

SUPREME COURT PENDING CASE

The following appeals are fully briefed and eligible for assignment by the Supreme Court in the near future.

BARRY LEE COHEN *v.* NANCY ROSSI et al., SC 20737
Judicial District of New Haven

Elections; Absentee Ballots; Whether Trial Court Properly Found for Defendant Democratic Mayoral Candidate and Municipal Election Officials in Plaintiff Republican Mayoral Candidate’s General Statutes § 9-328 Action After Concluding That Substantial Violations of Election Statutes Occurred but Results of Election Were Not Seriously in Doubt. The plaintiff Barry Lee Cohen was the Republican candidate and the defendant Nancy Rossi was the Democratic candidate for the West Haven mayoral election on November 2, 2021. Due to the closeness of the race, an automatic recanvass occurred on November 7, 2021. The certified election results following the recanvass provided that Rossi received 4275 votes and won the election by 32 votes over the plaintiff, who received 4243 votes. The plaintiff thereafter brought this action under General Statutes § 9-328, which provides in relevant part for such an action by a candidate in a municipal election who aggrieved by a ruling of an election official or claims statutory violations with respect to absentee ballots. The defendants included Rossi and the city clerk of West Haven, the Republican and Democratic registrars of voters, the head moderator, and the head absentee ballot moderator. The plaintiff alleged that the defendant municipal election officials had failed to process, count, maintain the chain of custody over, and endorse absentee ballots in compliance with mandatory statutory requirements and asked that the trial court issue a writ of mandamus and either set aside the results of the election or hold a special election. The action was tried to the court over a series of dates between November 2021 and April 2022, after which the trial court issued a memorandum of decision on June 24, 2022, that found in favor of the defendants. The trial court determined that “the evidence presented shows a concerning lack of overall compliance with statutory guidelines by election officials in the city of West Haven.” It nonetheless concluded that the plaintiff had failed to prove that the election results were seriously in doubt where it posited that a reallocation of improperly counted absentee ballots in favor of the plaintiff would still be insufficient to overcome the 32 vote margin. The plaintiff thereafter raised questions of law to be reviewed by the Supreme Court pursuant to General Statutes § 9-325, and the trial court transmitted the questions of law and its finding of

facts to the Chief Justice in accordance therewith. The Supreme Court will decide whether the trial court erred in concluding that fourteen “same day” absentee ballots that were endorsed by the assistant city clerk rather than the city clerk should be included in the vote count as substantially compliant with the relevant statutes where absentee ballots had been rejected from the initial count for the same reason. The Supreme Court will also decide whether the trial court erred in concluding that the city clerk was permitted to have a designee retrieve absentee ballots from drop boxes. The Supreme Court will further decide whether certain absentee ballots were properly counted despite their absence from the absentee ballot log or their noncompliance with statutory affidavit requirements. In addition, the Supreme Court will decide whether certain absentee ballots were deemed to be substantially compliant with the relevant statutes where the plaintiff argues that they were returned by improperly designated persons. The Supreme Court will finally decide whether the trial court erred in concluding that the election results were not in serious doubt and that there was no mistake in the vote count.

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

*Jessie Opinion
Chief Staff Attorney*
