

UNITED STATES CIRCUIT
COURT OF APPEALS FOR
THE SECOND CIRCUIT
NO. 20-2179

Libertarian Party of
Connecticut, et al

v

Ned Lamont, et al

Reply Brief of Appellants

September 8, 2020

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TABLE OF CONTENTS

Table of Authorities.....ii
Purpose of Reply.....1
Restatement of Critical Facts.....1
Conclusion.....4
Certificate of Compliance.....5
Certificate of Service.....6

TABLE OF AUTHORITIES

Emergency Executive Orders

Executive Order 7LL.....passim

PURPOSE OF REPLY

This brief reply serves to refocus the Governor's distortion of the facts.

RESTATEMENT OF THE CRITICAL FACTS

The Defendants have prevailed in the trial court exclusively by running the clock and continually changing the factual and procedural landscape.

The Defendants, on the record, initially agreed to provide the relief sought and represented as such on the record that additional time was needed to do it. At that point, petitioning was illegal. The Plaintiffs, acting on that representation, agreed to defer argument.

The Defendants then introduced a letter from six General Assembly Leaders, non-parties with no right or duty of intervention, as an excuse to delay the proceedings. It worked. The clock continued to run.

Executive Order 7LL then came as a complete surprise after the vast majority of the ballot drive season was over.

The Plaintiffs' affidavits and submissions demonstrate very clearly the mechanics of simultaneously running statewide ballot and a major state court case

challenging the unconstitutionally undue burdens of those drives, which the Defendants' absolutely do not, and their sole witness was absolute unqualified to offer first hand testimony on.

The Governor simply took advantage of COVID to win the state court case, delay this federal case and frustrate any possibility that those six General Assembly leaders or their parties would have any viable competition.

At 9:52 PM, the night before argument and with no real time to object or digest it, the Defendants filed their supplemental response. They again changed their interpretation of 7LL, which they initially represented as allowing social media circulation.

All that has happened here is obvious: once the Governor is about to lose in Court, he changes the rules, the facts and the procedural landscape so that he will win.

It is wrong and immoral for anyone to have allowed the Governor to do that.

The Plaintiffs have been repeatedly denied a full and fair day in court, and that process of being denied

due process started with the Governor's continued efforts to do this when he locked them out of the state court case in March.

The Plaintiffs have since been denied both the ability to bring in out of state witnesses and out of state petitioners for either a true ballot drive or a real hearing on the merits.

The Governor has even overruled his own Secretary of State because, to him, winning was more important than even achieving the stated public health goals she offered her expert opinion to address and fairly achieve in the safest, most expedient manner possible. In acting as he did, the Governor acted in direct violation of the very compelling state interest he claimed. Counsel for the Governor has not adequately represented her other client, the Secretary of State, who had the directly conflicting position of wanting the Appellants on the ballot in the interest of public health and safety.

The Governor took approximately six million dollars in federal funds from the CARES Act for the purposes of facilitating elections. The Defendants' conduct and filings instead demonstrate a clear misuse of that money to obstruct elections.

The Governor wants not only to make the voters' choices for them - he wants to make the State and Federal Courts' choices for them. So long as he continues to run the clock and print ballots on September 15, his plan succeeds.¹

CONCLUSION

The injunction should have issued as described and called for by the Secretary of State herself. The conduct of the State has been so unfair that no other remedy may be had. To order otherwise would be allow the Governor to fix the election by preemptively eliminating its participants from consideration.

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¹ Which is why the Appellants have decided to concede the right to argument. The Court has limited time to act because the State has simply consumed so much of that time by delaying earlier proceedings and continuing to change the factual landscape.

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), the undersigned hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B).

1.Exclusive of the exempted portions of the brief, as provided in Fed. R. App. P. 32(a)(7)(B), the brief contains 678 words.

2.The brief has been prepared in proportionally spaced typeface using Open Office in 12 point Courier New font. As permitted by Fed. R. App. P. 32(a)(7)(C)(i), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of the foregoing was sent via email to the following counsel and parties of record on or before this 8th Day of September, 2020 via PACER's ECF system, and by US Mail first class, postage prepaid:

Murphy Osborne via Maura.MurphyOsborne@ct.gov via ECF and a copy of the foregoing was also transmitted via first class mail, postage prepaid, to:

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