DISTRICT OF HARTFORD**
VS.	**:**	**AT HARTFORD**
NANCY DINARDO, ET AL.	**:**	**MAY 5, 2010**

MEMORANDUM OF DECISION

I. INTRODUCTION

In this case, plaintiff Susan Bysiewicz, Connecticut's Secretary of the State since 1999, has brought suit in her individual capacity, as a declared candidate for the nomination of the Connecticut Democratic Party for the office of Attorney General, to obtain a declaratory judgment under General Statutes § 52-29[1] confirming that she is eligible to serve in the latter office. As relief from this Court, the plaintiff seeks a judgment declaring:

> 1. That the requirement of [General Statutes] § 3-124 that the Attorney General be "an attorney at law of at least ten years' active practice of the bar of this state" violates Article Sixth § 10 of the Connecticut Constitution [; or,]
> 2. If the requirement of § 3-124 that the Attorney General be "an attorney at law of at least ten years' active practice of the bar of this state" is constitutional, [that] the plaintiff's fulfillment of her numerous statutory and administrative responsibilities as Secretary of the State constitute the active practice of law.

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[1] Section 52-29 provides as follows:

(a) The Superior Court in any action or proceeding may declare rights and other legal relations on request for such a declaration, whether or not further relief is or could be claimed. The declaration shall have the force of a final judgment. (b) The judges of the Superior Court may make such orders and rules as they may deem necessary or advisable to carry into effect the provisions of this section.

Revised Complaint for Declaratory Judgment ["R.C."], Prayer for Relief, p. 5.

The plaintiff bases her claim that the minimum practice requirement of Section 3-124[2] that the Attorney General be "an attorney-at-law of at least ten years' active practice at the bar of this state" is unconstitutional on the text of Article VI, § 10 of the Connecticut Constitution,[3] which provides in part that "Every elector who has attained the age of eighteen years shall be eligible to any office in this state, . . . except in cases provided for in this constitution." Because this minimum practice requirement is purely statutory in origin, she contends that its enforcement against her would be irreconcilably inconsistent with, and thus violate, her above-quoted constitutional right as a Connecticut elector of at least eighteen years of age to serve as the state's Attorney General.

The plaintiff bases her alternative claim that she meets the statutory requirement of being "an attorney at law of at least ten years' active practice at the bar of this state" upon a "combination of [her] private practice as an attorney and her eleven years of public service as Secretary of the State." R.C., ¶ 1. On the latter point, more particularly, she alleges that

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[2] Section 3-124 provides as follows:

"There shall be an Attorney General to be elected in the same manner as other state officers in accordance with the provisions of section . The Attorney General shall be an elector of this state and an attorney at law of at least ten years' active practice at the bar of this state. The office of the Attorney General shall be at the Capitol. The Attorney General shall receive an annual salary of one hundred ten thousand dollars. The Attorney General shall devote full time to the duties of the office and shall give bond in the sum of ten thousand dollars."

[3] Article Sixth, § 10 of the Connecticut Constitution (1965), as amended by Articles II and XV of the amendments to that Constitution, provides as follows:

"Every elector who has attained the age of eighteen years shall be eligible to any office in the state, but no person who has not attained the age of eighteen shall be eligible therefor, except in cases provided for in this constitution."

> in her eleven years as Secretary of the State, the plaintiff has engaged in the active practice of the law in order to fulfill her numerous statutory and administrative responsibilities. Her statutory responsibilities include her role as Commissioner of Elections; see Conn. Gen. Stat. § 9-3, for which she regularly issues "regulations, declaratory rulings, instructions and opinions" on issues of election law under Title 9 of the General Statutes. Id. The plaintiff also works with her staff to draft proposed legislation and regulations concerning the many areas for which the Secretary of the State has responsibility or oversight. Finally, the plaintiff supervises the legal work of the staff attorneys who work for her office. During her tenure as Secretary of the State, her office has employed between eight and twelve such attorneys.

R.C., ¶ 4.

Finally, the plaintiff bases her claim of entitlement to seek a declaratory judgment with respect to her constitutional and statutory claims upon the following series of events which transpired in the aftermath of declaring herself a candidate for the Democratic Party nomination for Attorney General on January 13, 2010. Thereafter, she alleges, a question arose as to the constitutionality and interpretation of General Statutes § 3-124 and its potential effect on her eligibility for the office of Attorney General. Id, ¶¶ 11-12. The question allegedly concerned three issues: "specifically, whether the requirement that the Attorney General be 'an attorney of at least ten years' active practice of the bar of this state'" is constitutional; whether active practice requires something more than being a member of the Connecticut Bar with an active status; and whether certain, specific conduct would constitute 'active practice' within the meaning of § 3-124." R.C. ¶ 12. In order to address this uncertainty, the plaintiff wrote a letter to the current Attorney General, Richard Blumenthal, in her capacity as Connecticut's Commissioner of Elections and for the benefit of the electors of this state, requesting his legal opinion on the foregoing issues. R.C., ¶ 13.

On February 2, 2010, Attorney General Blumenthal issued a formal opinion, No. 2010-001, in which he stated that: "a. The requirement that the Attorney General be 'an attorney of at least ten years' active practice at the bar of this state' is constitutional[;] b. The term 'active practice' requires more than simply being a member of the Connecticut Bar with an active status[; and] c. The determination of whether particular conduct 'constitutes active practice must be left to judicial determination pursuant to established judicial procedures.'". R.C., ¶ 13.

The plaintiff claims that the Attorney General's opinion has given rise to substantial uncertainty and/or a substantial question as to her legal rights. In particular, she claims that, in the absence of a judicial determination as to the meaning and constitutionality of the statute, "there is substantial uncertainty and/or a substantial question whether § 3-124 is constitutional and, if it is, whether [her] eleven years of public service as Secretary of the State qualifies as the active practice of law." Revised Complaint, ¶ 16. As such, she concludes, there is substantial uncertainty and/or a substantial question whether [she] would meet one of the currently-existing statutory requirements to serve as Attorney General, if elected." R.C. ¶ 17..

As defendants in this action, the plaintiff originally named and served process upon: Nancy DiNardo, in her official capacity as Chair of the Connecticut Democratic Party, and thus as the Chair of the Connecticut Democratic Party Convention in May 2010 who would have the responsibility to rule on any points of order concerning, or objections to, the qualifications of proposed nominees for Attorney General; Original Verified Complaint ["O.V.C."], ¶ 7; the Connecticut Democratic Party itself, which would endorse a candidate to run for the office of Attorney General at its May 2010 Convention; and the State of Connecticut Office of Secretary of the State, in its official capacity under General Statutes § 9-3 as the Commissioner of

Elections of the State, which has authority and responsibility to place the names of qualified candidates for statewide office on the ballot at each general election.

In addition, she provided written notice of the pendency of this action, by certified mail, return receipt requested, to the following persons or entities who/which she believed to be potentially interested in the subject matter of the action in a manner that was direct, immediate, and adverse to her own: Attorney General Richard Blumenthal; the Republican Party of Connecticut; Cameron Staples, a declared candidate for the nomination of the Democratic Party for Attorney General; George Jepsen, a potential, but undeclared candidate for the nomination of the Democratic Party for Attorney General; and John Pavia, a potential, but undeclared candidate of the Republican Party for Attorney General. O.V.C., ¶ 10. A certificate of compliance attesting to the giving of such notice to potentially interested parties was attached to the

plaintiff's Original Verified Complaint in accordance with Practice Book § 17-56(b).[4] O.V.C., p. 8. Id.

Shortly after this action was commenced, the Court met with counsel for the original parties to establish fair procedures for ensuring that all potentially interested persons or entities other than those initially notified by the plaintiff as aforesaid would receive reasonable notice of this action and be afforded a meaningful opportunity, if they wished to, to intervene as parties herein. It was ordered at that time that all previously notified persons or entities – including, by that date, the Green Party of Connecticut and Attorney Andrew W. Roraback, a declared

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[4] Section 17-56, entitled "Procedure for Declaratory Judgment," provides as follows:

"(a) Procedure in actions seeking a declaratory judgment shall be as follows: (1) The form and practice prescribed for civil actions shall be followed. (2) The prayer for relief shall state with precision the declaratory judgment desired and no claim for consequential relief need be made. (3) Actions claiming coercive relief may also be accompanied by a claim for a declaratory judgment, either as an alternative remedy or as an independent remedy. (4) Subject to the provisions of Sections 10-21 through 10-24, causes of action for other relief may be joined in complaints seeking declaratory judgments. (5) The defendant in any appropriate action may seek a declaratory judgment by a counterclaim. (6) Issues of fact necessary to the determination of the cause may be submitted to the jury as in other actions.
(b) All 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. If the proceeding involves the validity of a municipal ordinance, persons interested in the subject matter of the declaratory judgment shall include such municipality, and if the proceeding involves the validity of a state statute, such persons shall include the attorney general. The party seeking the declaratory judgment shall append to its complaint or counterclaim a certificate stating that all such interested persons have been joined as parties to the action or have been given reasonable notice thereof. If notice was given, the certificate shall list the names, if known, of all such persons, the nature of their interest and the manner of notice.
©) Except as provided in Sections 10-39 and 10-44, no declaratory judgment action shall be defeated by the nonjoinder of parties or the failure to give notice to interested persons. The exclusive remedy for nonjoinder or failure to give notice to interested persons is by motion to strike as provided in Sections 10-39 and 10-44. (d) Except as otherwise provided by law, no declaration shall be binding against any persons not joined as parties. If it appears to the court that the rights of nonparties will be prejudiced by its declaration, it shall order entry of judgment in such form as to affect only the parties to the action."

candidate for the nomination of the Republican Party for Attorney General, to which/whom notice had been sent by certified mail, return receipt requested, and certified to the Court in the interim under Practice book § 17-56(b) – must file their motions to intervene by March 4, 2010, then must appear at an initial status hearing on March 5, 2010, where such motions would be ruled on and further orders would be entered to ensure that reasonable notice of the action would be given to any other potentially interested persons or entities whom the Court or the parties might by then have identified. Notice of that Initial Scheduling Order was faxed or emailed to each potentially interested party as to whom notice of this action had already been sent and certified and was published on the Judicial Branch Website. At such initial hearing as well, it was further ordered that all discovery in the case be delayed until all potentially interested persons or entities who wished to intervene were before the Court.

On March 5, 2010, the Court granted the motion to intervene of the Connecticut Republican Party, which was the only such motion to be filed by any previously notified person or entity by the March 4 deadline. At this hearing as well, the Court issued a Second Scheduling Order setting a final deadline of March 9, 2010 for the filing of motions to intervene by other subsequently noticed persons or entities and scheduling a second status hearing to hear such motions and set a schedule for the further prosecution and defense of the case, on March 10, 2010. This Order was also published on the Judicial Branch Website.

At the March 10 hearing, no new motions to intervene having been filed by any other potentially interested person or entity as to whom notice had been sent by certified mail, return receipt requested and certified to the Court in the interim,[5] the Court set a schedule for closing

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[5] Notice was sent by certified mail, return receipt requested, to Attorney Sydney Schulman, a declared candidate for the nomination of the Democratic Party for Attorney General, and to Attorney Martha Dean, a declared candidate for the nomination of the Republican Party for Attorney General.

the pleadings, conducting pretrial discovery, filing and argument of a motion to dismiss for lack of subject-matter jurisdiction which the Republican Party disclosed the initial intention to pursue, and trial. At that hearing, moreover, the plaintiff gave notice, *inter alia*, of her intention to withdraw all claims against defendant Nancy DiNardo, who would be bound in her official capacity as Chair of the Democratic Party by any judgment entered in the action as to the Democratic Party itself, and to withdraw as unnecessary her claim for injunctive relief. The plaintiff agreed on that date to make the foregoing changes to her Complaint on or before March 12, 2010, when she would file a revised complaint in response to unobjected-to portions of the Republican Party's request to revise dated March 9, 2010.

Although the Republican Party later decided not to file a motion to dismiss for alleged lack of subject-matter jurisdiction before the start of trial, announcing instead that it would later raise that claim as a special defense to the plaintiff's Revised Complaint for Declaratory Judgment, the extended trial date originally set to allow extra time for briefing, arguing and deciding the expected motion was maintained in order to allow counsel additional time for the completion of discovery. Accordingly, evidence was received on two days - April 14 and 15, 2010 - briefs from the Republican Party and from Chief Disciplinary Counsel Mark DuBois, the latter as *amicus curiae*, were filed on April 19, 2010, and oral argument was held – first on the merits of the plaintiff's statutory and constitutional arguments and later on the Republican Party's challenge to this Court's subject-matter jurisdiction[6] – on April 20 and 22, 1010,

[6] This unusual order of argument resulted from the plaintiff's post-evidence filing, then later withdrawal, of a motion to reopen the evidence on the issue of subject-matter jurisdiction, which in turn led the Court to order *sua sponte* that the Republican Party could delay filing that portion of its trial brief which addressed its jurisdictional challenge until after the plaintiff's additional evidence, if any, was presented.

respectively. Final briefs from counsel on questions arising in the oral argument of April 20, 2010 were submitted on April 23, 2010.

The case is now before the Court for decision on the issues presented by the plaintiff's Revised Complaint and the Republican Party's challenges to it. Notwithstanding the order in which those issues were litigated and argued, the Court will address them in the following sequence. First, it will rule on the issues of its own subject-matter jurisdiction, as raised in the Republican Party's special defense. If that challenge is successful, the Court will end its analysis there for lack of jurisdiction to do otherwise. Next, if appropriate, the Court will address the plaintiff's claim that she is statutorily eligible to serve as Attorney General based in part upon the claim that her eleven years of public service as Secretary of the State involved or constituted "active practice of law at the bar of this state," within the meaning of General Statutes § 3-124. Finally, if the Court rejects the plaintiff's claim of statutory eligibility under § 3-124, it will decide if that requirement is constitutional under Article VI, § 10 of the Connecticut Constitution. The Court will make separate findings of fact and conclusions of law on each issue it reaches in the course of its decision.

II. WHETHER THIS COURT HAS SUBJECT MATTER JURISDICTION

A. General Principles

Before turning to the merits of the plaintiff's claim, the Court must address, as a threshold matter, the Republican Party's assertion that the plaintiff's claim is nonjusticiable. "[J]usticiability comprises several related doctrines, namely, standing, ripeness, [and] mootness . . . that implicate a court's subject matter jurisdiction and its competency to adjudicate a particular matter." (Internal quotation marks omitted.) *Chapman Lumber, Inc.* v. *Tager*, 288 Conn. 69, 86, 952 A.2d 1 (2008). "Jurisdiction of the subject-matter is the power [of the court]

to hear and determine cases of the general class to which the proceedings in question belong. . . . A court has subject matter jurisdiction if it has the authority to adjudicate a particular type of legal controversy. . . . [O]nce the question of lack of jurisdiction of a court is raised, [it] must be disposed of no matter in what form it is presented . . . and the court must fully resolve it before proceeding further with the case." (Internal quotation marks omitted.) *Milford Power Co., LLC* v. *Alstom Power, Inc.*, 263 Conn. 616, 624-25, 822 A.2d 196 (2003). This is true even in the context of a declaratory judgment action, which is necessarily limited to solving justiciable controversies. Id., 625. "Invoking § 52-29 does not create jurisdiction where it would not otherwise exist. *Wilson* v. *Kelley*, 224 Conn. 110, 116, 617 A.2d 433 (1992) ('Implicit in [§ 52-29 and Practice Book § 17-55] is the notion that a declaratory judgment must rest on some cause of action that would be cognizable in a nondeclaratory suit . . . . To hold otherwise would convert our declaratory judgment statute and rules into a convenient route for procuring an advisory opinion on moot or abstract questions . . . and would mean that the declaratory judgment statute and rules created substantive rights that did not otherwise exist.' [Citations omitted.])." Id.

Notwithstanding the Republican Party's tactical decision to challenge subject matter jurisdiction by interposing a special defense, "the 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 . . . to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute." (Internal quotation marks omitted.) *May* v. *Coffey*, 291 Conn. 106, 113, 967 A.2d 495 (2009). Nevertheless,"in determining whether a court has subject matter jurisdiction, every presumption

favoring jurisdiction should be indulged." (Internal quotation marks omitted.) *Connor* v. *Statewide Grievance Committee*, 260 Conn. 435, 443, 797 A.2d 1081 (2002).

B. Republican Party's Specification of Jurisdictional Claims

The Republican Party argues that the Court lacks subject matter jurisdiction over the plaintiff's claim because she has failed to establish: (1) that she has standing to bring her claim; (2) that there is a question or uncertainty as to her legal right to run for the office of Attorney General; (3) that the matter is ripe for adjudication and any decision by the Court would be more than advisory; (4) her claims cannot be properly determined by the Democratic Party using its own internal procedures; and (5) there are no other, more suitable procedures that can provide her with the relief she seeks.

C. Findings of Fact Concerning Jurisdictional Claims

At trial, the plaintiff testified that the question of whether or not she met the minimum practice requirements of General Statutes § 3-124 was first raised by the media. The concern was again brought to the plaintiff's attention by leaders of the Democratic party including the Chairman, Nancy DiNardo. Although raised in the form of a question, as opposed to a challenge, the plaintiff looked for reassurance that she met the minimum statutory requirements under § 3-124 from the Attorney General after declaring her candidacy. Instead of confirming the plaintiff's claim that she met the minimum practice requirement, however, Attorney General Blumenthal's formal opinion advanced an interpretation of § 3-124 that raised doubts as to the plaintiff's statutory qualifications. His opinion also rejected the plaintiff's alternative claim that § 3-124 is unconstitutional. In order to dispel the lingering uncertainty surrounding her eligibility for the office of Attorney General before the convention, primary, and election, the plaintiff brings this declaratory judgment action.

