FST-CV- 156025460-S

SENSIBLE WILTON

VS.

BOARD OF SELECTMEN OF THE TOWN OF WILTON

CONNECTICUT SUPERIOR COURT

JUDICIAL DISTRICT OF STAMFORD/ NORWALK AT STAMFORD

November 13, 2015

MEMORANDUM OF DECISION re: MOTION TO DISMISS (#107.00)

Nature of the Proceeding

This is a proceeding in which the plaintiff seeks to compel the defendants, officials of the Town of Wilton, to schedule a Special Town Meeting (as that term is used in the Town Charter), through the mechanism of an order in the nature of mandamus. The purpose for the meeting is to submit for consideration a proposed ordinance which, pursuant to the procedure set forth in the Town Charter, had been submitted to the Board of Selectmen (the first step in the process). The Board of Selectman has refused to take any further steps to schedule or conduct such a Special Town Meeting, which would have resulted in the proposed ordinance being submitted to the electorate for a vote.

Before any hearing on the merits of the application for a temporary order of mandamus, defendants filed a motion to dismiss, challenging/questioning the standing of plaintiff to pursue this action. The challenge to standing is multifaceted, but all aspects center on the fact that the plaintiff is, for purposes of Connecticut law, a political committee or political action committee, within the meaning of General Statutes § 9-601(3).

Among the bases for the challenge, the defendants claim that plaintiff should have ceased its existence months earlier, since the election/referendum for which it initially had been formed had long since taken place, and the time limits for all

avenues of review directly relating to that vote have long since expired. The defendants also claim that the plaintiff is not asserting a claim in its own right but rather in a representational capacity, but that the facts of this case do not allow it to assert a representational claim. The defendants also claim that there is a mismatch between the party (parties) circulating the petition for the special meeting and the party (parties) behind this legal proceeding.

In general terms, the plaintiff's response is that the committee was formed as an ongoing committee rather than one with a specific duration; that it is proper for the committee to be the plaintiff, as it satisfies representational requirements in varying respects; and that it otherwise is a proper party to pursue this matter. One of the reasons stated for continued utilization of the committee is that the individuals who formed the committee and control it claim that there had been "threats" of personal financial responsibility if they had pursued this avenue as individuals, rather than through the already-existing committee.

The dispute focuses on the manner in which the town will or should proceed with respect to the Miller-Driscoll School, located at 217 Wolfpit Road, Wilton, Connecticut, which is a combined structure – formerly 2 separate schools, the Miller School and the Driscoll School, each originally constructed in the mid-60's. A proposed renovation, at a cost of over $50 million, was submitted to the electorate for approval by way of a Special Town Meeting (nominally to approve financing of the project), held in September of 2014 – effectively, a referendum in the sense that it was a proceeding conducted via machine voting and governed by election laws, rather than an actual town meeting conducted with all participating/voting town residents in attendance.

The plaintiff initially was formed in order to oppose the funding for the project, i.e. to support a rejection of the project in the referendum. Although the two

individuals behind plaintiff have contended that certain irregularities took place leading up to the election, no formal challenge to the election itself was taken (but complaints were filed with the State elections enforcement commission (SEEC) relating to certain conduct by individuals associated with the Town or its board of education).[1] The result of the vote was to approve the project, by a relatively slim majority – approximately 50.7% voting in favor of funding the project.

According to the ¶ 3 of the complaint,

> "SENSIBLE WILTON ... is a duly formed political committee under the laws of the State of Connecticut. Its stated purpose is to oppose a proposed renovation of the Miller-Driscoll School ... in the Town of Wilton ... at a cost of over $50,000,000, on the grounds that the project is fiscally wasteful and unjustified based on the Town's projected needs, and because the project will not address the immediate repairs that must be performed at the School within a reasonable timetable. Sensible Wilton's supporters include over 1,000 electors in the Town of Wilton, and Sensible Wilton is the sponsor and organizer of the subject Petition."

