VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 22-CV-04124

Brooke Paige v. State of Vermont et al

Opinion and Order on Mr. Paige's Motion to Reconsider

In this case, Plaintiff H. Brooke Paige has asserted a broad variety of reasons why he thinks election law legislation known as Act 60 and recent constitutional amendments are unwise and invalid. 2021, No. 60. The State sought dismissal for lack of constitutional standing, among other reasons. In essence, Mr. Paige's response was that standing is irrelevant as a constitutional matter because he framed his complaint under 17 V.S.A. § 2603 (election contests), § 2603 allows any voter to contest an election, and he is challenging *all* elections in which he was a voter. To be clear, § 2603 allows a voter to contest the "result of an election." Mr. Paige is not challenging the *result* of any election. Instead, he is broadly asserting that all elections are invalid because Act 60 election procedures are, in his view, invalid.

In the dismissal decision, the Court expressed serious doubt that § 2603 is properly interpreted to permit the kind of challenge Mr. Paige has sought to raise here. Instead, however, it ruled in the State's favor on standing grounds. The Court explained in detail that the Legislature could not simply sweep away by statute the core constitutional standing requirement, and Mr. Paige lacked any identified injury for standing purposes. It entered final judgment for the State.

Thereafter, Mr. Paige filed the instant motion to reconsider. As the Rules of Civil Procedure have no formal standards for motions to reconsider, courts often analyze them under the provisions of Vt. R. Civ. P. R. 59. *See Drumheller v. Drumheller*, 185 Vt. 417, 432 (2009). Mr. Paige asserts that, in response to the State's dismissal motion, he intentionally "did not provide additional, unnecessary grounds for his standing status, fearing that doing so would create new precedent that would handicap future Election Complainants." He then reiterates his argument that 17 V.S.A. § 2603 (as he interprets it) trumps the constitution and that he should qualify under South Carolina's "public importance exception" in any event.

Rule 59(e) "allows the trial court to revise its initial judgment if necessary to relieve a party against the unjust operation of a record resulting from the mistake or inadvertence of the court and not the fault or neglect of a party." *N. Sec. Ins. Co. v. Mitec Elecs., Ltd.*, 2008 VT 96, ¶ 41, 184 Vt. 303, 319 (noting that the "narrow aim of Rule 59(e) is to make clear that the [trial] court possesses the power to rectify its own mistakes in the period immediately following the entry of judgment") (citations omitted). "Rule 59 is not a vehicle for relitigating old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise taking a 'second bite at the apple.'" *Sequa Corp. v. GBJ Corp.*, 156 F.3d 136, 144 (2d Cir. 1998); *see Keene Corp. v. Int'l Fid. Ins. Co.*, 561 F. Supp. 656, 665 (N.D. Ill. 1982). As a result, as the District of Vermont has rightly noted: "'The standard for granting [a motion to reconsider] is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked—matters, in other words, that might reasonably be expected to alter the conclusion reached by the court.'" *Latouche v. North Country Union*

High School Dist., 131 F. Supp. 2d 568, 569 (D. Vt. 2001) (quoting *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995)).

To the extent that Mr. Paige has simply objected that the Court erred by concluding that he, in fact, needs constitutional standing to assert his claims despite the supposedly broader language of 17 V.S.A. § 2603, he is simply relitigating a matter on which the Court already has ruled. His arguments provide no new bases for the Court to question its initial determination in that regard.

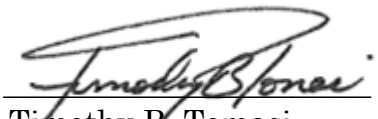
Otherwise, Mr. Paige points to South Carolina case law discussing a state-observed relaxation of traditional standing requirements on issues of perceived great public importance. He ostensibly would have this Court adopt that exception and use it to excuse his lack of constitutional standing in this case. The Court declines to address this matter in any detail. Mr. Paige did not raise this argument in opposition to dismissal. Nor does he identify any Vermont authorities indicating our High Court has ever exhibited any inclination to adopt such an exception, and the Court is aware of no such authority. He further presents no compelling reason why, if the exception ever were adopted in Vermont, it would be necessary to apply it in the circumstances presented in this case.

Similarly unavailing is his citation to "election contest" decisions from Tennessee. Those decisions rely on different statutory language and, in any event, do not undermine the Court's conclusions with regard to constitutional standing.

Conclusion

For the foregoing reasons, Mr. Paige's motion is denied.

Electronically signed on Thursday, July 13, 2023, pursuant to V.R.E.F. 9(d).



Timothy B. Tomasi
Superior Court Judge