D. Analysis of Specific Jurisdictional Claims

1. Claim of Lack of Standing

The Republican Party claims that the plaintiff lacks standing to bring this action on the ground that nothing now prevents her from running for the office of Attorney General. "Standing is not a technical rule intended to keep aggrieved parties out of court; nor is it a test of substantive rights. Rather it is a practical concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented. . . . These two objectives are ordinarily held to have been met when a complainant makes a colorable claim of direct injury he has suffered or is likely to suffer, in an individual or representative capacity. Such a personal stake in the outcome of the controversy . . . provides the requisite assurance of concrete adverseness and diligent advocacy." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC* v. *New London*, supra, 282 Conn. at 802-03. "If a party is found to lack standing, the court is without subject matter jurisdiction to determine the cause." (Internal quotation marks omitted.) *Andross* v. *West Hartford*, 285 Conn. 309, 321, 939 A.2d 1146 (2008).

In *Schiavone* v. *DeStefano*, 48 Conn. Sup. 521, 524, 852 A.2d 862 (2001), the Court was faced with the issue of whether the plaintiff, a declared candidate for mayor of the City of New Haven, could bring a declaratory judgment action concerning the constitutionality of a provision of the New Haven City Charter that imposed a residency requirement for the office of mayor. Although it was undisputed that the plaintiff did not meet the residency requirements in the Charter, the defendant argued that the plaintiff lacked standing to bring his action because "nothing prevents [him] from campaigning for the office of mayor" and that "he will be in no position to litigate against the charter provision in question until such time, if ever, . . . he is actually elected."

In rejecting this argument, Judge Blue explained that by declaring his candidacy for the office, the plaintiff had demonstrated a sufficient "personal stake in the outcome of the controversy" to establish standing. He remarked on the importance of determining eligibility for office before running for office as follows: "Running for office is an expensive and time-consuming business. A [declared] candidate seeking office not knowing whether he would be eligible to serve if elected would be quixotic indeed. Numerous courts . . . have considered the merits of durational residency requirement cases brought by would-be candidates. . . . This case plainly involves a 'hot controversy' with each view fairly and vigorously represented."

As a declared candidate for the Democratic nomination for Attorney General, the plaintiff has likewise established that she has a personal stake in the outcome of this case concerning whether or not she meets the statutory qualifications for that office, as set forth in General Statutes § 3-124. Like the plaintiff in *Schiavone*, the plaintiff in this case should not be forced to bear the time and expense of running for office without knowing whether she could be ousted from that office upon succeeding. The plaintiff has therefore established her standing to bring this action on the basis of her declared candidacy for the office of Attorney General.

2. Claim of Lack of Uncertainty as to Plaintiff's Legal Rights

The Republican Party also claims that the plaintiff has failed to establish that there is a question or uncertainty as to her legal right to be a candidate for Attorney General. Instead, it argues, the plaintiff has brought this action in order to settle her own fears and apprehensions about her qualifications for the office of the Attorney General. Furthermore, it argues that even if the Court finds that the plaintiff has established that there is a question as to her legal right to run for office, there is no evidence that the plaintiff's legal right has or will be harmed by any action of the defendants to this proceeding. According to the Republican Party, fear of future harm provides an insufficient basis for maintaining a declaratory judgment action.

Although related to its claim that the plaintiff lacks standing, this argument actually touches on the first two requirements for bringing a declaratory judgment action, as set forth in section 17-55 of the Practice Book. In order for a plaintiff to maintain a declaratory judgment action, she must establish that: (1) "[she] has an interest, legal or equitable, by reason of danger or loss or of uncertainty as to [her] rights or other jural relations;" and (2) "[t]here is an actual bona fide and substantial question or issue in dispute or substantial uncertainty of legal relations which requires settlement between the parties." See Practice Book § 17-55 (1)-(2). If these two requirements are not met, there is no justiciable controversy. See *ACMAT Corp.* v. *Greater New York Mut. Ins. Co.*, 88 Conn. App. 471, 478 n.2 (2005), cert. denied, 274 Conn. 903, 876 A.2d 11.

As for the first requirement of section 17-55, in order for the plaintiff to have such an interest, some legal or equitable relation of the plaintiff must be capable of being affected by the Court's decision. See E. Borchard, Declaratory Judgments (2d Ed. 1941) p. 36. The plaintiff's interest in this case is not hard to find. This first requirement of § 17-55 is clearly satisfied by the plaintiff's declared candidacy for the office of Attorney General. As identified by our Constitution in Article VI, § 10, the plaintiff, as an elector over the age of eighteen years of age, has at least a colorable claim of right to be deemed eligible for election to any office in the state.

Furthermore, it is well-established that the right of a candidate to run for office is inextricably bound up with the right of voters to vote for the candidate of their choice. See *Bullock* v. *Carter*, 405 U.S. 134, 142-43, 92 S. Ct. 849, 31 L. Ed. 2d 92 (1972). In other words, "the rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters." Id. In the present case, the plaintiff seeks to vindicate, in addition to her own personal interest in running for public office, the interests of the voters of the state of Connecticut, especially those

associated with the Democratic Party, to know whether a candidate is qualified before they cast their votes for her. In light of the compelling and substantial interests of both the plaintiff and the voters of the state of Connecticut, the requisite interest under section 17-55 (1) of the Practice Book has been established in this case.

To the extent that the Republican Party is claiming that the plaintiff must suffer actual harm in order to be capable of advancing her interests, it misses the point of a declaratory judgment action. The very purpose of a declaratory judgment action is "to enable parties to have their differences authoritatively settled in advance of any claimed invasion of rights, that they may guide their actions accordingly and often may be able to keep them within lawful bounds, and so avoid the expense, bitterness of feeling, and disturbance of the orderly pursuits of life which are so often the incidents of lawsuits." *Sigal* v. *Wise*, 114 Conn. 297, 158 A. 891 (1932). Although no traditional wrong has been committed, a declaratory judgment is appropriate where there "is the existence of an opposing claim, which disturbs the peace and freedom of the plaintiff and, by raising doubt, insecurity, and uncertainty in his legal relations, impairs or jeopardizes his pecuniary or other interests." E. Borchard, supra, p. 28. In this regard, it should be unnecessary for either party to act, at his peril, on his own interpretation of the requirements and incur the inherent risks of running, as described by Judge Blue in *Schiavone*, before asking for an interpretation by the Court on the basis of established facts. "There is a social and private interest in stability which should not have to wait upon manifested violence, breach or hostility as a condition of societal cognizance and adjudication. Evidence of the need for stabilization and security, evidence that an adversary, active or potential, has or might have an interest in opposing the claim for relief, should suffice." Id. In short, the very beauty of a declaratory judgment action is that the plaintiff may bring it before any actual harm has occurred.

The plaintiff here has established what is required to bring a declaratory judgment action— that there is uncertainty to her rights — more particularly, uncertainty over her right to qualify for the office of Attorney General, as required under Practice Book § 17-55 (1) and (2). After vigorously contesting whether the plaintiff satisfies the qualifications for the office of Attorney General under General Statutes § 3-124, the Republican Party now asks this Court, ironically, to find that the plaintiff has not established that there is a dispute as to her qualification. The requisite uncertainty was, however, present even before the Republican Party intervened as a party to this action and vigorously disputed the plaintiff's qualifications. Such uncertainty was created by media speculation and expressed to the plaintiff by members of the Democratic Party, including Nancy DiNardo, the party Chairman. Furthermore, the existing uncertainty was exacerbated by the Opinion of Richard Blumenthal; Opinions, Conn. Atty. Gen. No. 10-001 (February 2, 2010);[7] wherein he interpreted General Statutes § 3-124 to mean "more than merely being a member of the Connecticut bar in active status [for ten years]." Without opining as to what "more" was required, Attorney General Blumenthal explained that "[d]etermining the specific actions that could constitute active practice and whether any particular candidate has satisfied them in a particular case requires a highly fact-specific inquiry." Essentially, then, his formal Opinion presented an interpretation of the requirements of § 3-124 that conflicted with that of the plaintiff[8] and raised genuine doubt as to whether in fact she was qualified. Cf. *Brimmer* v. *Thomson*, 521 P.2d 574, 579 (Wyo. 1974) (official, reported opinion of the Attorney General effectively placed the senator's rights in question to provide the

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[7] Opinions, Conn. Atty. Gen. No. 10-001 (February 2, 2010) was attached to the original complaint, and, therefore, properly considered as evidence by the Court.

[8] To reiterate, the plaintiff's interpretation of § 3-124 is that it merely requires ten years' membership in the Connecticut bar in active status.

requisite adversity for his declaratory judgment claim). Although the Attorney General's opinion did not expressly state that the plaintiff's service as Secretary of the State did not qualify under § 3-124, it left that conclusion open as a serious possibility, thus leaving a cloud of substantial uncertainty over the plaintiff's ability to meet the minimum practice requirement for the office of Attorney General.

The speculative fears of the plaintiff that motivated this request for a declaratory judgment, the defendant argues, are insufficient to satisfy the substantial uncertainty required under § 17-55 (2). The Court agrees that speculative fears, without more, are insufficient to establish substantial uncertainty for the purpose of a declaratory judgment action. Nevertheless, the plaintiff's motivation in bringing the declaratory judgment action, whether it rest in his own doubts or the fears of third parties, is unimportant where the doubt is translated into a claim of right and asserted against one having an interest in contesting it. E. Borchard, supra, p. 36. "When [the right is asserted], it is a justiciable controversy, regardless of its origin in the plaintiff's own doubts or the fears of others, and regardless of the form of action, declaratory or executory, in which the issue is presented." Id. In the present case, the plaintiff has translated her doubts into a claim of right by declaring her candidacy for the office of Attorney General and asserted this claim against several defendants, all of whom have divergent, if not conflicting, interests. Her right was then placed in serious doubt by Attorney General Blumenthal's formal opinion. By declaring her candidacy and securing the conflicting formal opinion of the Attorney General as to the interpretation of § 3-124, the plaintiff rendered inconsequential the motivation behind her doubt regarding whether she satisfies § 3-124.

The Republican Party also argues that the plaintiff has not presented evidence that any of the defendants will harm, or could harm, her right to run for public office. Nevertheless, the evidence establishing the requisite uncertainty as to whether the plaintiff qualifies under § 3-124

also serves as a basis for any of the defendants or recipients of notice under § 17-56 (b), if disappointed with the way the election process is going at any point, to call into question the plaintiff's eligibility for office under § 3-124. Such procedures could include, after the election, quo warranto and mandamus proceedings, which are particularly intrusive. See General Statutes §§ 52-491 (quo warranto); and 52-485 (mandamus). Furthermore, the Republican Party's own ardent advocacy in this trial in contesting whether the plaintiff meets the qualifications for the office suggest that some harm is sure to follow if the parties proceed without a judicial interpretation of § 3-124.

3. Claim of Lack of Ripeness

The Republican Party argues that the plaintiff's claims are not ripe for adjudication because they are contingent on her being elected to the position of the Attorney General. Because her election has not occurred and may never occur, the Republican Party argues that the plaintiff's claims are premature and speculative, representing a mere request for an advisory opinion. In fact, it asserts, the plaintiff has not yet been denied an elective office or even had her candidacy challenged. Because these events are not certain to occur, the declaratory judgment sought by the plaintiff is not an attempt to settle a present controversy, but to avoid a possible dispute in the future.

The purpose of the ripeness requirement is "to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements . . . ." (Citation omitted; internal quotation marks omitted.) *Milford Power Co., LLC* v. *Alstom Power, Inc.*, supra, 263 Conn. 626. "[The court] must be satisfied that the case before [it] does not present a hypothetical injury or a claim contingent upon some event that has not and indeed may never transpire." Id. "In other words, [if] the plaintiff's claims [are] contingent on the outcome of a dispute that [has] not yet transpired, and indeed, might never transpire, the injury [is]

hypothetical and, therefore, the claim [is] not justiciable." Id., 627. "We are not compelled to decided claims of right which are purely hypothetical or are no of consequence as guides to the present conduct of the parties." (Internal quotation marks omitted.) *Esposito* v. *Specyalski*, 268 Conn. 336, 350, 844 A.2d 211 (2004). Any attempt to entertain jurisdiction of such a case is advisory. See id., 348.

In order for an action to be ripe, "the facts on which a legal decision is demanded must have accrued." E. Borchard, supra, p. 56. In other words, a declaratory judgment "declares the existing law on an existing state of facts." Nevertheless, a dispute should "be tried at its inception, before it has accumulated the asperity, distemper, animosity, passion, and violence of the full-blown battle which looms ahead. . . . The dispute may be determined before the status quo has been altered or disturbed by the physical acts of either party." Id., 57. That is, the purpose underlying the declaratory judgment action is to prevent conflict and guide the parties' conduct before violence has occurred.[9] Borchard provides a particularly useful analogy by explaining that "[with an ordinary cause of action,] you take a step in the dark and then turn on the light to see if you stepped into a hole. Under the declaratory judgment law you turn on the light and then take the step." (Internal quotation marks omitted.) Id., 58. Put another way, with declaratory judgment procedures, "the court does not have to say to the prospective victim that the only way to determine whether the suspect is a mushroom or a toadstool is to eat it." (Internal quotation marks omitted.) Id., 58 n.24.

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[9] Where there is an existing set of facts, a change to the status quo is not a necessary feature of ripeness. "[V]iolence and destruction make the issue more painfully and socially undesirable, but they do not make it any more controversial. The controversy was ripe for decision before the violence and destruction had begun." Id., 58.

Walking the tightrope between an accumulated set of facts and disruption of the status quo is not always easy. In determining whether facts have ripened to make the action justiciable, courts have considered whether there is a vested, as opposed to a contingent, interest that has been placed at issue in circumstances where the Court can grant practical, binding relief. See, e.g., *Larkin* v. *Bontatibus*, 145 Conn. 570, 145 A.2d 133 (1958). Our courts have consistently declined to require a disruption of the status quo where a vested right is involved even where such rights will arise or become complete only in the contingency of some future happening. See, e.g., *Peterson* v. *Norwalk*, 150 Conn. 366, 382 A.2d 33 (1963) (plaintiff entitled to declaration of validity of city's contract to maintain bridge, even though city not called on yet to expend funds for such maintenance because "contractual obligation to do so in the future is there now even if some unforeseen event may alter or eliminate it").

More specifically, cases from other jurisdictions that have considered when an action becomes ripe in the context of elections have emphasized the importance of declaring legal rights and relations before the claimed invasion of rights occurs. See, e.g., *Kneip* v. *Herseth*, 87 S.D. 642, 214 N.W.2d 93 (1974). As articulated by the South Dakota Supreme Court in *Kneip*, the cases involving election matters where the court exerts jurisdiction before the point of conflict are able to "resolve the uncertainty surrounding a person's candidacy by determining his status at a timely point. They prevent the watering down of the voter franchise by explaining who could run before a vote was irretrievably lost. This is desirable because present voting rights often depend on a determination of future questions." Thus, in order to effectuate the purpose of the declaratory judgment statute and allow the plaintiff to set the political machinery necessary to secure a nomination in motion, a controversy is considered ripe when a candidate has declared his candidacy. See, e.g., *Holley* v. *Adams*, 238 So.2d 401 (Fla. 1970). Once an individual has

declared his candidacy, he has a presently existing right in a matter where the court can grant practical, binding relief.

In the present case, the action is ripe for adjudication because the plaintiff has a presently existing right by virtue of her declared candidacy and the Court can grant practical, binding relief. The factual basis for the Court's determination as to whether the plaintiff satisfies the requirements of § 3-124 will not change depending on whether the plaintiff receives the party's nomination or wins the election. Instead, the facts on which a legal decision is requested have accrued, and the Court is in a position where it can avoid harsh consequences by declaring now whether or not the plaintiff meets the minimum statutory requirements for the office of Attorney General. The Court is in a position to guide the parties' conduct and turn on the proverbial light before the parties take a step forward into what might turn out to be a hole. Waiting until after a convention, a primary or an election has occurred before deciding the question presented in this case would simply require the parties to take a potentially costly step in the dark before turning on the light.

The Court is particularly convinced that now is the proper time to declare the plaintiff's right under s 3-124 considering the detrimental consequences of waiting until later. First, our electoral process necessitates adjudication in these early stages to ensure that the cloud on the plaintiff's right to run for office does not discourage her potential supporters. "[T]o deny a candidate the benefit of the party machinery before the [election] is to greatly limit his political success. Thus, the right of political association is razed to a point of being ineffectual if this is allowed. To make [a plaintiff wait after declaring his candidacy for office] before he can challenge the effect of a statute . . . is to deny the effectiveness of present rights and would destroy the justification for the creation of the Declaratory Judgment Act. It is obviously

apparent that the seeds of controversy have ripened to a state demanding adjudication. The legal interest is in jeopardy and the courts should effectuate that interest in keeping with the purposes of the Declaratory Judgment Act." *Kneip*, supra, 214 N.W.2d 99. Second, adjudicating the plaintiff's rights now ensures against more invasive and disruptive challenges later. The alternatives would admittedly wreak havoc on our political process by opening the doors to actions in the nature of mandamus and quo warranto, as well as to the possibility that the office of Attorney General will be left vacant while such actions go forward. See General Statutes § 9-213 (b) ("[a]ny vacancy in the office of Attorney General shall be filled by appointment by the Governor for the unexpired portion of the term").

In light of the facts in this case, which have reached a point where final adjudication of the question presented is possible, the harsh alternatives, and the remedial purpose of the declaratory judgment statute, the Court is of the opinion that the present matter is exactly the kind of controversy for which the declaratory judgment statute was designed. Because a present determination of rights based on existing facts can provide the parties with guidance as to their future conduct, it is ripe for adjudication and not the issuance of an advisory opinion to a hypothetical question.

4. Claim That Maintaining This Action Undermines the Autonomy of the Democratic Party to Determine the Qualifications of its Candidates for Public Office

The Republican Party claims that the Court lacks subject matter jurisdiction over the plaintiff's claim because she has failed to present evidence to establish that any of the delegates to the Democratic Party Convention are unable, or will be unwilling or unable, to be both democratic and judicious in applying its rules and other criteria governing any of the aspiring candidates to political office. Because of this failure, it argues, the present action is nothing

more than the interference with the operation of the state Democratic Party Convention and should be rejected as such. In support of these assertions, it cites *Hartford Democratic Town Committee* v. *Connecticut Democratic State Central Committee*, Superior Court, judicial district of Hartford, Docket No. CV 03 0822364 (February 18, 2003, *Booth, J.*).