Alex Ruskewich and Curtis Noel are founders and officers of Sensible Wilton, and both are electors within the Town of Wilton. (They also claim, at times, to be members, although there have been and were more credible statements to the effect that Sensible Wilton does not have members as that term ordinarily is understood.) Paragraph 6 of the complaint asserts that

> "Sensible Wilton has standing to bring this lawsuit, because its members, including non-parties Ruskewich and Noel, would otherwise have standing to sue in their own right; the interests that Sensible Wilton seeks to protect, including a vote to repeal the September 2014 bond authorization described herein, are germane to Sensible Wilton's

[1] The SEEC has since ruled on all of the complaints, finding no material violations.

purposes, which include opposing the $50,022,000 renovation of the Miller-Driscoll School; and, neither the claim asserted herein nor the relief requested requires the participation of individual members in the lawsuit."

There is no question about the conduct of Sensible Wilton up to and including the September 2014 approval of funding. The dispute – on the merits and as to standing – relate to subsequent events.

After the initial approval of financing and the claimed discovery of new information, Sensible Wilton sought a revote, which request was rejected under the circumstances (¶ 61 et seq. of complaint); no direct action was taken in response to that rejection. Then, the key events underlying this dispute are recited in ¶¶ 64 and 66:

> "Following the Board of Selectmen's rejection of Sensible Wilton's January 2015 petition [for a revote] on February 17, 2015 ... on April 1, 2015, Sensible Wilton filed the subject Petition ... containing the signatures of more than 2% of the Town's electors, and stating as follows:
>
> "SUBJECT: We, the undersigned electors and those of us qualified to vote in Town Meetings of the Town of Wilton, hereby Petition that a Special Town Meeting be held to consider and vote the following ordinance, without amendment, in full compliance with State Election Law:
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> **"The resolution appropriating and authorizing bonds in the amount of $50,022,000 for planning, design, construction, renovation, equipping and furnishing of the Miller-Driscoll School and related costs is hereby repealed; provided, however, that the Town will pay all legal obligations to third parties, lawfully incurred, including any arising from bonds or contracts already made and entered into by the Town prior to such repeal.**

"(Bold in original.)

"....

"66. However, at a meeting on May 18, 2015, the Board of Selectmen voted 4-0 to take no action on the April 2015 Petition."

It is the contention of the plaintiff that the Board of Selectmen had no discretion under the Town Charter – that upon submission of the petition with the requisite number of signatures, there was a duty to follow through and schedule a Special Town Meeting. It is the contention of the defendants that the plaintiff is incorrect on the merits but as a threshold matter, Sensible Wilton lacks standing. More particularly, the defendants claim that Sensible Wilton has no right to exist, and should have terminated months ago; as a referendum committee, it has no authority to petition for ordinances or bring lawsuits; it does not have members, and therefore cannot prosecute this lawsuit on the theory that it is representing its "members"; and a lawsuit to compel the Board of Selectmen to vote on an ordinance is not germane to the purpose for which the Plaintiff was formed, i.e., to raise and expend money to oppose a referendum held more than eight months prior to the commencement of this proceeding.

Legal Standards

"Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy. Nevertheless, [s]tanding 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. Standing [however] requires no more than a colorable claim of injury. . . ." *Citibank v. Lindland*, 310 Conn. 147, 161-62 (2013) (Internal quotation marks and citations, omitted.)

"It is well established that, in determining whether a court has subject matter jurisdiction, every presumption favoring jurisdiction should be indulged ...." *Ed Lally and Associates, Inc. v. DSBNC, LLC*, 145 Conn. App. 718, 728 (2013); see, also, *One Country, LLC v. Johnson*, 314 Conn. 288, 298 (2014).

"In other words, to demonstrate standing, one need not prove his case on the merits. Rather, standing entails a consideration of whether there is a possibility that some legally protected interest of the person asserting a claim has been adversely affected by the actions of the defendant." *Citizens Against Overhead Power Line Construction v. Connecticut Siting Council*, 139 Conn. App. 565, 590 (2012)

"[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual Representational standing depends in substantial measure on the nature of the relief sought. If in a proper case the association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured." *Connecticut Association of Health Care Facilities, Inc. v. Worrell*, 199 Conn. 609,

615 (1986), relying on, quoting and adopting, *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977) (internal quotation marks omitted).

