



House of Representatives

General Assembly

File No. 336

January Session, 2023

Substitute House Bill No. 6872

House of Representatives, March 30, 2023

The Committee on Government Administration and Elections reported through REP. BLUMENTHAL of the 147th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING FAITHLESS PRESIDENTIAL ELECTORS AND AUTHORIZING MANDAMUS ACTIONS RELATED TO THE CERTIFICATION OR DECLARATION OF ELECTION RESULTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 9-176 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2023*):

3 (a) The presidential electors shall meet at the office of the Secretary of
4 the State at twelve o'clock [] noon [] on the first Monday after the
5 second Wednesday of the December following their election and, as
6 required by the Constitution and laws of the United States, shall cast
7 their ballots for President and Vice President. Each such elector shall
8 cast [his] such elector's ballots for the candidates under whose names
9 [he] such elector ran on the official election ballot, as provided in section
10 9-175. If any such elector is absent or if there is a vacancy in the electoral
11 college for any cause, the electors present shall, before voting for
12 President and Vice President, elect by ballot an elector to fill such

13 vacancy, and the person so chosen shall be a presidential elector, shall
14 perform the duties of such office and shall cast his or her ballots for the
15 candidates to whom the elector he or she is replacing was pledged. In
16 the case of any such elector who fails to cast such elector's ballots for the
17 candidates under whose names such elector ran on the official election
18 ballot, or who fails to cast such elector's ballots for the candidates to
19 whom the elector he or she is replacing was pledged, (1) the votes of
20 such elector shall be nullified, (2) such elector shall forfeit such elector's
21 office as presidential elector, causing a vacancy in the electoral college,
22 and (3) the other electors present shall elect by ballot an elector to fill
23 such vacancy, and the person so chosen shall be a presidential elector,
24 shall perform the duties of such office and shall cast his or her ballots
25 for the candidates to whom the elector he or she is replacing was
26 pledged.

27 (b) Any presidential elector who fails to cast such elector's ballots for
28 the candidates under whose names such elector ran on the official ballot,
29 or who fails to cast such elector's ballots for the candidates to whom the
30 elector he or she is replacing was pledged, shall (1) be ineligible, upon
31 such failure and thereafter, to the office of presidential elector, and (2)
32 be imprisoned not more than one year, be fined not more than one
33 thousand dollars, or both.

34 Sec. 2. Section 9-315 of the general statutes is repealed and the
35 following is substituted in lieu thereof (*Effective October 1, 2023*):

36 (a) The votes returned as cast for a senator in Congress,
37 representatives in Congress and presidential electors shall be publicly
38 counted by the Treasurer, Secretary of the State and Comptroller on the
39 last Wednesday of the month in which they were cast, and such votes
40 shall be counted in conformity to any decision rendered by the judges
41 of the Supreme Court as provided in section 9-323. In accordance with
42 the count so made, they shall, on said day, declare what persons are
43 elected senators in the Congress of the United States or representatives
44 in Congress, and the Secretary of the State shall forthwith notify them
45 by mail of their election; and they shall declare the proper number of

46 persons having the greatest number of votes to be presidential electors
47 and, in case of an equal vote for said electors, shall determine by lot from
48 the persons having such equal number of votes the persons appointed,
49 and the Secretary of the State shall forthwith notify them by mail of their
50 appointment.

51 (b) If the Treasurer, Secretary of the State or Comptroller fails to carry
52 out any duty required under subsection (a) of this section, any resident
53 of the state may bring an action against said officer, as applicable, in the
54 Supreme Court for a writ of mandamus to compel said officer to carry
55 out such duty. Any such resident who prevails in such action shall be
56 entitled to recover court costs and reasonable attorney's fees.

57 Sec. 3. Section 9-316 of the general statutes is repealed and the
58 following is substituted in lieu thereof (*Effective October 1, 2023*):

59 (a) The Treasurer, Secretary of the State and Comptroller shall, within
60 thirty days after a vacancy election for a senator in Congress or
61 representative in Congress, subject to the provisions of section 9-323,
62 publicly count the votes returned, and declare what person is elected,
63 and the Secretary of the State shall forthwith notify [him] such person
64 by mail of [his] such person's election. The Secretary of the State shall
65 enter the returns in tabular form in books kept by [him] the Secretary
66 for that purpose and present a copy of the same, with the name of, and
67 the total number of votes received by, each of the candidates for said
68 office, to the Governor within ten days thereafter.

69 (b) If the Treasurer, Secretary of the State or Comptroller fails to carry
70 out any duty required under subsection (a) of this section, any resident
71 of the state may bring an action against said officer, as applicable, in the
72 Supreme Court for a writ of mandamus to compel said officer to carry
73 out such duty. Any such resident who prevails in such action shall be
74 entitled to recover court costs and reasonable attorney's fees.

75 Sec. 4. Section 9-317 of the general statutes is repealed and the
76 following is substituted in lieu thereof (*Effective October 1, 2023*):

77 When any senator in Congress has been elected, the Governor shall
78 certify [his] such election under the seal of the state to the President of
79 the Senate of the United States, which certificate shall be countersigned
80 by the Secretary of the State. If the Governor fails to so certify or the
81 Secretary fails to so countersign, any resident of the state may bring an
82 action against said officer, as applicable, in the Supreme Court for a writ
83 of mandamus to compel said officer to carry out such duty. Any such
84 resident who prevails in such action shall be entitled to recover court
85 costs and reasonable attorney's fees.