This claim presents features of both the political question doctrine and the doctrine of failure to exhaust administrative remedies as grounds for asserting lack of subject matter jurisdiction. However, the claim misses the mark as to each. Essentially, the Republican Party argues that the plaintiff's claim raises a political question, the resolution of which is beyond the Court's authority. Our jurisprudence establishes that "certain political questions cannot be resolved by judicial authority without violating the constitutional principle of separation of powers. . . . [T]he characterization of such issues as political is a convenient shorthand for declaring that some other branch of government has constitutional authority over the subject matter superior to that of the courts. . . . The fundamental characteristic of a political question, therefore, is that its adjudication would place the court in conflict with a coequal branch of government in violation of the primary authority of that coordinate branch. . . . Whether a controversy so directly implicates the primary authority of the legislative or executive branch, such that a court is no the proper forum for its resolution, is a determination that must be made on a case-by-case inquiry." *Nielsen* v. *Kezer*, 232 Conn. 65, 74-75, 652 A.2d 1013 (1995).

In *Nielsen* v. *Kezer*, supra, the defendant claimed that the Court lacked subject matter jurisdiction over the plaintiff's claims because it should have deferred to the decision-making autonomy of a political party to decide whether to certify a candidate for public office. The Court there found that the political question doctrine was not implicated because the defendants had not even made an argument that any of the plaintiff's claims were more properly left to

another branch of government to decide. Id., 75. The Court went on to explain that "[a]lthough political parties have wide leeway to select candidates for endorsement, both as a matter of constitutional law . . . and under state statutes, . . . there is no indication that the legislature sought to exclude courts completely from the adjudication of controversies relating to such matters. . . . Although a court must afford great deference to a party's decision to endorse, or not to endorse, a particular candidate, if the party's determination is clearly *contrary to law* blind acceptance of its decision is not appropriate." (Emphasis added.) Id.

Underlying the Court's holding in *Nielsen* is the principle that "the mere fact that [a] suit seeks protection of a political right does not mean it presents a political question." (Internal quotation marks omitted.) Id., 77 n.19. That is, although political parties are generally free to conduct their internal affairs free from judicial supervision, it does not cover situations where the parties' actions would be contrary to, and involve a question of, law. See id., 79. Courts are empowered to, and have routinely, exercised their jurisdiction to perform functions of statutory interpretation in matters connected with the political sphere. See *Board of Education of Naugatuck* v. *Naugatuck*, 257 Conn. 409, 425, 778 A.2d 862 (2001).

In the present case, there is no claim that the plaintiff's request for declaratory relief implicates some constitutional principle associated with the separation of powers doctrine or that some other coequal branch of government is charged with deciding the plaintiff's claim. Instead, the plaintiff's claim raises issues of statutory interpretation of the kind regularly entertained by courts. Issues of statutory interpretation are not internal disputes or affairs of political parties, but instead are questions of law properly left to the courts. Thus, even to the extent that the Republican Party contends that the Court lacks subject matter jurisdiction over the plaintiff's claim for a failure to exhaust the administrative remedies available under the Democratic Party's

Rules, matters of statutory interpretation for purposes of eligibility to office are not internal disputes appropriate for determination under party rules. Cf. *Nielsen* v. *Kezer*, supra, 232 Conn. (Court deferred to party's own interpretation of its rules as to whether seconding motion for nomination of state senate candidates was proper because it involved an internal matter and was not illegal or irrational); *Hartford Democratic Town Committee* v. *Connecticut Democratic State Central Committee*, Superior Court, judicial district of Hartford, Docket No. CV 03 0822364 (February 18, 2003, *Booth, J.*) (internal dispute regarding endorsement of candidate was appropriate matter for Democratic State Central Committee to interpret and apply its rules where no legal or constitutional right was violated and procedure was not patently irrational); *Oliveira* v. *Carnell*, Superior Court, judicial district of New London, Docket No. CV 02 0561348 (February 28, 2002, *Leuba, J.*) (pursuant to General Statutes § 9-387, plaintiff should have resolved intra-party dispute involving the endorsement of candidates in accordance with party rules).

5. Claim That the Plaintiff Should Be Required To Pursue Instead of Pursuing Her Claims for Relief in This Declaratory Judgment Action

At oral argument, the Republican Party also argued that the Court lacks subject matter jurisdiction over the plaintiff's claim because there are assertedly other remedies available to the plaintiff. The availability of other remedies does not, however, go to a court's subject matter jurisdiction. See *England* v. *Coventry*, 183 Conn. 362, 365-66, 439 A.2d 372 (1981). Instead, § 17-55 (3) acknowledges that the existence of alternative remedies merely affords the court another basis upon which to deny claims for declaratory relief. Maintenance of the action is proper unless "there is another form of proceeding that can provide the party seeking the declaratory judgment *immediate redress*." (Emphasis added.) See id. The Republican Party,

however, has not identified any proceedings that could provide the plaintiff with immediate redress. Even assuming the statutory causes of action cited by the defendant are available in this situation, which they are not,[10] they would provide at best a determination as to the plaintiff's eligibility only after she was had campaigned for and been elected to office. This would inevitably result in the irretrievable loss of time, money, and more importantly, votes cast by the plaintiff and citizens of the state of Connecticut, that could have been redirected to an eligible candidate. For these reasons, the Court, in its discretion, rejects the defendant's claim that the availability of other remedies warrants a dismissal of this declaratory judgment action.

III. WHETHER THE PLAINTIFF MEETS THE MINIMUM PRACTICE REQUIREMENT FOR THE OFFICE OF ATTORNEY GENERAL, AS SET FORTH IN GENERAL STATUTES § 3-124

A. The Statute.

The eligibility requirements for the office of Attorney General in Connecticut are set forth as follows in General Statutes § 3-124: "There shall be an Attorney General to be elected in the same manner as other state officers in accordance with the provisions of section 9-181. The Attorney General shall be an elector of this state and an attorney at law of at least ten years' active practice at the bar of this state. . . . The Attorney General shall devote full time to the duties of the office and shall give bond in the sum of ten thousand dollars." (Emphasis added.) This case concerns, *inter alia*, the interpretation and application to the plaintiff of the minimum practice requirement of the statute, as underscored above.

B. Rules of Statutory Construction

[10] The Republican Party identified General Statutes § 9-239a and § 9-324 as alternative statutory remedies available to the plaintiff.

Although the wording of this requirement has remained unchanged ever since it was first adopted as part of Public Acts 1897, c. 191, § 1, the original legislation which established the office of Attorney General in 1897, none of its terms have ever been defined by statute or interpreted by any court. Hence, they must now be interpreted by this Court under established rules of statutory construction set forth in General Statutes §§ 1-2z and 1-1(a). Section 1-2z provides that, "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." Section 1-1, in turn provides that, "In the construction of statutes, words and phrases shall be construed according to the commonly approved usage of the language; and technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly."

C. Elements of the Minimum Practice Requirement

Under the minimum practice requirement of Section 3-124, the Attorney General must be "an attorney-at-law of ten years' active practice at the bar of this state." To find the true meaning of this requirement, the Court must first examine its essential elements in light of the manner in which they are set forth in the statute and the settled meanings of the terms with which they are written, as used in other statutes, as described in case law, and as established by contemporaneous and later consistent usage. Those elements are: first, the Attorney General be an "attorney-at-law," duly authorized to "practice at the bar of this state"; and second, that the Attorney General, so authorized, have "at least ten years' active practice at the bar of this state."

D. The First Element: *Attorney-at-Law*

The first term that requires interpretation in this context is "attorney-at-law," for although it is undisputed that the plaintiff meets this element of the minimum practice requirement, a clear understanding of it is essential to ascertaining the true meanings of the other terms used in that requirement. Because the text of the statute does not provide a definition of the term "attorney-at-law," it is appropriate to look to related statutes for guidance in interpreting it. See General Statutes § 1-2z.

In Connecticut, chapter 876 of the General Statutes governs attorneys. In particular, General Statutes § 51-80, which governs the admission of attorneys, provides that: "The superior court may admit and cause to be sworn as attorneys such persons as are qualified therefor, in accordance with the rules established by the judges of the superior court. The judges of the superior court may establish rules relative to the admission, qualifications, practice and removal of attorneys." Our Supreme Court has declared that this provision "can be construed only as a legislative recognition of the inherent right of the Superior Court, a constitutionally established tribunal, to promulgate rules for the admission of attorneys." *State Bar Ass'n of Connecticut v. Connecticut Bank & Trust Co.*, 145 Conn. 222, 231, 140 A.2d 863 (1958).[11] Rules so

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[11] Article Second of our Constitution, as amended, provides in relevant part as follows:

"The powers of government shall be divided into three distinct departments, and each of them confined to a separate magistracy, to wit, those which are legislative to one; those which are executive, to another; and those which are judicial, to another." Article third, § 1, vests the legislative power in a General Assembly. Article fifth, § 1, as amended, states: "The judicial power of the state shall be vested in a supreme court, an appellate court, a superior court, and such lower courts as the general assembly shall, from time to time, ordain and establish. The powers and jurisdiction of these courts shall be defined by law." "Fixing the qualifications for, as well as admitting persons to, the practice of law in this state has ever been an exercise of judicial power. . . . Irrespective of legislation, the rule-making power is in the courts." (Citation omitted.) *Heiberger v. Clark*, 148 Conn. 177, 185, 169 A.2d 652 (1961). Thus, although the legislature may pass states to aid the judicial department in reaching a proper selection of those qualified for admission as an attorney who can practice in its courts, "[n]o statute can control the judicial department in the performance of its duty to decide who shall enjoy the privilege of

promulgated have the force of statute. *In re Application of Dodd*, 132 Conn. 237, 241, 43 A.2d 224 (1945).

The power of Connecticut's courts to serve as gatekeepers for the admission of attorneys to the practice of law in this state predates the Constitution of 1818. *Heiberger v. Clark*, supra, 148 Conn. at 188-89. "As early as 1708, the general court enacted legislation which provided that no attorney could be admitted to the bar of any county court or court of assistants (which became, in 1711, the Superior Court . . .), without first being approved of by the court." Id., 188. This is significant, because prior to the adoption of the Constitution, the General Assembly, then known as the "Generall (sic) Court and Assembly," had and exercised legislative, executive, and judicial powers. Id., 189. As further explained by our Supreme Court in *Heiberger*, "[t]he fact that the General Assembly in 1708, a hundred and ten years before the adoption of the constitution of 1818, had assigned to the courts the matter of the admission of attorneys . . . indicates that under the government established by virtue of the charter of 1662 of Charles II, the General Assembly, although it could establish and abolish courts, recognized and conceded that the admission of attorneys was a prerogative of the courts themselves." Id., 190.

In 1906, in an illuminating case entitled *In re O'Brien's Petition*, 79 Conn.46, 63 A. 777 (1906), our Supreme Court detailed as follows the evolution of Connecticut's rules and procedures for the admission of attorneys to the Connecticut bar from the Colonial Era through the date of its decision: "In 1730 the number of attorneys in the colony was limited to 11, 'viz., three attorneys in the county of Hartford and the other four counties to have two attorneys to plead at the bar in each respective county, and no more, which attorneys shall be nominated and

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practicing law." (Internal quotation marks omitted.) *State Bar Association of Connecticut v. Connecticut Bank & Trust Co.,* supra, 145 Conn. 232.

appointed from time to time as there shall be occasion by the county court; each county court to appoint the number of attorneys hereby allowed in the county where such court doth preside.' . . . This limitation of number was repealed the next year, but the exclusive power of admitting attorneys continued in the hands of the county court until 1808, when it was enacted that 'the superior and county courts be and they are hereby respectively authorized to make such rules and regulations as to them may appear meet, relative to the admission and practice of attorneys in such courts; provided that such rules and regulations shall have no operation upon attorneys already admitted by the county courts.' . . . By the Revision of 1831 this power was again committed exclusively to the county courts, and remained with them until their abolition in 1855, when it was enacted that 'the superior court may admit and cause to be sworn as attorneys, such persons as are qualified therefore agreeably to the rules established by the judges of said court; and all attorneys so admitted shall have the right to practice in all the courts of the state; and said judges are authorized to establish such rules and they shall judge proper relative to the admission, qualifications, practice and removal of attorneys.' . . .

"The power of the courts over the admission of attorneys thus given or confirmed by the General assembly was exercised from the first in each county, largely by the aid of the county bar. It was by this bar that the whole business of the civil courts was, until the closing quarter of the nineteenth century, mainly arranged and made ready for disposition. Assignments of cases for trial were made at the bar meetings presided over by one of their own number, and standing rules were adopted at such meetings in regard, among other things, to the qualifications, examinations, and mode of admission of attorneys. These rules, while not identical in every county, generally provided that every person seeking admission to the bar must be of full age and good moral character; must have studied law under competent instruction for a certain

period of years; and must pass a satisfactory examination upon it before a committee of the county bar, and be recommended by them for the approval of the court. Judicial and Civil History of Connecticut, 186. Being framed by the bar, these rules were known in each county as the 'rules of the bar,' although deriving their real authority from the sanction, expressed or implied, of the court in that county. . . .

"Shortly after the organization of the State Bar Association in 1875, its committee on legal education reported in favor of a new scheme to regulate admissions to the bar, which should be uniform throughout the state, under rules adopted by the judges of the Superior Court. It was proposed that they should appoint a State bar examining committee to hold semi-annual sessions, before which all candidates must appear, and that no one could be admitted to an examination who had not given 30 days' previous notice to the bar of his county, through the clerk of the Superior Court, of his intention to apply for it. On this report, adopted by the Association in 1881, the rules of court on this subject now in force were based." (Citation omitted.) *In re O'Brien's Petition*, supra, 79 Conn. at 50-52.

The rules of court thus referenced in *O'Brien*, which established a uniform statewide system for the admission of attorneys to the bar, were adopted by the judges of the Superior Court in 1890. See Rules of Practice, 1890, 58 Conn. 561, 589-93 (1890). [12] They, in fact, were the rules in effect when the original legislation creating the office of Attorney General was passed in 1897 In light of the subject matter of those rules, which lay exclusively within the constitutional domain of the judiciary, they and subsequent revisions of them have the force of statute. *In re Application of Dodd*, supra, 132 Conn. at 241**.** They may thus be looked to for

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[12] These rules, which were contained in the "Rules of Practice," but entitled "Rules Regulating the Admission, Suspension, and Displacement of Attorneys," are referred to herein as the Rules of Practice.

guidance as to the "relationship [of the statute here at issue] to other statutes," under the plain meaning rule of General Statutes § 1-2z.

Under the 1890 Rules of Practice, a new attorney could be admitted to the bar of this state by the judges of the Superior Court only if he took the following steps. First, he had to apply for that purpose to the bar of his county, which had to approve his application by the vote of its practicing members at one of its regular meetings, after notice of the application had been given to such practicing members. Rules of Practice, 1890, c. iii, § 4. If his application was approved by his county bar, the applicant was then required to satisfy the state bar examining committee that he met all of the requirements set forth in the Rules for taking the bar examination, which then included that he was a United States citizen who would be at least twenty-one years old by the time of his admission to the bar, that he was a person of good moral character, and that he had engaged in at least three years of legal study, either at a law school or under competent professional instruction in the office of a practicing lawyer. Id. Once he was found to have met these requirements, he was "called to the bar" to take the bar examination, in which he would be tested on his knowledge of a wide range of legal subjects arising in all types of legal practice. Rules of Practice, 1890, c. iii, § 5. Such subjects, by rule, included but were not limited to the law of pleading, practice, evidence, constitutional law, the law of real and personal property, contracts, torts, equity, criminal law, wills and administration, corporations, partnership, negotiable paper, agency, bailments, domestic relations. Id., § 6. Upon satisfactorily passing that examination, the applicant was admitted to the bar by the judges of the Superior Court upon taking a special oath for attorneys-at-law. The new attorney-at-law, so admitted, was thereby authorized to engage in legal practice throughout the state. He would remain so authorized, without further education, examination or certification, for so long as he

remained a member in good standing of the bar – that is, until he resigned from the bar, was suspended from it, or was disbarred. See Practice Book § 2-65 (good standing of attorney); see also Practice Book §§ 2-52 (resignation); 2-55 (retirement); 2-56 (inactive status). The life's work of an attorney-at-law and member of the bar would be described as his "career at the bar. " See, e.g., Obituary of Charles Phelps, 126 Conn. 726, 727 (1940) ("Mr. Phelps' career at the bar was marked by devotion to public service.").

The attorney-at-law requirement for the office of Attorney General is thus satisfied if the Attorney General is a member in good standing of the Connecticut bar, a term which is now defined in Practice Book § 2-65 as follows: "An attorney is in good standing in this state if the attorney has been admitted to the bar of this state, has registered with the statewide grievance committee in compliance with Section 2-27 (d),[13] has complied with Section 2-70,[14] and is not under suspension, on inactive status,[15] disbarred, or resigned from the bar.

E. The Second Element: "*At Least Ten Years' Active Practice at the Bar of this State*"

As for the second element of the minimum practice requirement set forth in Section 3-124 – that the Attorney General have "at least ten years' active practice at the bar of this state" – the parties agree at the outset, as they must, on two very basic but important matters: first, that the word "practice," as used in the statute, necessarily means "legal practice" or the "practice of

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[13] Section 2-26 (d) requires annual registration with the statewide grievance committee of the lawyer's office or offices maintained for the practice of law and information regarding any financial account in which the funds of more than one client are kept.

[14] Practice Book § 2-70 requires annual payment of the client security fund fee. See Practice Book § 2-70.

