

SUPREME COURT PENDING CASES

The following appeal is assigned for argument in the Supreme Court on August 6, 2020

MARY FAY et al. v. DENISE MERRILL et al., SC 20486
Judicial District of Hartford

Elections; Whether Governor’s Executive Order and Secretary of State’s Issuance of Absentee Ballot Application Permitting Voting by Absentee Ballot Due to COVID-19 Violate Connecticut Constitution. The four plaintiffs are candidates for United States Representative for the First and Second Congressional Districts of Connecticut who are on the ballot for the state primary election on August 11, 2020. They brought this action to challenge the primary election absentee ballot application issued by the defendant, Secretary of State Denise Merrill, because it lists the COVID-19 pandemic as a basis for seeking to vote by absentee ballot. The application provides in a notation next to the COVID-19 option that “all voters are able to check this box, pursuant to Executive Order 7QQ.” Executive Order 7QQ was issued by Governor Ned Lamont and states in relevant part that General Statutes § 9-135, which governs absentee voting, “is modified to provide that, in addition to the enumerated eligibility criteria set forth . . . an eligible elector may vote by absentee ballot for the . . . primary election if he or she is unable to appear at his or her polling place during the hours of voting because of the sickness of COVID-19.” The order further states that such circumstances will be present if, at the time the application is filed, “there is no federally approved and widely available vaccine for prevention of COVID-19.” The plaintiffs alleged that the executive order and the absentee ballot application impermissibly expanded the exclusive, limited scope of absentee voting allowed under article sixth, § 7, of the Connecticut Constitution, as implemented by § 9-135. Article sixth, § 7, of the state constitution provides in relevant part that the legislature may establish voting procedures for individuals who are unable to vote in person under certain enumerated circumstances, including “because of sickness,” and § 9-135 in turn lists criteria consistent with article sixth, § 7, of the state constitution in defining when an individual may vote by absentee ballot, including because of “his or her illness.” The plaintiffs made claims in this action that challenged the defendant’s issuance of the absentee ballot application as a ruling of an election official under General Statutes § 9-329a and sought declaratory and injunctive relief. The trial court rendered judgment in favor of the defendant. It determined that the executive order and the absentee ballot applica-

tion did not constitute an impermissibly broad interpretation of article sixth, § 7, of the state constitution and § 9-135 under the present circumstances. The trial court also determined that the plaintiffs had “neither pleaded nor argued” and had “eschewed making” the claim that the executive order and the absentee ballot application exceeded the governor’s authority to modify statutes during a public health emergency. The plaintiffs appeal from the trial court’s judgment upon the granting of certification by the Chief Justice pursuant to General Statutes § 52-265a. The Supreme Court will decide whether the trial court properly rendered judgment in favor of the defendant. It will also decide (1) the extent to which the plaintiffs are aggrieved by the executive order and the absentee ballot application and (2) the appropriate remedy, including whether the issue of aggrievement may limit the scope of relief that can be granted to the primary election in which the plaintiffs are candidates.

The summary appearing here is not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. This summary is prepared by the Staff Attorneys’ Office for the convenience of the bar. It in no way indicates the Supreme Court’s view of the factual or legal aspects of the appeal.

*Jessie Opinion
Deputy Chief Staff Attorney*