Discussion

The starting point for the court – and a recurring concern with the defendants' motion and brief – is that standing is intended to be a practical concept, whereas the defendants rely on technical contentions. Compounding the problem is that many/most of the authorities cited and relied upon by the defendants, do not quite fit this situation, and the gap, however modest in appearance, often is material.

For example, the defendants rely upon an Oregon decision, *Oregon Taxpayers United PAC v. Keisling*, 924 P.2d 853, 857 (Or. Ct. App. 1996) for the proposition that "in absence of statutory authority to bring declaratory judgment action in representative capacity, political action committee lacked standing to sue." Standing jurisprudence in Oregon, however, appears to be far more limited and technical than is the case in Connecticut. Thus, in *Local No. 290 v. Dept. of Environ. Quality*, 323 Or. 559, 919 P.2d 1168 (1996), the Oregon Supreme Court declined to recognize a union's representational standing on behalf of its members because such an approach was not supported by the language of the applicable statute being considered – it spoke of aggrieved parties and a union would not satisfy the requirement of aggrievement. The *Keisling* opinion discussed the *Local No. 290* decision at length, 143 Or. App. 541-43, before going on to explain why prior appellate decisions required a narrow reading or were inapplicable to claims of representational standing (especially under the declaratory judgment statute).

The defendants also cite (at p. 15) *Hope, Inc. v. County of DuPage, Ill.*, 738 F.2d 797, 815 (7th Cir. 1984) as supporting its contention that the lack of members is fatal to the plaintiff's claim. ("[O]rganization with no members or substantial

equivalent of members 'has no standing in a representational capacity to represent [individuals] as if they were.'") However, the preceding page of that decision (738 F.2d 814) on multiple occasions links members and directors as seemingly equivalent or interchangeable individuals for purposes of representational status of an entity (suggesting that directors are the "substantial equivalent of members")[2] – and the argument of the defendants is that the individuals involved in forming and controlling the plaintiff in fact are directors (as opposed to being members).

The defendants also rely on General Statutes § 9-608 and the language concerning disposition of assets within six months after the referendum or election for which the committee was formed. There are a number of problems with reliance on that provision for purposes of assessing standing.

The obvious starting point is that it is a provision relating to disposition of money; it has nothing to do with the continued existence or required termination of the committee. The rationale if not need for such a provision is relatively obvious: once a committee has outlived its raison d'être, the obvious question is what to do with any remaining money – especially in the context of a series of statutes focusing on financing in the context of elections. The statute attempts to deal with that by requiring disposition after a set period of time. There is nothing in this statute, and the defendants have not cited any other statute, that requires cessation of the existence of the committee at any particular time or at all/ever. It may well be assumed that by that time, with the committee having outlived its purpose, there

[2] "The problem with HOPE's standing in its representational capacity is that it has not alleged much less proven that any of its members or directors either suffered an injury or was threatened with immediate injury to the extent that the member or director would be able to make out a justiciable case had he brought suit himself ..." and "Amicus curiae attempts to expand HOPE's representational capacity, however, by extending it beyond HOPE's members and directors ...."

would be no reason for continued existence, but there is no mandate for dissolution or other provision terminating the existence of the committee at any set time. Conversely, on Exhibit 1 (the Sensible Wilton Form 3 filed with the State Election Enforcement Commission), the purpose for the committee (question #25) was "ongoing" rather than "durational" and limited to a single referendum.[3]

Related, there is no indication that a possible sanction for failing to dispose of any remaining funds, in accordance with the statute, might result in cessation of existence of the committee; cf. General Statutes § 33-890, identifying circumstances under which the Secretary of State might administratively order the dissolution of a corporation for noncompliance with statutory requirements. Chapter 155 of the General Statutes (which encompasses § 9-608) contains penalty provisions (§ 9-623; see, also, § 9-601e), but there is no indication that termination of the existence of a committee is a consequence of any alleged failure to comply with any requirement of Chapter 155.