[15] See Practice Book § 2-56 (explaining what while on inactive status, an attorney is precluded from practicing law).

law" by a Connecticut attorney-at-law; and second, that in this state, as previously noted in Part III.D of this Memorandum of Decision, supra, the exclusive power to admit attorneys to the bar and to define and regulate the lawful scope of their professional activities is constitutionally vested in the state's judiciary. Thus, the term "practice," as used in the statute, is simply a short-form reference to the full range of legal practice which a Connecticut attorney-at-law may lawfully engage in by virtue of his admission to the bar as an attorney-at-law.

From this common point of departure, however, the parties' analyses of this second element diverge in several ways. First they disagree as to the meanings in context of the two terms used in the statute to describe, and thus perhaps to limit, the kinds or sorts of practice a Connecticut attorney-at-law must have engaged in in order to become eligible for the office of Attorney General. Those terms, grouped together as sub-elements, present overlapping inquiries as to the meanings of terms "active practice" and "practice at the bar of this state." Secondly, and more fundamentally, the parties disagree as to the essential meaning of the term "practice," both in theory and as applied to the evidence presented in support of the plaintiff's claim that she partially satisfies the minimum practice requirement of the statute on the basis of her years of public service as Secretary of the State. The Court will first examine all contested claims concerning the statutory qualifiers of the term "practice," as used in the second element of the minimum practice requirement of the statute, then address the merits of the plaintiff's claims that all or some of her work as Secretary of the State, if otherwise eligible for such consideration under the statute notwithstanding those qualifiers, constituted "active practice of law at the bar of this state."

1. The Parties' Conflicting Claims as to Statutory

Qualifiers of the Word "*Practice*" in the Statute

The plaintiff contends, as a threshold matter, that the term "active practice at the bar of this state" means nothing more than remaining in "active status" as a member in good standing of the Connecticut bar, with or without engaging in legal practice of any kind. On that basis, she claims initially that that she meets minimum practice requirement of Section 3-124 simply because she has maintained her active status as a member of the Connecticut bar ever since she was admitted to it in 1986.

The Republican Party disputes the plaintiff's threshold claim, insisting that such a reading of the statute would render meaningless every term in its minimum practice requirement except "attorney-at-law," which itself implies that the Attorney General must be a member of the bar in good standing simply in order to perform the legal duties of the office.[16]

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[16] Such duties were originally set forth as follows in Public Acts 1897, c. 191, § 2:

"The attorney-general shall have general supervision over all legal matters in which the state is an interested arty, except those legal matters over which the state's attorneys have direction. He shall advise and assist the state's attorneys if they so request. He shall appear for the state, the governor, the lieutenant-governor, the treasurer, and the comptroller, and for all heads departments and state boards, commissioners, agents, inspectors, librarian, committees, auditors, chemists, directors, harbor masters, in all suits and other civil proceedings, except upon criminal recognizances and bail bonds, in which the state is a party or is interested, or in which the official acts and doings of said officers are called in question in any court or other tribunal, as the duties of his office shall require; and all such suits shall be conducted by him or under his direction. When any measure affecting the state treasury shall be pending before any committee of the general assembly, such committee shall give him reasonable notice of the pendency of such measure, and he shall appear and take such action as he deems to be for the best interests of the state, and he shall represent the public interest in the protection of any gifts, legacies or devises intended for public or charitable purposes. All legal services required by such officers and boards in matters relating to their official duties shall be performed by the attorney-general or under his direction. All writs, summonses or other processes served upon such officers and legislators shall, forthwith, be transmitted by them to the attorney-general. All suits or other proceedings by such officers shall be brought by the attorney-general or under his direction. He shall, when required by either branch of the general assembly, give his opinion upon questions of law submitted to him by either of said branches."

The Republican Party insists, moreover, that the requirement of "ten years' active practice at the bar of this state" must mean far more than merely maintaining one's active status as a member of the bar – more particularly, that the Attorney General must not only have practiced law for at least ten years as a member of the Connecticut bar, but must have done so in substantial part by pleading cases in court. So contending, it argues that plaintiff cannot qualify for the office of Attorney General because she admittedly has no courtroom experience representing anyone but herself, and that in a small-claims matter many years ago.

In support of this claim, the Republican Party makes two arguments. The first is that, although in-court practice was not the only form of legal practice in which Connecticut attorneys-at-law engaged in 1897, the drafters of the statute signaled their intention to require that the Attorney General have at least ten years of courtroom practice before assuming the duties of his office by using the phrase "at the bar of this state" to modify the word "practice" in the text of the statute. Claiming that the word "bar," as used in the phrase "at the bar," refers to the bar of the court at which attorneys plead their cases,[17] it argues that "practice at the bar" is a restrictive reference to practice in a court or courtroom.

Secondly, the Republican Party argues that the word "active," as also used in the statute to modify the word "practice," means practice which an attorney regularly engages and to which

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[17] In support of its claim, the Republican Party cites several contemporary definitions. See, e.g., Black's Law Dictionary \ (7th Ed. 1999), p. 122, 124 (explaining that "at the bar" is synonymous with "at bar," which means "now before the court"); Merriam-Webster Online Dictionary (defining the word "bar," *inter alia*, as "the railing in a courtroom that encloses the place about the judge where prisoners are stationed or where the business of the court is transacted in civil cases"). It also points to several older definitions. See Black's Law Dictionary (2d Ed. 1891), p.119 (defining "bar," *inter alia*, as "[a] partition or railing running across a court-room"); Black's Law Dictionary (1891), p.120 (same); 1 Bouvier's Law Dictionary (6th Ed. 1856) (defining "bar, practice" as "[a] place in a court where the counsellors and advocates stand to make their addresses to the court and jury").

he devotes a substantial portion of his working time. Based upon out-of-state authorities,[18] it claims that the term "active practice" is used in the statute to distinguish essentially full-time practice, which meets the statute's requirements, from less frequent or intensive practice activity, engaged in only casually or occasionally, which assertedly does not.

The plaintiff disagrees with both of the Republican Party's statutory claims. First, she contends that the phrase "at the bar," as used in the statute, actually means "as a member of the bar," that is, the collective body of Connecticut attorneys who have been "called to the bar" and admitted to the practice of law in Connecticut. She thus claims that the phrase "practice at the bar of this state" means practice as a member of the Connecticut bar. Secondly, she argues that the term "active practice," when used to describe an attorney's professional work, means actually engaging in such practice as opposed to not or no longer practicing at all.

2. Claim That Maintaining Active Status as a Member of the Connecticut Bar for Ten Years Constitutes "*Ten Years' Active Practice at the Bar of this State*"

Initially, the Court must reject the plaintiff's threshold claim that merely being admitted to and maintaining one's active status as a member of the Connecticut bar for at least ten years can be found to constitute at least ten years' active practice at the bar of this state." This conclusion has three bases. First, as the Republican Party rightly argues, it springs logically from the drafters' express inclusion of a practice requirement in the statute in addition to the requirement that the Attorney General be an attorney-at- law. Had the attorney-at-law

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[18] The cases cited by the defendant in support of his claim that active requires a substantial portion of the practitioner's time include *Application of Stormont*, 238 Kan. 627, 712 P.2d 1279 (1986); *In re Stanton,* 828 A.2d 529 (R.I. 2003); *Petitions of Jackson*, 95 R.I. 393, 187 A.2d 536 (1963); *State ex rel. Laughlin v. Washington State Bar Ass'n,* 26 Wash.2d 914 (1947); and *In re Pierce,* 207 N.W. 966, 189 Wis. 441 (1926).

requirement been thought sufficient to qualify the Attorney General for office, the legislature would not have included any practice requirement in the statute.

Secondly, this conclusion is supported by the language of Section 4.1 of the 1890 Rules of Practice, which in 1897 provided, in relevant part, that a person seeking admission to the bar of this state must first make application to the bar of his county and be approved by the vote of that bar, at one of its regular meetings, after timely notice of his application had been given to "every member of the bar engaged in practice." This contemporaneous usage in our Rules of Practice governing the admission of attorneys to practice – which, to reiterate, had the force of statute – made it clear that a person could be a member of the bar without actually engaging in the practice of law.

Third, this conclusion is supported by a series of later Connecticut cases which discussed the separate but related question of whether an out-of-state attorney who was admitted to practice "in the highest court of original jurisdiction of another state" but had never appeared in that court could be admitted without examination in Connecticut under a rule so permitting if, *inter alia,* he "actually practiced for at least five years in the highest court of original jurisdiction in one or more states." This question arose directly in *In re Application of Plantamura,* 149 Conn. 111, 176 A.2d 61, cert. denied, 369 U.S. 872, 82 S.Ct. 1141, 8 l. Ed. 2d 275 (1961), where our Supreme Court affirmed the denial of an application for admission without examination of an out-of-state attorney who had practiced patent law for several years, but had admittedly never set foot in the highest court of original jurisdiction of the state where he was admitted to practice. The Court there determined that actually practicing law could not be equated with the mere unexercised right to practice. Accord, *In re Application of Marsching*, 161 Conn. 166, 168, 286 A.2d 306 (1971) (holding that an attorney from New York who had performed extensive legal

work in his office throughout the relevant pre-application time period but had never appeared "in" the highest court of original jurisdiction of that state, as the rule required, did not qualify for admission in Connecticut without examination). See also *In re Application of Slade*, 169 Conn. 677, 681-2, 363 A.2d 1099 (1975) (accepting "the basic distinction . . . between the fact of being authorized to practice and the fact of having exercised that authority by engaging in actual practice," but expressly rejecting the notion that, in the absence of statutory standards or guidelines for the purpose, actual practice required practice of any particular "frequency, extent, type of litigation or outcome").

For all of these reasons, the Court rejects the plaintiff's threshold claim that she may be found to have at least ten years' active practice at the bar of this state merely because she has maintained her active status as a Connecticut attorney since her admission to the bar in 1986.

3. Claim that an Attorney-at -Law Must Have At Least Ten Years of Courtroom Practice to Meet the Minimum Practice Requirement for the Office of Attorney General of *"Ten Years' Active Practice at the Bar of this State*"

The Republican Party rightly notes that the original meaning of the word "bar," as used in the phrase "at the bar," was the physical barrier that separated the well of the court, where courtroom lawyers, known in England as counselors or barristers, pleaded their cases, from the spectator section of the courtroom where all others were required to remain. The words "at the bar," it therefore claims, mean in or before the court, and thus the phrase "practice at the bar of this state" necessarily means courtroom practice in a Connecticut court or courtroom. Meeting a less demanding practice requirement, it contends, would ill prepare the Attorney General to perform the duties of her office, and thus cannot be what the legislature intended when it established that requirement.

For the following reasons, however, the Court must reject the claim that the statute's use of the term "at the bar" in the phrase "practice at the bar of this state" should be read as a restrictive reference to the Attorney General's courtroom practice, in the manner of an English barrister. In the Connecticut Colony, as previously noted, the training of new attorneys-at-law was typically undertaken by members of their respective county bars, who instructed bar candidates in their offices until they were ready to take the bar examination. See *O'Brien's Petition*, supra, 79 Conn. at 52. Unlike in England, however, the practice of law in Connecticut was never subdivided into separate branches – one for courtroom lawyers, the counterparts of English counselors or barristers, and the other for office lawyers who advised clients, prepared briefs and drafted legal documents, the equivalent of English solicitors or attorneys. Id.[19] Therefore, the Connecticut bar trained all of its new attorneys to perform both in-court and out-of-court work, and examined them, as previously noted, on a wide range of legal subjects falling within both branches of their merged profession. See Rules of Practice, 1890, c. iii, § 5. In seeming acknowledgment of this marked departure from English practice, Connecticut lawyers were admitted to "the bar" of this state, in what has been claimed to be a reference to their potential work as courtroom lawyers, but were formally labeled "attorneys-at-law," in what might equally be claimed to be a reference to their potential work as office lawyers. Against this background, it cannot reasonably be argued that the term "at the bar," when used to describe a the Attorney General's legal practice, is a restrictive reference to her courtroom work any more

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[19] The Judicial and Civil History of Connecticut (D. Loomis & J. Calhoun, eds., 1895) p. 187-88, illustrates this point as follows: "The members of the Connecticut bar have yielded little to the modern impulse to practice only in selected lines. Some few among them have been almost exclusively engaged in patent practice, but the division has gone little beyond this. A few have grown into more or less of a corporation practice, but this is rather the development of special opportunities than the choice of one field to the exclusion of others. Most of the better-known lawyers have had experience in all branches of law on its civil side and have practiced in the criminal courts."

than calling her an "attorney-at-law," when describing her profession, can be taken as an indication that her practice is an office practice. Instead, the meaning of that term in any phrase or expression, depends entirely upon the context in and purpose for which it is used.

Thus, the term "at the bar" must obviously be found to signify "in the courtroom" when it is used in phrases such as "at the bar of the court," which make an explicit connection between the word "bar" and a court or courtroom. A similar meaning, moreover, must be attributed to those words when they are used in such common phrases as "prisoner at the bar," "case at the bar," and "plead at the bar," each of which unquestionably refers to a person, thing or activity present before or taking place in a court or courtroom.[20]

By contrast, the term "at the bar" refers more generally to an attorney's membership in or status as a member of "the bar" – that is, the collective body of attorneys who have been admitted to legal practice "at the bar" – when it is used in such phrases or expressions as "standing at the bar" or "career at the bar." Thus in *Phelps v. Hunt*, 40 Conn. 97 (1873), where an attorney's "standing at the bar" was held to be a relevant factor in determining the true value of legal services he had rendered to a client who had seen him only in his office, without ever going to court, the term "standing at the bar" was an obvious reference to the attorney's professional status or reputation among his fellow lawyers. Plainly, it had nothing to do with his presence before or activities in a courtroom.[21]

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[20] See, e.g., *State v. Avcollie*, 174 Conn. 100, 104, 384 A.2d 315 (1977) ("prisoner at the bar"); *Linn v. Hartford*, 135 Conn. 469, 472, 66 A.2d 115 (1949) ("case at the bar"); *Fairfield County Bar v. Taylor*, 60 Conn. 11, 22 A. 441 (1891) ("plead at the bar").

[21] The vast majority of the sources cited by the defendant for the proposition that "at the bar" means "before the court" also acknowledge this alternative meaning. See, e.g., Black's Law Dictionary (2d Ed. 1891), p. 119 (defining "bar" to include "the whole body of attorneys and counsellors or the members of the legal profession, collectively, are figuratively called the 'bar' . . . . They are thus distinguished from the 'bench,' which term denotes the whole body of

The latter meaning of the term “at the bar” is especially obvious when it is modified, as it is in this statute, by such phrases as “of the county,” “of the state,” or “of another state.” In such phrases, the “bar” does not mean the bar of any court or courtroom, “at” which an attorney appears in person to plead his cases. Rather, once again, it is the collective of attorneys admitted to practice as members of the bar of that state or county. Hence, the term “practice at the bar of the state” unambiguously refers to an attorney’s practice of law as a member of the bar of the state, not necessarily to his in-court practice in any court or courtroom of the state.[22]

This interpretation is bolstered by both contemporaneous and more modern usages of the term “at the bar.” For example, section 8 (a) of Rule 1 of the Practice Book of 1908, which governed the admission of attorneys from other states to the bar of this state, provided in part that: “Any attorney and counselor in the highest court of original jurisdiction in another state may be admitted to examination before [the state bar examining] committee, upon satisfactory proof to said committee that he is such attorney and counselor, a citizen of the United States, a resident of the state of Connecticut or intends to become such resident, twenty-one years of age, of good moral character, and that he has filed with the clerk of the Superior Court in the county where the examination is to be held a certificate from the clerk of the Superior Court . . . together with a certificate of good moral character <u>signed by two members of the bar of this state of at</u>

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judges"); Black’s Law Dictionary (1891), p.120 (same); Bouvier’s Law Dictionary, supra, (explaining that "[f]iguratively the counsellors and attorneys at law are called the bar of Philadelphia, the New York bar"). See also Merriam-Webster Online Dictionary, supra, (a more modern source defining the word "bar," *inter alia*, to mean "the whole body of barristers or lawyers qualified to practice in the courts of any jurisdiction").

[22] This language may be contrasted, for example, with that used in the statute governing unauthorized practice of law in 1897, which expressly prohibited anyone who was not an attorney, except in his own cause, from “plead[ing] at the bar of any court in this state.” See General Statutes (Rev. to 1890) § 784.

least five years' standing at the bar . . . ." (Emphasis added.) Similarly, subsection (b) of the rule provided that, "[i]f any such attorney and counselor shall have practiced for three years in the highest courts of another state, he may be admitted by the court as an attorney, without examination . . . [provided he supply] a certificate of good moral character signed by two members of the bar of this state of at least five years' standing at the bar . . . . The clerk shall, within three days after said notice of intention and certificate are filed, communicate to every member of the bar of the county engaged in practice the fact that the same have been filed . . . ." (Emphasis added.) As used in this rule, the term "bar of this state" was plainly used in reference to the entire group of attorneys who had been admitted to the Connecticut bar. Moreover, the related term, "standing at the bar," as used in the above-quoted rule, referred to the professional status or reputation among their fellow Connecticut attorneys of those who filed certificates of good moral character on behalf of out-of-state attorneys for admission without examination to the Connecticut bar. See also *Slade v. Harris*, 105 Conn. 436, 445, 135 A. 570 (1972) (using the term "standing at the bar" to describe an attorney's good professional reputation among his professional colleague); *Stoddard v. Sagal*, 86 Conn. 346, 347, 85 A. 519 (1912) (same).

