

SUPREME COURT PENDING CASES

The following appeal is assigned for argument in the Supreme Court on January 21, 2021

STEPHANIE O'SHEA *v.* JACK SCHERBAN, IN HIS OFFICIAL
CAPACITY AS HEAD MODERATOR *et al.*, SC 20542
Judicial District of Stamford-Norwalk at Stamford

Elections; Mandamus; Whether Trial Court Properly Determined When City Charter Requires Vacated Position on Board of Education to Be on Ballot for Municipal Election. The Charter of the city of Stamford states that an election for municipal officials shall be held on the Tuesday after the first Monday in November, 1953, and biennially thereafter. The Charter further states that, in the event of a vacancy in an elected position, the Board of Representatives shall, within sixty days, elect a successor to fill the vacated position until “the next biennial election.” The Charter also provides, with respect to the city’s Board of Education, that its nine members are elected for a term of three years and that an election is to be held every year with respect to three of the positions. Frank Cerasoli was elected to the Board of Education in November, 2018. Although Cerasoli’s term was to run until November, 2021, he vacated the position in January, 2020. In February 2020, the Board of Representatives elected Rebecca Hamman to fill the position. In early October, 2020, ballots were printed for the November 3, 2020 election, many of which were mailed to absentee voters, that listed a position for the “Board of Education to fill vacancy for one year” without any endorsed candidates. On October 16, 2020, the city’s Corporation Counsel issued a legal opinion that the position was included on the ballot in error because, under the Charter, Hamman holds the position until the November, 2021 election. The Secretary of State subsequently sent a letter to the city clerk that enclosed a list of people registered as write-in candidates for offices to be contested at the November 3, 2020 election, including Hamman, Stephanie O’Shea and Joshua Esses as candidates for the one year term on the Board of Education. Following the election, however, the city’s Head Moderator, Jack Scherban, submitted a final report and certification of votes to the Secretary of State that did not include any votes for that position. O’Shea then filed this action, claiming that she was the candidate who received the most votes in the election and that Scherban was obligated to certify her as such. The trial court disagreed, holding that the language of the Charter is clear and unambiguous that, when the Board of Representatives elects a successor to fill a vacancy in an elected office, the successor holds the position

until the next biennial election and that biennial elections occur every two years in odd-numbered years. The trial court concluded, therefore, that the Charter requires that an election for the position vacated by Cerasoli be held in November, 2021. O'Shea appeals, claiming that the Charter should be construed as requiring that a vacated position should be on the ballot at the next municipal election so that the voters themselves can choose the person they want to fill the vacancy. O'Shea further claims that the city has, by past practice, established a precedent that vacancy elections for the Board of Education may be held in even-numbered years. O'Shea also argues that the city's act of changing of the rules in the middle of an election violates common-law and constitutional due process rights to fundamental fairness and disenfranchises voters.

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
Chief Staff Attorney*