That, in turn, provides a segue to a provision that is in the statutory scheme. The statute explicitly contemplates that there may be subsequent election-related issues or procedures, requiring an extension of the presumptive six-month period at the end of which remaining assets need to be distributed (in accordance with the statute).[4] Here, there were subsequent election-related events and procedures,

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[3] The form identifies Mr. Ruskewich as Chairperson, and elsewhere he is also identified as president of the plaintiff; Mr. Noel is identified as the Treasurer.

[4] General Statutes § 9-608(e)(1)(C)(ii) provides "Notwithstanding the provisions of this subsection, a committee formed for a single referendum shall not be required to expend its surplus not later than ninety days after the referendum and may continue in existence if a substantially similar referendum question on the same issue will be submitted to the electorate within six months after the first referendum. If two or more substantially similar referenda on the same issue are submitted to the electorate, each no more than six months apart, the committee shall expend such surplus within ninety days following the date of the last such referendum;"

starting with the initial application for a revote, followed by the submission of a proposed (related) ordinance which, again, would ultimately require a Special Town Meeting which would be a further referendum-type procedure. Indeed, the statute, as quoted in footnote 4, explicitly anticipates/authorizes continued existence of the committee ("may continue in existence") in such circumstances.

In their arguments, the defendants implicitly take a somewhat limited view of what constitutes a referendum, seemingly distinguishing between the referendum authorizing financing of the school project and a proposal for an ordinance. What defendants seem to elide is that the proposal for an ordinance would require a Special Town Meeting, and it is the calling of a Special Town Meeting that triggers an eventual referendum/election procedure[5] – thus, a petition for an ordinance is almost certain to result in a referendum-type procedure (as would the explicit (but denied) earlier request for a revote). Therefore, while literally true that the submission of the proposed ordinance was not a direct referendum procedure, it was as much a referendum procedure in practice as was the earlier referendum that led to the creation of the plaintiff.

Related, in attempting to distinguish *Windham Taxpayers Association v. Board of Selectmen*, 234 Conn.513 (1995) (and the underlying trial court decision, Judicial District of Windham at Windham, Docket No. CV-94-0049807 S, 1995 WL 118748, at * 1, 1995 Ct. Sup. 2232, 14 CLR 115 (March 13, 1995)), the defendants

[5] Town Charter § C-9(C) provides, in relevant part: "(4) Special Town Meeting to consider proposal. (a) If the Board of Selectmen fails to or does not have the power to adopt the proposal brought forth by petition without any substantive change within 35 days after a petition making such a proposal shall have been certified to the Board of Selectmen, the Board of Selectmen shall, within the time limits prescribed in Subsection E below, call a Special Town Meeting to consider the petition proposal and any modification of the proposal the Board of Selectmen deems advisable."

argue (at pp. 21-22) that "[t]he Plaintiff is improperly attempting to bring an action far removed from this purpose, which has long since expired." The court has rejected and continues to reject, for purposes of a standing analysis, the contention that the effort to submit an ordinance to undo the school project financing approval is unrelated to the initial effort to defeat that budget financing proposal when first presented to the electorate. (The court also notes that, as in *Windham*, "neither the claim asserted nor the relief requested required the participation of individual members in the lawsuit. Writs of mandamus to compel a referendum can be pursued without the participation of individuals." 234 Conn. 527 (Emphasis added).)

Therefore, the only issue in *Windham* that is not clearly satisfied is the issue of absence of members in the sense of membership. Is membership the *sina qua non* for standing? Is the implied equivalence of directors and members, as noted earlier in *Hope*, supra, sufficient? Or is the nature of the plaintiff as a political committee inherently sufficient, under these circumstances?