Consistent with such earlier usage, the phrases "at the bar of this state" and "at the bar of another state" are used to this day in our current Practice Book to mean "as a member of the bar of this state" or "as a member of the bar of another state." In Section 2-24, for example, which requires Connecticut attorneys to give timely notice to statewide bar counsel of their admission to practice law in other states, the following language appears: "An attorney who is admitted to practice at the bar of another state . . . shall send to the Connecticut statewide bar counsel written notice of all such jurisdictions in which he or she is admitted to practice within thirty days of admission to practice in such jurisdiction." (Emphasis added.) This rule, so written, expressly

equates the phrase "practice at the bar of another state" with practice as a member of the bar of such other state. Similarly, Practice Book § 2-16, which governs the privilege of out-of-state lawyers to appear *pro hac vice* in our courts, expressly limits that privilege to "[a]ny attorney who is in good standing at the bar of another state . . . upon special and infrequent occasion and for good cause shown upon written application presented by a member of the bar of this state[.]" (Emphasis added.) In this provision as well, the term "bar of th[e] state" obviously refers to the collective of lawyers who have been admitted to practice law in the state in question. Here, then, as in the 1908 Practice Book, the "good standing at the bar" of an out-of-state lawyer is his status and reputation as a member of his out-of-state bar.

The Court thus concludes that the phrase "practice at the bar of this state," as used in Section 3-124, is not a restrictive reference to the Attorney General's courtroom experience in Connecticut, but rather is a general reference to her overall practice experience as a member of the Connecticut bar. Such usage is sensible in a statute which defines the minimum eligibility requirements for this state's chief civil attorney, to distinguish it from legal practice elsewhere, for in-state practice of any kind would likely assist the Attorney General far better in preparing to perform the duties of her office than comparable experience in a different state or jurisdiction.[23] See, *Abrams v. Lamone*, 398 Md. 146, 180-84, 919 A.2d 1223 (2007) (construing

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[23] There is nothing in the legislative history of the original legislation creating the office of Attorney General to indicate that the Attorney General was expected to bring substantial in-court practice to his job or to engage in substantial in-court practice while performing the job, which officially remained part-time until 1982. Although the text of the statute assigned him duties of several types, including entering "appear[ing] for the state and state officers and agencies in a host of legal matters in which they might sue or be sued or in which the state might be interested, it expressly provided that those suits would either be "conducted by him or at his direction." The statute also contemplated that the Attorney General's office would be at the State Capitol in Hartford, and that he must be available in that office to comment on the interests of the state with respect to all pending legislation of all kinds and to give his opinions upon questions of law submitted to him by either branch of the General Assembly. It is hardly surprising that in the

a ten years' practice requirement for the office of Attorney General in the Maryland Constitution to require ten years' in-state practice as a member of the Maryland bar).

In any event, it clearly appears, and this Court thus finds, that the Attorney General's "practice at the bar of this state" means her practice of law in Connecticut, as a member of the Connecticut bar.

4. Claim that an Attorney-at-Law Must Have Regularly Engaged in and Devoted a Substantial Portion of his Professional Time to Courtroom Practice for at Least Ten Years to Meet the Requirement That He Have *"At Least Ten Years' Active Practice at the Bar of this State"*

As for the further question of what constitutes "active practice" at the bar of this state, there is, to reiterate, no definition in the statute to guide the reader as to exactly what that term means. On the most basic level, the word "active" could be read as a qualitative descriptor of the term "practice" – to describe a particular type or kind of legal practice – or as a quantitative descriptor of such a practice – to describe the frequency or intensity with which the attorney engaged in such practice For the following reasons, the Court concludes that "active practice" is a qualitative term used only to distinguish those who have actually engaged in some form of legal practice from those who have not.

Although the term "active practice" is not defined in the statute, it has had a regular meaning when used by attorneys and others in this state since at least the end of the Nineteenth Century, when the office of Attorney General was first established. Then, as now, an attorney was said to be "in active practice" when he was actually engaged in the practice of law. Lists of

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first Attorney General's first annual report about the doings of his office, he reported that the vast majority of his time was spent on such advising and commenting responsibilities and that he had frequently hired private counsel to assist him in handling his in-court responsibilities.

attorneys from that time period thus distinguished between attorneys currently engaged in the practice of law, who were said to be "in active practice," and attorneys who were not so engaged, who were listed as "not in active practice." There were no other gradations on such lists to distinguish among attorneys on the basis of the relative frequency or intensity of their respective legal practice activities.

Similarly, obituaries and historical descriptions of that era often described attorneys who actually practiced law in any manner as being "in active practice."[24] Such accounts distinguished between practicing attorneys and others who were not "in active practice" for any number of reasons. Such reasons included simply choosing not to practice law at all,[25] or having practiced for a time, later ceasing to practice due to resignation,[26] retirement [27] or taking up other lines or work.[28] Although this usage is certainly inconsistent with the meaning initially urged upon this Court by the plaintiff, under which active practice was equated with maintaining one's active status at the bar, it is also inconsistent with the meaning contended for by the Republican

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[24] See D. Kilbourn, The Bench and Bar of Litchfield County, Connecticut, 1709-1909, 123-24 (1909) (listing the members of the Bar in 1907 and designating those who were "not in active practice" with an asterisk). Among those listed as "not in active practice" were J. Gail Beckwith, Jr.; Francis Bissell; William Ransom; Henry B. Plumb; and C.E. Bristol. Id.

[25] See id., 275 (although Henry B. Plumb was admitted to the bar in 1879, he was "not in active practice" because he "never practiced law — but is Secretary of the Eagle Lock Company").

[26] See id., 276 (William L. Ransom was listed as "not in active practice" because he had resigned in 1887).

[27] See id., 228 (Francis Bissell was listed as "not in active practice" because he only practiced for a short time after his admission to the bar before entering the insurance business and retiring therefrom).

[28] See id., 225 (J. Gail Beckwith, Jr., was listed as "not in active practice" because instead of practicing law, he "engaged in journalism"); 232 (C.E. Bristol was listed as "not in active practice" because he was "engaged in the mercantile business").

Party, which would require a particular frequency or intensity of practice activity – specifically, devoting a substantial portion of one's professional time to such activity.

Since the enactment of the statute, moreover, the term "active practice" has been used in many different statutes and Practice Book provisions, always with the same meaning – to distinguish active practitioners from those who are not practicing at all.. See General Statutes § 17a-565 (requiring the advisory board to the Whiting Forensic Division of the Department of Mental Health and Addiction Services to include "two attorneys of this state, at least one of whom shall be in active practice and have at least five years' experience in the trial of criminal cases"); and comment to the Rules of Professional Conduct 1.17 (noting that when a lawyer who has sold an area of legal practice to another "remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold").

One such current usage of the term "active practice" that is of particular significance here is that appearing in two related Practice Book provisions governing the admission of out-of-state lawyers to Connecticut bar, either on examination; Practice Book § 2-8 (8); or without examination. Practice Book § 2-13 (a) (4) (admission without examination). The Judges of this Court, in the exercise their inherent constitutional authority to establish rules for the admission of attorneys to the bar of this state; *Heiberger v. Clark*, supra, 148 Conn. at 182-83; have long established special rules for the admission of out-of-state attorneys based upon the satisfaction of alternative requirements reflective in some measure of their out-of-state practice experience. The admission of an out-of-state attorney on examination is thus permitted, *inter alia,* even when the applicant does not satisfy the standard educational requirements for such admission, when he can satisfy the state bar examining committee that he has been admitted to an out-of-state bar for at least ten years, that he remains a member in good standing of that bar, that he has actually

practiced law in such out-of-state jurisdiction for at least five of the seven years immediately preceding the filing date of his application, and that he “intends, on a continuing basis, actively to practice law in Connecticut and to devote the major portion of the applicant’s working time to the practice of the law of Connecticut.” Practice Book § 2-8 (8) ©). Similarly, the two-stage process for admission of an out-of-state attorney without examination to the Connecticut bar, which first involves applying for and receiving a temporary license for a period of one year, requires the applicant for a temporary license I to prove that he “intends, upon a continuing basis, to practice law actively in Connecticut and to devote a major portion of his or her working time to the practice of law in Connecticut.” Practice Book § 2-13 (a) (4). What is significant about the identical intent-to--practice requirements quoted above – which, to reiterate, have the force of statute – is that they list the phrases “ practice law actively,” “on a continuing basis,” and “devote a major portion of his or her working time to the practice of law in Connecticut” as three separate requirements, each presumably with an independent meaning not arising from the others. The implication naturally arising from such usage is that the term “active practice of law” does not necessarily mean either practicing on a continuing basis or devoting the major portion of one’s working time to the practice of law in Connecticut.

In addition, the term “active practice” has been used for many years with a comparable meaning in Practice Book provisions and statutes distinguishing between active and inactive members of other professions. See, e.g., General Statutes § 20-94a (b) (3) (requiring at least five years “active practice as a nurse practitioner” in a licensed nursing facility in order to obtain licensing as an advanced practice registered nurse); General Statutes § 20-162bb) ©) (3) (requiring “no lapse in active practice” of greater than twenty-four months as a condition for alternative licensing as a perfusionist); General Statutes § 20-302 (1) (requiring “four years of

active practice in engineering work" for licensing as a professional engineer); General Statutes § 20-302 (3) (requiring "three years of active practice of land surveying" for licensure as a land surveyor); § 20-374 (providing that a landscape architect "who is not engaging in the active practice of the holder's profession in this state . . . may allow [his] license to lapse"). Such usages repeatedly distinguish "active practice" from non-practice, not from less frequent or less intensive forms of practice activity.

In sum, the Court concludes that the "ten years' active practice" requirement of General Statutes § 3-124 must be understood to mean that the Attorney General had ten years' experience actually engaging in some form of legal practice as a member of the bar of this state, although not necessarily doing so in a courtroom, or on a continuing basis, or with any particular degree of frequency or intensity. Accord,. *In re Application of Slade*, supra, 169 Conn. at 681-82 (holding that, in the absence of particular statutory standards to measure the quality or quantity of an applicant's practice experience, the requirement for admission to the Connecticut bar without examination of "five years' actual practice in the highest court of original jurisdiction of another state" was satisfied by an applicant who had appeared only three times in the court in question during the relevant five-year period).

5. The Parties' Conflicting Claims as to Whether or Not the Plaintiff Has "*Ten Years' Active Practice At the Bar of This State*" Based in Part Upon Aspects of Her Work as Secretary of the State

As a fallback to her threshold position that maintenance of active status as a member of the Connecticut bar constitutes the active practice of law at the bar of this state, the plaintiff claims that she satisfies the minimum practice requirement of Section 3-124 through a combination of her 3 ½ years' private practice as a corporate lawyer at the Hartford law firm of

Robinson & Cole, her 2 years' experience as in-house counsel for Aetna in Hartford, and her 11-plus years' public service as Connecticut's Secretary of the State. The plaintiff argues, more particularly, that she has practiced law in her official capacity as Secretary of the State by: (1) issuing declaratory rulings, instructions, and opinions with respect to the administration of state election law; pursuant to General Statutes § 9-3, either independently or in collaboration with staff attorneys from her office, (2) advising local election officials in connection with properly conducting elections; either independently or in collaboration with other attorneys from her office pursuant to General Statutes § 9-4; (3) advocating for legislative change and enforcement, both independently and in collaboration with other staff attorneys from her office; (4) managing, assessing and evaluating the staff attorneys and their legal skill; and (5) responding to inquiries and questions about the law from her constituents by phone, letter, or in press conferences.

The Republican Party disputes this alternative claim as well, for several reasons. First, it argues generally that: (1) all of the plaintiff's claimed legal work as Secretary of the State, even if she engaged in it as she claims to have, was performed in a manner that lacked all of the essential characteristics of traditional legal practice; (2) no such work was performed on behalf of an identifiable client in contemplation of possible litigation; (3) to the extent that such work involved the mere transmission of information, it has been held by our courts not to constitute the practice of law; and (4) to the degree that such work is regularly engaged in by non-lawyers in the performance of their statutory duties as government employees, it cannot constitutionally be deemed to constitute the practice of law without rendering the statute which calls for it performance unconstitutional under the separation of powers doctrine..

The Republican Party also disputes, more specifically, on both factual and legal grounds, each of the plaintiff's particular claims that work she claims to have performed in her capacity as Secretary of the State actually constituted the practice of law.

6. Findings of Fact Concerning Plaintiff's Claim That Aspects of the Her Work as Secretary of the State Constituted "*Active Practice At the Bar of This State*"

The plaintiff, to reiterate, claims that she meets the minimum practice requirement for the office of Attorney General through a combination of her private practice as a corporate lawyer with Robinson & Cole, LLC, her corporate practice as an in-house attorney for Aetna, and her public service as Connecticut's Secretary of the State. Because her work in private and corporate practice concededly total only 5-1/2 years, proof that she actively practiced law for at least 4-1/2 years by or in the course of performing her duties as Secretary of the State, is critical to establishing her claim that she meets the minimum practice requirement of section 3-124.

In support of that claim at trial, the plaintiff presented her own testimony and that of her current chief of staff, Deputy Secretary of the State Lesley Mara. She also introduced as evidence several documents claimed to demonstrate her work as a practicing Connecticut lawyer while serving as Secretary of the State. Based upon such testimony and evidence, as well as other facts of which this Court has taken judicial notice, the Court makes the following findings of fact:

The plaintiff is a graduate of Yale College and Duke Law School who was admitted to the Connecticut Bar in 1986 and to the New York Bar in 1987. After working for two years in private practice in New York City, she returned to Connecticut in 1988 to work as an associate with the Hartford law firm of Robinson & Cole. While at Robinson & Cole, where she remained

until July 1992, she practiced corporate and business law only, never taking part in any litigation. In fact, her primary task, as she described it, was to help keep her corporate clients out of court. The plaintiff worked for a total of 3-1/2 years at Robinson & Cole, including a 3-month maternity leave but not including a 6-month leave to work on the first campaign of Richard Blumenthal for Attorney General.

In November of 1992, the plaintiff was elected to the Connecticut General Assembly as State Representative from the 100th District, representing Durham, Middlefield and part of Middletown. Shortly, thereafter, in December of 1992, she took a job at Aetna, where she worked as an in-house attorney until November of 1994. on health care and ERISA pension issues This position involved also no litigation. The plaintiff remained a member of the state House of Representatives for six years, serving as a member of the Judiciary Committee all three terms and as Chair of the GAE Committee in her last two terms.

Near the end of her third term in the General Assembly, in November of 1998, the plaintiff was elected to the state constitutional office of Secretary of the State. Having assumed that office in January of 1999, she has served in it ever since, having twice run successfully for re-election, in 2002 and 2006. She is now in her twelfth year of service as Secretary of the State.

At all times relevant to this case, the plaintiff's office as Secretary of the State has been at the State Capitol in Hartford while the office of her staff, which has ranged in size from 85-110 people during her tenure, has been located at 30 Trinity Street in Hartford.

The two main duties of the Secretary of the State are to serve as the state's Chief Business Registrar and as its Commissioner of Elections. To perform these functions, the agency's staff is currently divided into four division and one department, as follows: the Commercial Recording Division, with a staff of 41 including 3 attorneys, headed by a managing

attorney; the Management and Support Division, with a staff of 18 headed by a non-attorney; the Elections Division, with a staff of 11 including 3 attorneys, headed by managing attorney; the IT Department, with a staff of 5 headed by a non-attorney; and the executive staff of 9, headed by Deputy Secretary Lesley Mara, an attorney who supervises the day-to-day operations of the agency and directly supervises its staff.

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The plaintiff, for her part, interacts with her Deputy on a daily basis and with individual members of her staff, particularly the attorneys, when she seeks their input on matters she is working on. The plaintiff seeks input from such attorneys on a variety of legal matters, and when she does, she often collaborates with them in formulating approaches to the effective handling of such matters. Among the legal matters on which the plaintiff acts personally and regularly collaborates with the attorneys in her office are requests from local election officials, political candidates, party officials and others, under General Statutes § 9-3, for declaratory rulings, instructions and opinions concerning the administration of elections and primaries under state election law.[29] Section 9-3 expressly authorizes the plaintiff, in her capacity as the state Commissioner of Elections, to perform such duties. That statute has expressly provided since 1984 that when any such declaratory rulings, instructions and opinions are "issued in written

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[29] Section 9-3 provides as follows:

"The Secretary of the State, by virtue of the office, shall be the Commissioner of Elections of the state, with such powers and duties relating to the conduct of elections as are prescribed by law and, unless otherwise provided by state statute, the secretary's regulations, declaratory rulings, instructions and opinions, if in written form, shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under this title, except for chapter 155, provided nothing in this section shall be construed to alter the right of appeal provided under the provisions of chapter 54."

form," they "shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under [Title 9 of the General Statutes]."

In her testimony at trial, the plaintiff presented evidence of two such written declaratory rulings on which she collaborated with others attorneys from her office, personally participating in their planning, drafting, and editing, then finally approving and issuing them. One formally banned the further use of lever voting machines in Connecticut in order to ensure compliance by the state with new federal requirements imposed by the Help America Vote Act ("HAVA"), 42 U.S.C. § 15301 et seq. The other ruling allowed signatures collected on behalf of an independent candidate for Governor to be counted towards the minimum number required for him to appear on the ballot in the upcoming general election. In each case, the plaintiff was personally involved in finding answers to the legal questions posed, evaluating input sought from other attorneys on these questions, and ultimately deciding on the substance and final language of the ruling.

The plaintiff issued the voting machine ruling on behalf of the state, which was legally responsible for complying with the Help America Vote Act, and the general public, who would ultimately benefit from such compliance. Similarly, she issued the declaratory ruling concerning the propriety of counting certain signatures towards the total required by law to be listed on the November election ballot serve the state, at under whose statutory direction she acted, and the public, for whose benefits the procedures of General Statutes § 9-3 were created.. Her "client" in that process was not the individual who brought the question to her attention, although his personal interests were certainly affected by her ruling. Instead, the true and intended beneficiary of the ruling was the public at large, whose vital interests were served by ensuring that the requirements for ballot access in the election in question were properly followed.

In addition to these declaratory rulings, the plaintiff, either independently or in collaboration with her staff attorneys, issued several opinions on matters of election administration to local election officials, party leaders, candidates for office and citizens. Most of these opinions, which are frequently requested, are issued orally, either in person or over the phone.

b.