The argument that the nature of the plaintiff inherently precludes a right to bring a lawsuit (a political committee cannot start a lawsuit) even if it is consistent with its purpose, seems dubious. General Statutes § 9-601 (4) – the definition that immediately succeeds the definition of "political committee" – states that

> "(4) 'Candidate committee' means any committee designated by a single candidate, or established with the consent, authorization or cooperation of a candidate, for the purpose of a single primary or election and to aid or promote such candidate's candidacy alone for a particular public office or the position of town committee member, but does not mean a political committee or a party committee...."[6]

[6] Note that both candidate committees and political committees come within the scope of the more general definition of "committee" as set forth in General Statutes § 9-601(1); that more general definition is the source of the limiting language "organized ... for a single

A candidate committee generally exists for the purpose of a single election, yet the Supreme Court entertained an appeal in which candidate committees were parties – both as a plaintiff and as multiple defendants. *Foley v. State Elections Enforcement Commission*, 297 Conn. 764 (2010). While the plaintiff committee appears to have been a corporation, the defendant committees were not so identified. Using the arguments of the defendants here, there is no identified statutory authority for candidate committees to sue and be sued as committees – yet that has happened, without standing or any related concern being raised or addressed.[7]

An aspect of the practical component of standing and the representational component of standing jurisprudence is the general rejection of form over substance – an entity can pursue claims if its members could, even if the entity itself does not claim harm to the entity as such. The argument of the defendants seeks to reintroduce a form-based component – the organizational structure of the entity is critical. A member-based committee can assert its members' interests, but a two-person committee without formal members cannot assert the interests of the founders and officers/directors. Is a corporation permissible because it has the authority to sue and be sued, or does it not still have to establish either a direct interest/injury or a representational claim because its members (or equivalent of members) can so claim? See, *Foley*, supra.

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primary, election or referendum, or for ongoing political activities, to aid or promote the success or defeat of any political party, any one or more candidates ... or any referendum question."

[7] The statutory provisions relating to committees under Chapter 155 presumptively would take precedence over the more general scope of statutes relating to corporations, *Laguex v. Leonardi*, 148 Conn.App. 234, 242 (2014); otherwise, a corporate committee (candidate or otherwise) could engage in activities consistent with corporate status but exceeding the scope of permissible conduct for a (candidate or otherwise) committee, thereby frustrating the purpose of the election/financing laws under which the committee is required to operate.

Note that the court is not stating (or determining) that there is no substantive relevant distinction between the referendum approving financing of the project and the submitted ordinance that might also result in a referendum; the court is addressing a standing issue. "Standing requires no more than a colorable claim of injury. A party ordinarily establishes ... standing by *allegations* of injury. Similarly, standing exists to attempt to vindicate arguably protected interests." *Portfolio Recovery Associates, LLC v. Healy*, 158 Conn. App. 113, 116 (2015) (internal quotation marks and citations, omitted; emphasis as in cited case.) "Aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest ... has been adversely affected." Id. (internal quotation marks and citations, omitted; emphasis as added in cited case.) *Windham Taxpayers Association* may have some bearing on the merits of the underlying dispute, but the merits are not before the court at this time.

The defendants appear to misread General Statutes § 9-601(7) in arguing that political committees are excluded from the definition of "organization," as a premise for further arguing that the plaintiff cannot represent the interests of others. With or without that explicit exclusion, the plaintiff could not be an organization under the statutory definition, because the definition of "organization" as stated in § 9-601(7) starts with the global assertion that the term "means all labor organizations" and then goes on to more particularly identify the contours of the term. Properly read, the exclusion of political committees from the term "organization" simply means that the term is intended to exclude any labor-based political committee that might otherwise come within the ambit of "all labor organizations." Or, to put differently, the exclusion of political committees relates to the universe of "all labor organizations," and has no meaning or applicability except in that context. In the absence of any suggestion that the plaintiff has anything to do

with "labor organizations," the exclusion is irrelevant – it has no applicability whatsoever to this particular political committee.