Other instances in which the plaintiff has acted personally and regularly collaborated with the attorneys on her staff in the performance of their legal work include joint efforts to formulate answers to legal questions raised by requests from local election officials for advice as to proper methods of conducting local elections. Giving such advice, as is required of her under General Statutes § 9-4,[30] is not only one of the plaintiff's most important statutory duties as

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[30] Section 9-4 provides as follows:

> The Secretary of the State, in addition to other duties imposed by law, shall, as such commissioner, (1) advise local election officials in connection with proper methods of conducting elections and referenda as defined in subsection (n) of section 9-1, and, upon request of a municipal official, matters arising under chapter 99; (2) prepare regulations and instructions for the conduct of elections, as designated by law; (3) provide local election officials with a sufficient number of copies of election laws pamphlets and materials necessary to the conduct of elections; (4) distribute all materials concerning proposed laws or amendments required by law to be submitted to the electors; (5) recommend to local election officials the form of registration cards and blanks; (6) determine, in the manner provided by law, the forms for the preparation of voting machines, for the recording of the vote and the conduct of the election and certification of election returns; (7) prepare the ballot title or statement to be placed on the ballot for any proposed law or amendment to the Constitution to be submitted to the electors of the state; (8) certify to the several boards the form of official ballots for state and municipal offices; (9) provide the form and manner of filing notification of vacancies, nomination and subsequent appointment to fill such vacancies; (10) prescribe, provide and distribute absentee voting forms for use by the municipal clerks; (11) examine and approve nominating petitions filed under section 9-453o; and (12) distribute corrupt practices forms and provide instructions for completing and filing the same.

Secretary of the State, and thus as Commissioner of Elections, but one of the duties she is most frequently called upon to perform, especially as Election Day approaches. The plaintiff and Deputy Secretary Mara both credibly testified that large numbers of such requests for advice pour into their offices every day.[31] When they do, they are typically handled at once by those who first receive them – at times, by the managing attorney of the Elections Division, Attorney Ted Bromley, or one of his staff, and at other times, especially when the calls come directly to them, by the plaintiff or Deputy Secretary Mara.

When the plaintiff receives such requests directly, at the State Capitol or elsewhere, she typically attempts to handle them herself. Examples given in her testimony of situations in which she has recently done so include the receipt of a call from the Mayor of Hartford concerning how to handle the 11th hour plan of a local public school principal to close his school, an established polling place, before polls closed on Election Day. The plaintiff advised the Mayor to intervene at once and stop the planned closure because an established polling place cannot be moved to another location without giving reasonable notice before Election Day to local voters. This is an example of a situation where the plaintiff, in the exercise of her statutory responsibilities to give advice to local elections officials concerning the conduct of elections, used legal training to analyze and respond to particular problem or inquiry. Here, again, however, her "client" for this purpose was not the Hartford Mayor personally, but the State and its citizens, particularly the citizens of Hartford, for whom she made herself available, as

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[31] The Republican Party, through counsel, cross-examined the plaintiff at great length as to why no entries concerning such conversations by with local election officials appeared in her office calendar. Her explanation for their absence is simply that the calendar served a different purpose, to wit: to list and remind her on a daily basis of her scheduled appointments. The calendar was not used as a log or diary to keep a permanent record of her daily activities as or after they took place.

required by Section 9-4, to give advice so that the election in their city would be properly conducted, in accordance with law.

In other cases, requests for advice regarding the conduct of elections have been shared by the plaintiff with other attorneys on her staff, who then worked with her to formulate correct answers to the legal questions raised. An example given at trial of such a request was one recently received by the plaintiff in an email from the first selectman of Suffield, asking if proper procedures had been followed for the conduct of a post-election recount in his town. Attorney Bromley of the Elections Division and Deputy Secretary Mara were both involved with the plaintiff in formulating answers to the first selectman's questions, and joined her on the telephone call in which she responded point by point to all of the first selectman's questions. After the call, the plaintiff directed Attorney Bromley to follow up on the call by sending a confirmatory letter to the first selectman restating her advice in writing. This is another example of a situation in which the plaintiff, acting in her capacity as the state's Commissioner of Elections, made herself available on behalf of the State, as required by General Statutes § 9-4, to deliver advice of a legal nature to a local elections official concerning the conduct of an election, not for the private benefit of the local election official who sought the advice, but for the benefit of the public, whom both she and the local official were attempting to serve.

At times, of course, requests for advice from local elections officials have required nothing more than transmitting publicly available information to them, or supplying them with materials, equipment or personnel needed to ensure that the election would be properly conducted. Examples of such requests described at trial included a request from a State Representative for additional monitors for a particular polling place in her district on Election

Day. As a result of the request, which obviously required no legal analysis or legal judgment on behalf of anyone, additional monitors were sent as requested.

Historically, of course, non-lawyers working in the office of the Secretary of the State have sometimes provided both information, on the one hand, and legal opinions and advice, on the other, to local election officials and others who have made requests for them to the office of the Secretary of the State. Persons involved in that process have included certain previous Secretaries of the State who were not lawyers, and even non-lawyer staff members who worked in the Elections Division during the early years of the plaintiff's tenure in office. The office has had no established protocol requiring approval by the plaintiff, her Deputy or any other lawyer in the office of any declaratory ruling, instruction or opinion about state elections law before it is issued under § 9-3, or any advice to local election officials concerning the conduct of elections given out to local elections under § 9-4. Nor does it keep formal records reflecting what declaratory rulings, instructions, opinions or advice it has given out, or to whom or in what circumstances so they may be referenced at later times.

c.

A third aspect of the plaintiff's work as Secretary of the State which has long kept her busy and has regularly involved her in collaboration about legal matters with other attorneys on her staff is monitoring, implementing and proposing or opposing new legislation affecting the ability of her office to perform its core functions, including, especially, the registration of businesses and the conduct of elections. As for monitoring legislation, the plaintiff is constantly on the lookout for changes in federal law in particular, which will or may impose new burdens and obligations on the State of Connecticut generally, on her office, or on the persons and entities whose interests she is specially charged with protecting, to wit: the state's voters and

candidates for office and its duly registered businesses. She thus has played an active role on the federal level in lobbying Connecticut's Congressional delegation both to resist the passage of new legislation that would burden her office with major new reporting responsibilities concerning persons suspected of terrorism and assertedly impose an unconstitutional obligation on attorneys to report their mere suspicions about the identities and activities of their own clients to federal Homeland Security officials. She also lobbied the Veterans Administration to change its policy in 2008 disallowing state officials from putting on voter registration and information programs in VA hospitals. Another such example is her cooperation with Senator Christopher Dodd and others in supporting legislation ultimately signed by President Obama which made it easier for oversees military personnel to obtain absentee ballots and vote.

Another important aspect of the plaintiff's legislative monitoring activities has involved assessing what changes in Connecticut law and practice would be required to implement the federal Help America Vote Act.[32] Her work on this effort, together with that of Deputy Secretary Mara and others she recruited for that purpose, led ultimately to the adoption on a statewide basis of optical scan voting equipment for use in Connecticut and the issuance of a declaratory ruling, described above, which forbade the further use of lever voting machines in

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[32] When HAVA was first passed by Congress in 2002, it represented a major overhaul of federal election law. HAVA's technical requirements necessitated action by the state of Connecticut in order to avoid legal jeopardy possibly arising from non-compliance. Initially, she was required to review and analyze the requirements the new federal law, to identify the standards under which the state's compliance with it would be assessed, and to develop a plan for its state-wide implementation to ensure such compliance. The plan called, in particular, for the implementation of HAVA's centralized voter registration system, voting system standards, provisional voting procedures, audit capacity, and accessibility requirements for individuals with disabilities, all in light of the plaintiff's and others' joint legal analysis of the requirements of federal law. Furthermore, the plaintiff's responsibility under HAVA requires her to perform an annual review of the state policies and practices as well as to engage in constant monitoring, adaptation and implementation of other changes in federal election law. Such work has occupied a significant portion of the plaintiff's time during her tenure in office.

the State. Other specific efforts she has made to implement HAVA in Connecticut have included drafting, submitting and successfully lobbying for the passage of new legislation requiring post-election audits of at least 10% of all paper ballots cast in each election - an especially important safeguard of the right to vote mandated by HAVA. The plaintiff's collaboration with other attorneys on these legislative efforts has been intensive and of long duration. It has involved her directly in interpreting federal law and advising State legislators and others of her conclusions in support of proposals to take suitable steps legislatively to ensure the proper implementation of HAVA in Connecticut.

Beyond the above-described legislative activities, the plaintiff and her Deputy have worked each year to develop their legislative agenda for each new legislative session, and to that end have always engaged in conceptualizing, drafting and editing proposals for new legislation, then supporting such proposals with prepared testimony. Most such proposed legislation has not been based upon the plaintiff's and her colleagues' legal analysis of the requirements of federal law, which the state must comply with to avoid putting itself in legal jeopardy, but upon notions of good public policy which non-lawyers no less than lawyers, both in and out of government, regularly present to legislative bodies, lobbying hard, and sometimes successfully, for its passage. One example, among many, of proposed legislation which the plaintiff has supported for reasons of good public policy was a bill that would deprive state officials who were convicted of corruption of their state pensions.[33] The pursuit of such legislation, unlike

[33] Other such legislative initiatives have included: a bill to establish an address confidentiality program for the victims of domestic violence to permit them to list the office of the Secretary of the State as their home address for certain official purposes; a bill to establish an index of advanced health care directives in the office of the Secretary of the State to facilitate the accessing of living wills when the moment for consulting them arrives; and several bills to make technical changes to state election law not required by federal mandate.

legislation designed and intended to ensure that Connecticut complies fully with applicable federal mandates such as those arising under HAVA, has not involved, much less required, the formulation of any underlying legal analysis of the rights, duties or obligations of the state or any of its citizens or the application such an analysis to the resolution of a problem arising in a particular factual or legal context.

d.

Yet another activity in the plaintiff claims to have collaborated with other lawyers from her office is in formulating legal advice for constituents in response their requests for service. To the extent that such requests concern the administration of elections, on which she is duly charged with issuing declaratory rulings, instructions and opinions under General Statutes § 9-3, there is no reason in principle to distinguish between requests from constituents and requests from others, for the statute makes no such distinction.

As for requests for assistance on other legal issues, however, responding to them hardly falls within the plaintiff's job description as Secretary of the State, which by law is a full-time job with fixed statutory responsibilities. It thus is not surprising that, of the constituent requests described at trial, none elicited any answer more helpful than to look elsewhere for assistance with the problem at hand. One constituent was told to put the question to his lawyer. Another was told that her only hope might be to seek legislative action. Though such advice was doubtless sound, giving it required no application of legal analysis to the particular problem at hand.

e.

Finally, the plaintiff claims that, in addition to collaborating with members of her agency's legal staff, she has supervised them and evaluated them generally in the performance of

their work. Although the plaintiff has doubtless formed impressions as to the quality of the work of those attorneys with whom she has collaborated in formulating responses to legal questions from local election officials and others for opinions on election law, advice on the conduct of elections, and analysis of the mandatory requirements of federal law, the record does not support her claim that she has served as their supervisor or the ultimate evaluator of their legal work. Instead, it shows that she has dealt with the lawyers largely through the Deputy Secretary Mara, who in turn has supervised them in cooperation with the managing attorneys of their respective divisions. According to Deputy Secretary Mara, the lawyers' annual evaluations are prepared by such managing attorneys and submitted to her for her signature. The plaintiff's only role in the evaluation process has been to give occasional input as to the work of individual attorneys after these evaluations have been prepared. In short, the plaintiff's only role in this process has been a cameo one.

7. Legal Analysis of the Term "Practice of Law" – Basic Principles

The power to define what constitutes the practice of law belongs to the judges of the Superior Court. *Massameno v. Grievance Committee*, 234 Conn. 539, 554, 663 A.2d 317 (1995). "[Because of the manifold activities which might be held included in the phrase 'practice of law,' an all-inclusive definition is difficult, if not impossible, of formulation." *Grievance Committee v. Dacey*, 154 Conn. 129, 147, 222 A.2d 339 (1966), appeal dismissed, 386 U.S. 683, 87 S.Ct. 1325, 18 L.E.2d 408 (1967). Therefore, since"[a]ttempts to define the practice of law have not been particularly successful[;]" *Grievance Committee v. Patton*, 239 Conn. 251, 254, 683 A.2d 1359 (1996), our Supreme Court has counseled that, in the absence of

a precise definition, "[t]he more practical approach is to consider each state of facts and determine whether it falls within the fair intendment of the term." Id., 254.

The fair intendment of the term "practice," as used Section 3-124, naturally depends upon the essential purpose of that statute. As explained by the Supreme Court of Georgia in *Gazan v. Heery*, 187 S.E. 371, 183 Ga. 30 (1936), "[t]he words 'practice of law' may have an entirely different meaning in a statute designed to prevent the practice of law by one not qualified to do so, from that which the same expression should have in determining qualification to hold . . . office. Words may be given one meaning in one statute, and an entirely different meaning in a different statute, determinable by the character and purpose of the legislation." See also*, Abrams v. Lamone*, supra, 398 Md. at 180-84 (recognizing that the term "practice of law" can have different meanings in different contexts based on the purpose of the statute).

The purpose of Section 3-124, of course, is to establish minimum eligibility requirements for the office of Attorney General. Such a purpose is quite different from those of many other rules and statutes in and for which that term has been used, defined and interpreted, particularly those proscribing and making punishable the unauthorized practice of law. The latter, as penal rules and statutes, must be strictly construed to ensure that persons potentially subject to them will be put on fair notice as to which activities they prohibit and which they do not. With a term as difficult to define as practice of law, the due process problems that would doubtless arise from an expansive interpretation of it in this penal context would be substantial.

Eligibility-for-office statutes such as Section 3-124, by contrast, are not penal in nature, although their incorrect interpretation and enforcement can have serious consequences in other important ways. As a statute which establishes eligibility requirements for service in public office, it impacts the right of citizens both to serve in that office and to elect the candidate of

their choice thereto. As a result, such statutes have long and appropriately been subject to liberal interpretation under a rule of construction that requires them "to be construed, as far as possible, in favor of equality of rights. All restrictions upon human liberty, all claims for special privileges, are to be regarded as having the presumption of the law against them, and as standing upon their defense, and can be sustained, if at all by valid legislation, only by the clear expression or clear implication of the law." *In re Hall*, 50 Conn. 131 (1882). In this context, that means that the word "practice" must be given the broadest interpretation made reasonably possible by the language of the statute in order to protect the equal rights of all citizens both to serve as Attorney General and to elect to that office the candidate of their choice.

Consistent with the logic of our Supreme Court in *In re Hall*, other states where the issue of interpreting statutes imposing minimum practice requirements upon candidates for public office has arisen have routinely adopted a rule of liberal construction in interpreting their statutes. See, e.g., *Riddle v. Roy*, 126 So.2d 448 (La. Ct. App. 1960) (representing private clients while on leave from army sufficient to count toward practice of law requirement for district attorney office)*; Schneck v. Shattuck*, 439 N.E.2d 891, 1 Ohio St. 3d 372 (Ohio 1982) (service as trial referee satisfied practice of law requirement for judicial position notwithstanding statutory prohibition on practice of law by referee); *Devine v. Schwarzwalder*, 136 N.E.2d 47, 165 Ohio St. 447 (Ohio 1956) (service as attorney-examiner and chief enforcement officer for department of liquor control counted toward practice of law requirement for judicial position); *Reyna v. Goldberg*, 604 S.W.2d 549 (Tex. Civ. App. 1980) (service as executive director of district attorney's association, when combined with minimal private practice, counted toward practice of law requirement for judicial office).

With these cautionary considerations in mind, the Court will look initially for interpretive guidance to definitions of the term "practice of law" that have been developed in rules and case law concerning the unauthorized practice of law. Currently, our Practice Book sets forth a non-exclusive definition of the term "practice of law," for the purposes of the prohibition on unauthorized practice, the definition of multi-jurisdictional practice, and the activities of authorized house counsel, in Practice Book § 2-44A. Section 2-44A begins by providing the following "General Definition" of the term, as follows, in subsection (a) thereof: "The practice of law is ministering to the legal needs of another person and applying legal principles and judgment to the circumstances or objectives of that person." Thereafter, in that same subsection, it lists six different types of attorney activity which, among others not listed, are said to be included within the General Definition. They are:

> (1) Holding oneself out in any manner as an attorney, lawyer, counselor, advisor or in any other capacity which directly or indirectly represents that such person is either (a) qualified or capable of performing or (b) is engaged in the business or activity of performing any act constituting the practice of law as herein defined.
>
> (2) Giving advice or counsel to persons concerning or with respect to their legal rights or responsibilities or with regard to any matter involving the application of legal principles to rights, duties, obligations or liabilities.
>
> (3) Drafting any legal document or agreement involving or affecting the legal rights of a person.
>
> (4) Representing any person in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in any administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.
>
> (5) Giving advice or counsel to any person, or representing or purporting to represent the interest of any person, in a transaction in which an interest in property is transferred where the advice or counsel, or the representation or purported representation, involves (a) the preparation, evaluation, or interpretation of documents related to such transaction or to implement such transaction or (b) the evaluation or interpretation of procedures to implement such transaction, where such transaction, documents, or procedures affect the legal rights, obligations, liabilities or interests of such person, and

(6) Engaging in any other act which may indicate an occurrence of the authorized practice of law in the state of Connecticut as established by case law, statute, ruling or other authority.

Id., § (a). The rule then defines certain essential terms used in it, including "person," which means "a natural person, corporation, company, partnership, firm, association, organization, society, labor union, business trust, trust, financial institution, governmental unit and any other group, organization or entity of any nature, unless the context otherwise dictates."

Next, the rule lists several "exceptions" to its General Definition and listed examples, which are set forth as follows in subsection (b)::

(b) Exceptions. Whether or not it constitutes the practice of law, the following activities by any person are permitted:

(1) Selling legal document forms previously approved by a Connecticut lawyer in any format.

(2) Acting as a lay representative authorized by administrative agencies or in administrative hearings solely before such agency or hearing where: (A) Such services are confined to representation before such forum or other conduct reasonably ancillary to such representation; and (B) Such conduct is authorized by statute, or the special court, department or agency has adopted a rule expressly permitting and regulating such practice.

(3) Serving in a neutral capacity as a mediator, arbitrator, conciliator or facilitator.

(4) Participating in labor negotiations, arbitrations, or conciliations arising under collective bargaining rights or agreements.

(5) Providing clerical assistance to another to complete a form provided by a court for the protection from abuse, harassment and violence when no fee is charged to do so.

(6) Acting as a legislative lobbyist.

(7) Serving in a neutral capacity as a clerk or a court employee providing information to the public.

(8) Performing activities which are preempted by federal law.

(9) Performing statutorily authorized services as a real estate agent or broker licensed by the state of Connecticut.

(10) Preparing tax returns and performing any other statutorily authorized services as a certified public accountant, enrolled IRS agent, public accountant, public bookkeeper, or tax preparer.

> (11) Performing such other activities as the courts of Connecticut have determined do not constitute the unlicensed or unauthorized practice of law.
>
> (12) Undertaking prose representation, or practicing law authorized by a limited license to practice.

Id., § (b). Thereafter, and of special interest in this case, Section 2-44A provides as follows:

> (d) General Information: Nothing in this rule shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public.
>
> (e) Governmental Agencies: Nothing in this rule shall affect the ability of a governmental agency to carry out its responsibilities as provided by law.

Id., §§ (d)-(e).

The rules set forth as aforesaid in Section 2-44A are consistent with those that have developed over the last century to define the unauthorized practice of law. Applying broadly, as they do, to both in-court and out-court lawyering activity, they clearly reflect the teaching of Connecticut case law that the practice of law is not limited to conduct occurring in court. As explained in *State Bar Association of Connecticut v. Connecticut Bank & Trust Co.*, 145 Conn. 222, 234-35, 140 A.2d 863 (1958), "[t]he practice of law consists in no small part of work performed outside of any court and having no immediate relation to proceedings in court. It embraces the giving of legal advice on a large variety of subjects and the preparation of legal instruments covering an extensive field. Although such transactions may have no direct connection with court proceedings, they are always subject to subsequent involvement in litigation. They require in many aspects a high degree of legal skill and great capacity for adaptation to difficult and complex situations. No valid distinction can be drawn between the work of the lawyer which involves appearance in court and the part which involves advice and the drafting of instruments."

On the other hand, our courts have recognized that some conduct, although undeniably legal in nature, does not constitute the practice of law. One such exclusion is the distribution of general information. See *Grievance Committee v. Dacey*, supra, 154 Conn. 142. When, however, the information given is directed toward a particular person and adapted to an individual's situation and needs, it is no longer regarded as general information, but becomes legal advice, requiring the employment of legal judgment, and thus falls within the meaning of the phrase practice of law. Id., 142-44.

8. Legal Analysis of the Term "Practice of Law" – Analysis of Republican Party's General Challenges to the Plaintiff's Claim That Aspects of Her Alleged Work as Secretary of the State Can Be Found to Have Constituted "*Active Practice at the Bar of this State*"

Several of the arguments made by the Republican Party apply across-the-board to all of the plaintiff's claims that she actively practiced law while performing her duties as Secretary of the State.[34] First, it claims that the plaintiff could not have been practicing law by engaging in any of the work she claims to have engaged in because, while performing such work as she describes it, the plaintiff admittedly did not hold herself out as an attorney. Holding oneself out as an attorney while engaging in particular conduct is, however, not dispositive of whether such conduct may properly be classified as the practice of law. Section 2-44A (a) of the Practice Book lists holding oneself out as an attorney as only one of six ways, on a non-exclusive list, in which an individual may be found to have engaged in the practice of law. The other five

[34] Because jurisprudence on what constitutes the practice of law for purposes of the prohibition on the unauthorized practice of law is more restrictive than "practice of law" for purposes of § 3-124, any of the Republican Party's arguments that would not pass muster in the context of the prohibition on unauthorized practice certainly fail in this context.

examples so listed all describe conduct by which a person may be found to have practiced law even though he did not then hold himself out to be an attorney.

Next, asserting that the plaintiff's work as Secretary of the State lacks all of the traditional characteristics of what attorneys do, the Republican Party insists that even if the plaintiff performed such work, she was not engaged in the practice of law when she did so. On this score, in particular, it claims that the plaintiff disregards many of the formalities required of attorneys by the Rules of Professional Conduct, including the conduct of conflicts checks before taking on new clients, the issuance of engagement letters to clients, and the maintenance of confidentiality with respect to communications to and from her client.. Although the presence of these traditional indicators may suggest that one is practicing law, it does not logically follow that one is not practicing law in their absence. If that were the case, then many government lawyers in particular could not be found to be practicing law, for, as acknowledged in the Preamble to the Rules of Professional Conduct, "lawyers under the supervision of [government law offices] may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. They also have the authority to represent the 'public interest' in circumstances where a private lawyer would not be authorized to do so." The Republican Party's argument thus distinguishes individuals who are practicing law *privately* from all others; as opposed to distinguishing those who are practicing law from those who are not.

The Republican Party also claims that in order to be practicing law, the plaintiff must be able to point to an identifiable client on whose behalf she has performed legal services. However, it is well established that conduct which may constitute the practice of law is not limited to that which takes place within the traditional framework of an attorney-client

relationship. See, e.g., *Grievance Committee v. Payne*, 128 Conn. 325, 22 A.2d 623 (1944) (plaintiff violated prohibition on unauthorized practice by preparing certificates of title for banks and attorneys). Although the definition of practice of law in Practice Book § 2-44A (a) contemplates that such practice ministers to the legal needs of another person, it does not necessarily follow that the person is a client in the traditional sense. Section 2-44A thus defines "person" to include, *inter alia*, a "governmental unit and any other group, organization or entity of any nature." Therefore, if the plaintiff performed legal services and used legal judgment to minister to the legal needs of the State itself or one or more members of the general public, whom she aided at the behest of the State by performing the duties of her office, her failure to identify and treat the immediate recipient of such legal services as a traditional client is not fatal to her claim that by rendering such services she engaged in the practice of law.

Next, the Republican Party argues that the legal activities which the plaintiff claims to have engaged in as Secretary of the State cannot be found to have constituted the practice of law because they are specifically authorized under relevant statutes and regulations. Instead of practicing law, then, it claims that engaging in such activities merely constitutes the performance of governmental functions. If, it claims, the Court were to rule that engaging in such activities constitutes the practice of law, then the statutes authorizing their performance would violate the separation of powers doctrine by authorizing non-attorneys to engage in the practice of law.

The separation of powers doctrine is rooted in Article second of our Constitution, which, as amended, provides in relevant part as follows: "The powers of government shall be divided into three distinct departments, and each of them confined to a separate magistracy, to wit, those which are legislative to one; those which are executive, to another; and those which are judicial, to another." "[T]he primary purpose of [the separation or powers] doctrine is to prevent

commingling of different powers of government in the same hands. . . . The constitution achieves this purpose by prescribing limitations and duties for each branch that are essential to each branch's independence and performance of assigned powers. . . . It is axiomatic that no branch of government organized under a constitution may exercise any power that is not explicitly bestowed by that constitution or that is not essential to the exercise thereof. . . . . [Thus, t]he separation of powers doctrine serves a dual function: it limits the exercise of power within each branch, yet ensures the independent exercise of that power.

"In the context of challenges to statutes whose constitutional infirmity is claimed to flow from impermissible intrusion upon the judicial power, we have refused to find constitutional impropriety in a statute simply because it affects the judicial function. . . . A statute violates the constitutional mandate for a separate judicial magistracy only if it represents an effort by the legislature to exercise a power which lies exclusively under the control of the courts . . . or if it establishes a significant interference with the orderly conduct of the Superior Court's judicial functions. . . . In accordance with these principles, a two part inquiry has emerged to evaluate the constitutionality of a statute that is alleged to violate separation of powers principles by impermissibly infringing on the judicial authority. . . . A statute will be held unconstitutional on those grounds if: (1) it governs subject matter that not only falls within the judicial power, but also lies exclusively within judicial control; or (2) it significantly interferes with the orderly functioning of the Superior Court's judicial role." (Citations omitted; internal quotation marks omitted.) *State v. McCahill*, 261 Conn. 492, 505-506, 811 A.2d 667 (2002).

Turning to the first prong, defining what constitutes the practice of law is a subject matter that lies exclusively in the domain of the judiciary. *Massameno v. Grievance Committee*, supra, 234 Conn. at 554. Even so, where the legislature has acted in an area of exclusive judicial

control, such legislative action is constitutionally permissible where there is acquiescence in such action by the judiciary. See *Adams v. Rubinow*, 157 Conn. 150, 156, 251 A.2d 49, 56 (1968). "Manifestation of such acquiescence may, although it need not, take the form of the adoption of the statutory rule as a rule of court in the exercise of the court's inherent rule-making power." Id. It may also take the form of inaction over a long period of time in which the practice in question, though openly engaged in, is never challenged.

The judges of the Superior Court, by their adoption of Practice Book § 2-44A (e), have now formally manifested their acquiescence in the legislature's statutory authorization of the performance by non-lawyers of governmental functions which, when performed by lawyers, may constitute the practice of law. That section, to reiterate, provides as follows: "Governmental Agencies: Nothing in this rule shall affect the ability of a governmental agency to carry out its responsibilities as provided by law."[35] Since the passage of that Rule, any argument that an attorney-Secretary of the State's performance of the duties set forth in General Statutes §§ 9-3 or

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[35] This section cannot be read to preclude all activity performed in furtherance of a governmental agency as activity excluded from the definition of the practice of law for purposes of General Statutes § 3-124. Although Justice Borden's concurrence in *In re Darlene C.*, 247 Conn. 1, 15, 717 A.2d 1242 (1998) (Borden, J., concurring), supports the proposition that non-attorneys acting on behalf of a governmental agency cannot practice law, it is distinguishable from the present case for two reasons. First, the public policy underlying his concern; that the principle of necessity requires that non-lawyers be able to perform governmental functions due to a lack of attorney personnel; is lacking here, in the context of § 3-124. Second, Justice Borden's opinion was limited to whether the actions of non-lawyers could constitute the practice of law, and did not address whether the same activity can constitute the practice of law when engaged in by a lawyer.

Interpreting § 2-44A (e) as authorizing non-lawyers to perform any acts necessary to carry out their governmental agency functions is further supported by subsection (a) of that section. Practice Book § 2-44A (a) defines the practice of law in terms of ministering to the legal needs, by applying legal judgment to the individual circumstances of another person. The term "person" is defined in that subsection, inter alia, as"a governmental unit." An individual is thus practicing law under § 2-44A (a) when ministering to the legal needs of a governmental unit.

9-4 cannot be deemed to constitute the practice of law without rendering such statutes unconstitutional, because otherwise they would impose lawyering duties upon non-attorney Secretaries of the State, is simply unfounded. As applied, moreover, to the statutory duties of the Secretary of the State, which attorney- and non-attorney-Secretaries of the State have openly carried on for many decades, most recently with the enhanced authority to issue declaratory rulings, instructions and opinions about the administration of state election law which are presumed to correctly interpret and effectuate state election law, the passage of Section 2-44A merely confirms the judiciary's long-standing acquiescence in that practice.

This interpretation, moreover, is consistent with our case law regarding the prohibition of unauthorized practice of law. In *In re Darlene C.*, 247 Conn. 1, 717 A.2d 1242 (1998), our Supreme Court was faced with the issue of whether the drafting, signing and filing of petitions for termination of parental rights by non-lawyer representatives of the Department of Children and Families violated the prohibition of the unauthorized practice of law contained in General Statutes § 51-88. Without deciding whether or not the activities there at issue constituted the practice of law, the Court's majority, in an opinion by Justice Palmer, held that they did not violate Section 51-88 because they were expressly authorized by provisions of the General Statutes and the Practice Book. The majority's discussion of the separation of powers issue was thus limited to a single footnote, wherein it stated: "Because we conclude that these activities are expressly authorized not only by statute but by Practice Book section promulgated by the judges of the Superior Court acting on behalf of the judicial branch, there is no separation of powers violation." Id., 9 n.20. The adoption of Section 2-44A has now formalized such acquiescence in the very text of our binding rules on unauthorized practice of law.

Having thus concluded that there is no separation of powers violation when the legislature authorizes and the Superior Court acquiesces in the performance by non-lawyers of governmental functions, the Court concludes that the legal activities performed by the plaintiff in her role as Secretary of the State may be found to constitute the practice of law if they otherwise so qualify.

9. Legal Analysis of the Term "Practice of Law"– Analysis of the Plaintiff's Claim That Aspects of Her Work as Secretary of the State Constituted "*Active Practice at the Bar of this State*"

a. Issuing Declaratory Rulings, Instructions and Opinions Interpreting and Effectuating State Election Law Under Title 9 Pursuant to General Statutes § 9-3

The plaintiff first claims that she is practicing law when, acting either independently or in collaboration with her staff attorneys, she issues declaratory rulings, instructions, and opinions with respect to state election law pursuant to General Statutes § 9-3. For the following reasons, the Court agrees.

Section 9-3 of the General Statutes, to reiterate, provides in relevant part: "The Secretary of the State, by virtue of the office, shall be the Commissioner of Elections of the state, with such powers and duties relating to the conduct of elections as are prescribed by law and, unless otherwise provided by state statute, the secretary's regulations, declaratory rulings, instructions and opinions, if in written form, shall be presumed as correctly interpreting and effectuating the administration of elections and primaries under this title . . . ." The Court has found that when the plaintiff issues declaratory rulings, instructions and opinions under that statute, as she frequently has, though not commonly in writing, she must often apply her legal training, skill and judgment to the solution of the problem at hand, which typically is presented to her under a

particular set of facts and circumstances. Her task in fulfilling her statutory responsibility under Section 9-3 is to make a correct determination as to what the law requires in the circumstances presented, and to do so as fairly and expeditiously as possible for the benefit of the entire State and its citizens, who must have her answer quickly so they can rely upon it and not lose the chance to run or vote in the election in question. Only by "getting it right" the first time can the state and local municipalities ensure that elections are conducted fairly and avoid the cost, delay, uncertainty and lack of confidence in public processes and institutions that arise from a challenged election results.

The plaintiff's "client" when performing this duty is not the particular individual who contacted her with a request for a ruling, instructions or an opinion. Instead, it is the State itself, which has charged her with providing this service for the benefit of all who are concerned with the fairness of state and local elections. Accordingly, she does not treat the initial contact person as a private client, doing a conflicts check before agreeing to help him, issuing him an engagement letter, or keeping his confidences about their communications once the case has begun. Indeed, such behavior would be antithetical to her distinctly public purpose in following up on his inquiry. Therefore, her only allegiance in the process must be to the state and its people, who demand only that she remain faithful, in performing those duties, to the law she was sworn to interpret, effectuate and uphold.

The Republican Party suggests that the matters on which the plaintiff responds in this fashion are really nothing more than garden-variety requests for factual information which any competent civil servant can easily provide without benefit of any training whatsoever. If and to the extent that this is true, the Republican Party is correct that responding to such matters does not constitute the practice of law. Here, however, there are two important reasons for rejecting

that argument: first, the history of the statutory amendment that gave the Secretary the authority to issue rulings, instructions and opinions about election law that were presumed correct; and second, the facts of this case as the Court has found them.

The history of the 1984 amendment to the Section 9-3, which made the Secretary's declaratory rulings, instructions and opinions on state election law presumably correct, suggests an understanding by the legislature that fulfilling the Secretary's new statutory responsibility would involve far more than merely supplying of readily available information. Prior to 1984, General Statutes § 9-3 provided: "The secretary of the state, by virtue of the office, shall be the commissioner of elections of the state, with such powers and duties relating to the conduct of elections as are prescribed by law." 1984 Public Acts No. 84-319 then added the language here at issue, establishing a presumption that the Secretary's regulations, declaratory rulings, instructions and opinions, when in writing, correctly interpret and effectuate the statutes governing election law. The amendment was hotly contested in the House. Initially, at the urging of Rep. Van Norstrand, the House approved an amendment to P.A. 84-319 that would have deleted the presumption in favor of the Secretary's rulings and made the State Elections Commission, a non-partisan body, the final authority on issues relating to election law. 1984 H.R. Proc. p. 2356-57. The amendment, it was said, was intended to "settle a turf war" between the Secretary and the State Elections Commission concerning who had the final say with regard to interpretations of election law issues. See 1984 H.R. Proc. p. 2356, 2359-60.

Two weeks later, however, the House reversed itself and adopted a different version of the bill approved by the Senate, which gave the Secretary with her full authority under the statute as we know it today. See 1984 H.R. Proc. p. 5825. Rep. Lyons summarized the amendment as "preserv[ing] the paramount authority of the Secretary of [the] State in the field of election

administration, namely that the office of the Secretary of the State is the authority in the interpretation of election statutes other than campaign financing." Id. Even after Rep. Van Norstrand reminded the House that earlier in the session it had chosen the State Elections Commission as the final arbitrator of election law, the House approved the amendment. See id., 5826, 5829.

The legislative history surrounding P.A. 84-319 demonstrates that the authority provided to the Secretary of the State to issue declaratory rulings, instructions, and opinions, which are presumptively correct when written, goes far beyond mere authority to provide general information. If Section 9-3 only authorized the Secretary of the State to provide information of a general, nonspecific nature, then Rep. Van Norstrand and others would not have been so concerned about the Secretary's political affiliation. They need not have pushed for a non-partisan, non-political body, the State Elections Commission, to have the authority now vested in the Secretary. Furthermore, the distribution of general information, without more, would not have created the "turf war" between the two governmental units necessitating the amendment in the first place because general information, by its very nature, is the same regardless of its source.