As the court previously noted, "every presumption favoring jurisdiction should be indulged ...." *Ed Lally and Associates, Inc.*, supra. The facts presented to the court appear to be sufficient to establish the standing of the plaintiff to pursue this matter further.

Conclusion

The defendants have presented numerous arguments as to why they contend that the plaintiff lacks standing, citing cases from numerous jurisdictions and some of the statutory provisions applicable to political committees. Sometimes, however, it is productive (here, perhaps dispositive) to go back to basics and origins, i.e. *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977), which, as noted earlier, was adopted by the Connecticut Supreme Court in *Connecticut Association of Health Care Facilities, Inc. v. Worrell*, 199 Conn. 609 (1986). In *Hunt*, the U.S. Supreme Court observed:

> "In any event, appellants contend that the Commission is not a proper representative of industry interests. Although this Court has recognized that an association may have standing to assert the claims of its members even where it has suffered no injury from the challenged activity, the Commission is not a traditional voluntary membership organization such as a trade association, for it has no members at all. Thus, since the Commission has no members whose claims it might raise, and since it has suffered no 'distinct and palpable injury' to itself, it can assert no more than an abstract concern for the well-being of the Washington apple industry as the basis for its standing. That type of interest, appellants argue, cannot substitute for the concrete injury required by Art. III." 342 (internal quotation marks and citations, omitted; emphasis added).

Needless to say, as the seminal case on the topic, and despite the explicit recognition of the absence of any members in the "traditional" sense, the Commission was found to have standing to assert the interests of those it represented. Yet the absence of any members of the plaintiff is the centerpiece/linchpin of the arguments presented to this court.[8]

"Representational standing depends in substantial measure on the nature of the relief sought." *Worrell*, supra, 199 Conn. 616 (internal quotation marks and citation, omitted). The Town of Wilton has opted for a legislative body consisting of a more traditional – as opposed to representative – town meeting, where all electors, as a body, constitute the legislative body of the Town. A group of electors submitted a petition, assisted and/or coordinated by the plaintiff and its founders, seeking to have the proposal for a new ordinance considered by way of a Special Town Meeting and subsequent vote/referendum. At least hundreds of Town electors had signed the petition,[9] including (inferentially) Alex Ruskewich and Curtis Noel, the individuals who formed and control the plaintiff. Those electors are, in a sense, being disenfranchised by the action of the defendants – or more accurately, the executive branch of the Town is precluding legislative consideration of a proposed ordinance, by refusing to act upon a petition seeking to commence the legislative

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[8] *In Friends of the Earth v. Chevron Chemical*, 129 F.3d 826 (5th Cir. 1997), the court reversed a lower court decision that also had relied on the absence of members. In so doing, the court relied upon an earlier case in which a corporate-representative party "had been suspended and failed to take the steps necessary to preserve its corporate status under California law," but nonetheless had been deemed to have standing to sue as an unincorporated association. 129 F.3d 828. See, also, *Hope*, supra, treating directors as the equivalent of members for purposes of representational standing.

[9] Section C-9(C) of the Charter requires 2% of the electors to sign a petition for purposes of a proposed ordinance. The Town's website indicates an approximate population of 18,000, and conservatively assuming only half are electors, at least 180 signatures would be required on a petition under § C-9(C). There was testimony that the number of people who signed the petition exceeded 1000.

process. The defendants contend that the fact that the plaintiff rather than individual signers commenced this proceeding presents a standing-based bar to further review. That loss of the Charter-based right to submit a proposed ordinance constitutes a colorable claim of injury for each of the petition-signing electors including Mr. Ruskewich and Mr. Noel, and under the circumstances of this case and *Hunt*, sufficiently establishes the standing of plaintiff to pursue this action.

For all these reasons, then, the motion to dismiss is denied.

POVODATOR, J. 11/13/15

Decision entered in accordance with the foregoing.
11/13/15

All counsel and self-represented parties of record notified.
11/13/15

Paul Katsetos, TAC