In fulfillment of the legislature's expectation that fulfilling this new statutory responsibility would involve considerably more than the transmission of static information, this obvious expectation, the plaintiff presented evidence, and the Court has found on the basis of such evidence, that she has indeed made declaratory rulings and issued opinions interpreting state election law that required her to apply legal skill and judgment to the solution of particular problem arising in particular factual circumstances. Her active collaboration :in the process of

finding and communicating legal solutions to those problems for the ultimate benefit of the state and its citizens thus constitutes the practice of law.

The Republican Party next argues that even if the materials distributed by the Secretary of the State's office pursuant to § 9-3 are not merely of a general nature, performing the functions authorized thereunder cannot constitute the practice of law because such actions can be, and in fact have been, performed by a non-lawyer. Suffice it to say that the conduct itself, and not the individual engaged in it, is the proper focus of the Court's inquiry when determining if practice of law has occurred. The fact that a non-lawyer may be authorized by statute and Practice Book provision to perform certain duties that when done by a lawyer constitute the practice of law is consistent with our case law. See *In re Darlene C.*, supra.

Nor is the plaintiff's admission that she does not individually issue such declaratory rulings, instructions, and opinions fatal to her claim that in so doing, she is practicing law. So long as the plaintiff contributes to the underlying legal concepts and ideas embodied in them by using legal judgment and skill to apply the law to specific facts and circumstances, she is practicing law. Drafting is only one way in which an individual can engage in the practice of law. See Practice Book § 2-44A (a) (3). Providing advice or counsel, in whatever form, as well as conducting the necessary steps leading up to the dissemination of the advice, including research and collaboration with other attorneys, involves legal judgment and may fall within the definition of the practice of law.

b. Advising Local Election Officials in Connection with Proper Methods of Conducting Elections Pursuant to General Statutes § 9-4

The plaintiff next claims that she has practiced law while working in her official capacity as Secretary of the State by advising local election officials in connection with the proper conduct of elections, either independently or in collaboration with other attorneys from her office, pursuant to General Statutes § 9-4. For the following reasons, the Court agrees with the plaintiff on this claim as well.

The Court has found that the plaintiff has both acted personally and regularly collaborated with attorneys in her office to formulate answers to legal questions presented to her by local elections officials in search of proper methods of conducting local elections. Giving such advice is one of the duties she is most frequently called upon to perform, especially around Election Day. When such requests for assistance come directly to the plaintiff at her office in the state capitol, she will typically attempt to handle them herself, without the involvement of staff attorneys from the Elections Division of her office. On other occasions, she will involve such attorneys in a collaborative effort to give the best answer possible to the question raised, and then will communicate that answer personally to the official requesting the assistance.

The Court has made findings in this case about several situations in which the plaintiff drew upon her legal skill and training to answer the question presented, applying such skill and training to particular facts presented to her. What she did not do is simply lateral the inquiry to someone else to answer because of her superior position in the office. Examples of situations she handled personally include the interaction with Hartford's Mayor about a school principal's reported threat to close his school, an official polling place, before the polls were closed on Election Day. See Findings of Fact, supra. The Court has found that this was situation in which the plaintiff, in the exercise of her statutory responsibilities to give advice to local elections officials concerning the conduct of elections, used her legal training to respond to particular

problem or inquiry for the benefit of other persons. Here, again, however, as when she responded to requests for declaratory rulings, instructions or opinions under Section 9-3, her "client" was not the Mayor, another public official who shared her goal and responsibility of ensuring the proper conduct of the election, but the State and its citizens, who were the ultimate and intended beneficiaries of her advice.

The Court has also found that the plaintiff collaborated with others on her staff to respond to such requests for advice, as, for example, in the situation where the Suffield first selectman sought an explanation of recount procedure. This, as the Court has previously noted, is simply another example of a situation in which the plaintiff, acting in her capacity as the state's Commissioner of Elections, made herself available on behalf of the State, as required by General Statutes § 9-104, to deliver advice of a legal nature to a local elections official concerning the conduct of an election, not for the private benefit of the local election official who sought the advice, but for the benefit of the public, whom both she and the local official were attempting to serve.

The Court acknowledges, in so finding, that many of the requests made under Section 9-4 do not call for any legal skill or knowledge. Responding to such requests, such as requests for additional information, supplies, equipment and personnel, does not constitute the practice of law. As for the others, however, which are directed to the plaintiff and the other members of her office very frequently, the application of legal skill and knowledge to answering particular legal problems presented in particular facts and circumstances is standard fare for the plaintiff in her role as Secretary of the State, and thus as state Elections Commissioner.

The Court has already answered the general objections of the Republican Party to this aspect of the plaintiff's claim – that the plaintiff has not held herself out as a lawyer when

interacting with local elections officials who have sought her advice under Section 9-4, that she has not treated such officials as her private clients, by conducting conflicts checks before speaking with them or later preserving their confidences about matters discussed with them, and that the advice she gave them was merely factual information whose transmission does not constitute the practice of law. For the reasons previously stated, such claims miss the mark entirely in considering the true nature of the legal work performed by the plaintiff in this context. See Part 3.E.8, supra.

It may well be argued that that the informal manner in which questions under Section 9-4 are received and answered by the plaintiff and others in her office makes it difficult to assess the true nature of such advice in particular instances or the frequency with which it is given. This is so because there are no centralized records documenting the giving of such advice, the precise nature of the advice given in each instance, or the person or persons to whom such advice has been imparted. These office practices, however, tend to confirm the consistent and credible testimony of both the plaintiff and Deputy Secretary Mara that the volume of such requests is always very high, and that they are handled with dispatch by the persons to whom they are first directed.

What matters in this context, however, is whether the plaintiff's advice to elections officials under Section 9-4 has been based upon the application of a legal analysis which the plaintiff has personally arrived at, either alone or in collaboration with other attorneys from her office, to specific facts presented to her. When it has, as has often been the case in her eleven-plus years in office, the formulation and giving of such advice has constituted the practice of law.

c. Engaging in Legislative Advocacy

The plaintiff argues that she has practiced law by monitoring, analyzing, and testifying as to the impact of proposed state and federal legislation that may affect the core functions of her office as well as advocating for reform of the law at the state and federal level in areas relevant to those core functions. The Republican Party disagrees, contending that legislative lobbying is excluded from the definition of "practice of law" under Section 2-44A (b) of the Practice Book.

In support of her argument that the practice of law encompasses such legislative advocacy, the plaintiff points to the Preamble to the Rules of Professional Conduct, which provides, in relevant part, that: "As a public citizen, a lawyer should *seek improvement of the law*, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, *employ that knowledge in reform of the law* and work to strengthen legal education." (Emphases added.)

It is true that since Colonial times, there has always been a close relationship between lawyers and legislative advocacy. See Kevin Hopkins, The Politics of Misconduct: Rethinking How We Regulate Lawyer-Politicians, 57 Rutgers L. Rev. 839, 842 & n.7 (2005) ("[f]or example, thirty of the fifty-six signers of the Declaration of Independence were judges or lawyers and thirty-one of the fifty-five members of the Continental Congress were lawyers"). However, even though the Preamble to the Rules of Professional Conduct acknowledges a lawyer's duty to act "[a]s a public citizen," and thus attempts to revive the concept of the statesman-lawyer, it simply provides no support for the proposition that when engaging in legislative activities, a lawyer is practicing law. That a lawyer is subject to the Rules of Professional Conduct when she engages in particular activities is not an indication of whether such activities constitute the practice of law, because, of course, a lawyer is subject to the Rules

as a member of the legal profession in both her personal and her professional endeavors. See, e.g., Rule of Professional Conduct 8.4 (2); see also ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 336 (1974) (noting that a lawyer acting within his professional capacity or otherwise was bound by the earlier disciplinary rules of the pre-existing Code of Professional Responsibility).

Contrary, however, to the Republican Party's claim that Connecticut excludes legislative advocacy from the definition of practice of law, there is no authority in Connecticut with respect to whether such activity does or does not constitute the practice of law. Practice Book § 2-44A (b), for instance, actually takes no stance on the issue, listing "acting as a legislative lobbyist" as an activity that is permissible "[w]hether or not it constitutes the practice of law." See Practice Book § 2-44 (b). Indeed, if anything, the placement of this "exception" in subsection (b) of the Rule tends to indicate that, at least in certain circumstances, lobbying engaged in by a lawyer may be found to constitute the practice of law even though it is not counted as legal practice for the purpose of defining and punishing the unauthorized practice of law.

The Republican Party cites various cases from other jurisdictions, all arising in contexts distinguishable from this case, for the broad proposition that lobbying is not the practice of law. See, e.g., *Legal Aid Soc. of Hawaii v. Legal Services Corp.,* 145 F.3d 1017, 1029 (9th Cir. 1998) (using lobbying as an example of conduct that did not fall under the definition of outside legal practice for purposes of the prohibition on outside legal practice by attorneys employed by a legal services organization); *Oak Grove Jubilee Center, Inc. v. Genoa*, 808 N.E.2d 576, 347 Ill. App. 3d 973, 985-86 (2004) (petitioning by a non-lawyer for the enactment of legislation was permissible because lobbying did not constitute the practice of law); *Reilly v. Ozzard*, 166 A.2d, 360, 33 N.J. 529, 544 (1960) (concluding that lobbying was not the practice of law such that it

was required as part of municipal attorney's duties in determining whether offices of senator and municipal attorney would conflict).

In questioning whether legislative advocacy can constitute the practice of law, it is important to look at the underlying conduct involved in performing such legislative advocacy. Conduct that does not otherwise qualify as the practice of law is not automatically transformed into the practice of law by virtue of its occurrence in the legislative process. The question thus becomes: When the underlying conduct is examined in isolation from its involvement in the legislative process, does it constitute the practice of law? The answer to this question must be found by applying the general principles applying to that inquiry in other contexts. Has the party engaging in it performed a legal analysis and applied that analysis to particular facts to guide another person faced with potential legal complications, or does the work consist of transmitting information of a general nature or personal opinions as to what constitutes good public policy without reference to an underlying legal analysis? It is not difficult to imagine situations where an individual engaging in legislative advocacy is applying legal principles and judgment to specific circumstances and objectives in order to persuade the legislature that a certain, fixed, result is necessary to avoid particular legal consequences. On the other hand, however, merely appearing before the legislature to provide general information, even in response to questions, or requesting additional funding for one's office or a public project would not fall within the definition of practice of law by virtue of its generality and lack of underlying legal analysis to a particular factual situation. That the activity occurred before the legislature simply has no bearing on whether it constitutes the practice of law. The conduct that forms the basis for the plaintiff's claims of legislative advocacy must therefore be examined in light of more general principles.

Much of the plaintiff's legislative activity has involved the pursuit of legislative initiatives grounded in notions of good public policy, the desirability of governmental reform, and the pursuit of administrative efficiency. Although undoubtedly valuable in many ways, and frequently relating to the functions of her office, proposing and advocating for such legislation has not required the plaintiff to apply legal judgment or legal analysis to the solution of particular problems arising on particular facts and circumstances, as is typically involved in conduct deemed to constitute the practice of law.

On the other hand, the plaintiff did introduce evidence of her ongoing efforts to monitor federal legislation and keep the General Assembly abreast of new or impending federal legislation that would or might require compliance with federal standards by the state. The most prominent example of such activity by the plaintiff in her years in office has been her legislative advocacy with respect to the federal Help America Vote Act. As a continuous and ongoing function of her office, the plaintiff has been required since 2002 to monitor, interpret, and implement all aspects of HAVA. By prescribing methods for achieving compliance with HAVA based upon the application of her and others' legal analysis of it to Connecticut's existing election laws and practices, then advocating before the General Assembly for the passage of appropriate legislation to facilitate such compliance, the plaintiff has attempted in her official capacity to ensure that the state as an entity would avoid any adverse legal consequences that might flow from non-compliance while its citizens would receive the full benefits of that law's effective enforcement in Connecticut. The plaintiff has thus ministered to the legal needs of the state in the same way that a private lawyer ministers to the legal needs of a private client.

For the foregoing reasons, the Court concludes that, while many of the plaintiff's legislative activities cannot be so characterized, her long-standing and systematic efforts to

anticipate the requirements of federal law and advocate before the General Assembly for changes in state law which are required, in her legal judgment, to achieve compliance with federal standards, she has engaged in the active practice of law in Connecticut on behalf of the state and all of its citizens.

d. Rendering Legal Services to Constituents

Another way in which the plaintiff claims that she has practiced law in the course of performing her duties as Secretary of the State is by responding, both personally and in collaboration with her legal staff, to requests from her constituents for legal advice. Such responses, she claims, are most commonly made by phone or by letter, although the plaintiff also claims that she has made them by holding press conferences

As a general matter, the plaintiff's conduct may constitute the practice of law if, in responding to the public's inquiries and questions, she is "[g]iving advice or counsel to persons concerning or with respect to their legal rights or responsibilities or with regard to any matter involving the application of legal principles to rights, duties, obligations or liabilities." Practice Book § 2-44A (a) (2). Responses giving only general information of a non-specific nature would not suffice. See id., (d). The mode of communication with the public, whether by phone, letter or press conference, would not impact whether the conduct that forms the basis of the communication could fairly be classified as the practice of law.[36] However, because the practice of law invariably requires a factual analysis, it is difficult, although not impossible, to conceive of a situation where the format of a press conference would lend itself to dissemination to the giving of situation-specific legal advice.

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[36] For this reason, the Republican Party's argument that the plaintiff was not the scrivener of all letters does not bear on whether the conduct is the practice of law.

Here, however, the Court has found that the plaintiff failed to prove her claim. As disclosed by the evidence, the only advice she appears to have given is has been to look elsewhere for legal assistance. Such advice, however useful and appropriate, may obviously be given without practicing law, just as it was here. Accordingly, the Court rejects as unproved this particular aspect of the plaintiff's claim.

e. Management and Evaluation of Staff Attorneys.

The final activity allegedly engaged in by the plaintiff in her capacity as Secretary of the State which she claims to have constituted the practice of law is the management and evaluation of the staff attorneys in her office. In performing this function, she claims that she has been required to supervise the legal work of her office and to assess the legal skill of both staff attorneys and her paralegals. The Republican Party disputes this claim on both factual and legal grounds, claiming that in managing the staff of her office, which includes attorneys, the plaintiff acts more like the chief executive officer of a corporation than the managing partner of a law firm. Although the plaintiff's legal background and education may assist in her performance of these duties, the Republican Party argues that the performance of such duties cannot constitute the practice of law.

Once again, the focus of inquiry in determining if managing a staff of attorneys constitutes the practice of law turns on whether or not such conduct requires the exercise of independent legal judgment. Supervising legal personnel, without more, does not constitute the practice of law any more than supervising non-legal personnel. If, however, in supervising her legal staff, the plaintiff applied legal principles in evaluating their legal skills and judgment, then her conduct may be found to constitute the practice of law.

In this case, the Court has found that the plaintiff did not in fact manage the attorneys in her office in any meaningful way. Instead, on the evidence here presented, it clearly appears that task was delegated to and handled exclusively by others, particularly the managing attorneys of her Elections and Commercial Recording Divisions and Deputy Secretary Mara, to whom the managing attorneys reported and submitted their annual evaluations of staff attorneys Accordingly, the Court rejects as factually unfounded any claim that the plaintiff practiced law in her capacity as Secretary of the State by running and supervising attorneys in her office.

10. Conclusion

For the last eleven years the plaintiff, as Secretary of the State and the state's Commissioner of Elections, has regularly drawn upon her skill and training as a Connecticut attorney to issue rulings, instructions and opinions concerning the administration of elections in this state. Her responses to such inquiries, when issued in written form, are presumed as a matter of law to be correct under General Statutes § 9-3. In addition, the plaintiff has regularly made herself available to give advice to local election officials in connection with properly conducting elections, as is required of her under General Statutes § 9-4. These requests, which are made of her personally almost every day, have frequently required the plaintiff to use her legal skill and training to give proper guidance to election officials for the benefit of the general public – in essence, all who will benefit from a properly held election. The Court concludes that by engaging in the performance of these services in her capacity as Secretary of the State throughout her tenure in office, the plaintiff has engaged in the active practice of law for at least ten years, within the meaning of General Statutes § 3-124.

In addition to the foregoing practice activities, the Court finds that the plaintiff has devoted a significant portion of her time in office to safeguarding the interests of Connecticut

businesses and voters by monitoring federal legislation and keeping a close eye on new federal mandates which Connecticut must implement in order not to put itself in serious jeopardy. The plaintiff's purpose for engaging in such monitoring has been to serve the interests of the state and its citizens by guiding the General Assembly to take action when action is needed to avoid running afoul of federal law. The plaintiff's extensive efforts to ensure that our state fully and promptly complied with the Help America Vote Act is simply the best example of her protective legislative efforts in the public interest. In the Court's view, such legislative activities, as distinguished from many of her other significant efforts to improve state law, have involved the application of legal skill and training to the analysis of state statutes and the application of such analysis to a particular fact situation in order to ensure that the State, by enacting suitable legislation, would comply with federal mandates. Such conduct in the performance of the plaintiff's duties as Secretary of the State has also constituted the practice of law.

F. Special Defense of Laches

The Republican Party's alternative special defense of laches, though briefly discussed at oral argument in response to a question from the Court, was not briefed or supported by the presentation of evidence, and thus is considered abandoned.

DECLARATION AND ORDER

On the basis of the foregoing findings of fact and conclusions of law, the Court hereby finds, and thus enters judgment in this action to declare, that the plaintiff, as a Connecticut attorney-at-law since 1986 who performed the above-described duties of her office as Connecticut's Secretary of the State since 1999, has engaged in active practice at the bar of this state, within the meaning of General Statutes § 3-124, for at least ten years. So finding and

declaring, the Court has no occasion to reach and decide the plaintiff's alternative challenge to the constitutionality of Section 3-124 under Article Sixth, § 10 of the Connecticut Constitution.

IT IS SO ORDERED this 5th day of May, 2010.

______________________________, J.
Michael R. Sheldon