86 Sec. 5. Section 9-318 of the general statutes is repealed and the
87 following is substituted in lieu thereof (*Effective October 1, 2023*):

88 (a) The votes for Governor, Lieutenant Governor, Secretary of the
89 State, Treasurer, Comptroller and Attorney General shall be canvassed
90 by the persons authorized to receive and count the same, within thirty
91 days next after they were cast, unless a complaint under the provisions
92 of section 9-324 is pending, in which case such canvass shall not be made
93 until after the third Monday of December next after they were cast. In
94 making such canvass, the votes upon the returns made by presiding
95 officers shall be counted in conformity to the decision of the judge of the
96 Superior Court or of the Supreme Court, as the case may be, and such
97 canvass shall be in conformity to such decision, and a fair list of such
98 votes made to conform to the original returns of the presiding officers,
99 as corrected or affected by the finding or decision of such judge, with
100 the original returns of the presiding officers and certified copies of the
101 decision of such judge, shall, on the first day of the session, be laid before
102 the General Assembly, which shall declare who are elected to said
103 offices respectively.

104 (b) (1) If any of the persons authorized to receive and count the votes
105 for Governor, Lieutenant Governor, Secretary of the State, Treasurer,
106 Comptroller or Attorney General fail to carry out any duty required
107 under subsection (a) of this section, any resident of the state may bring
108 an action against such person, as applicable, in the Supreme Court for a
109 writ of mandamus to compel such person to carry out such duty.

110 (2) If the General Assembly fails to declare who is elected to any of
111 said offices, as required under subsection (a) of this section and in
112 accordance with the provisions of section 9-173, any resident of the state
113 may bring an action against the General Assembly in the Supreme Court
114 for a writ of mandamus to compel the General Assembly to carry out
115 such duty.

116 (3) Any resident of the state who prevails in an action brought under
117 subdivision (1) or (2) of this subsection shall be entitled to recover court
118 costs and reasonable attorney's fees.

119 Sec. 6. Section 9-319 of the general statutes is repealed and the
120 following is substituted in lieu thereof (*Effective October 1, 2023*):

121 (a) The votes for state senators, state representatives and judges of
122 probate, as returned by the moderators, shall be canvassed, during the
123 month in which they are cast, by the Treasurer, Secretary of the State
124 and Comptroller, and they shall declare, except in case of a tie vote, who
125 is elected senator in each senatorial district, representative in each
126 assembly district and judge of probate in each probate district. The
127 Secretary of the State shall, within three days after such declaration, give
128 notice by mail to each person chosen state senator, state representative
129 or judge of probate of [his] such person's election.

130 (b) If the Treasurer, Secretary of the State or Comptroller fails to carry
131 out any duty required under subsection (a) of this section, any resident
132 of the state may bring an action against said officer, as applicable, in the
133 Supreme Court for a writ of mandamus to compel said officer to carry
134 out such duty. Any such resident who prevails in such action shall be
135 entitled to recover court costs and reasonable attorney's fees.

136 Sec. 7. Subsections (b) and (c) of section 51-199 of the general statutes
137 are repealed and the following is substituted in lieu thereof (*Effective*
138 *October 1, 2023*):

139 (b) The following matters shall be taken directly to the Supreme
140 Court: (1) Any matter brought pursuant to the original jurisdiction of

141 the Supreme Court under section 2 of article [sixteen] sixteenth of the
 142 amendments to the Constitution; (2) an appeal in any matter where the
 143 Superior Court declares invalid a state statute or a provision of the state
 144 Constitution; (3) an appeal in any criminal action involving a conviction
 145 for a capital felony under the provisions of section 53a-54b in effect prior
 146 to April 25, 2012, class A felony or any other felony, including any
 147 persistent offender status, for which the maximum sentence which may
 148 be imposed exceeds twenty years; (4) review of a sentence of death
 149 pursuant to section 53a-46b; (5) any election or primary dispute brought
 150 to the Supreme Court pursuant to section 9-323 or 9-325, or any action
 151 for a writ of mandamus brought to the Supreme Court pursuant to
 152 sections 9-315 to 9-319, inclusive, as amended by this act; (6) an appeal
 153 of any reprimand or censure of a probate judge pursuant to section 45a-
 154 65; (7) any matter regarding judicial removal or suspension pursuant to
 155 section 51-51j; (8) an appeal of any decision of the Judicial Review
 156 Council pursuant to section 51-51r; (9) any matter brought to the
 157 Supreme Court pursuant to section 52-265a; and (10) any other matter
 158 as provided by law.

159 (c) The Supreme Court may transfer to itself a cause in the Appellate
 160 Court. Except for any matter brought pursuant to its original
 161 jurisdiction under section 2 of article [sixteen] sixteenth of the
 162 amendments to the Constitution, the Supreme Court may transfer a
 163 cause or class of causes from itself, including any cause or class of causes
 164 pending on July 1, 1983, to the Appellate Court. The court to which a
 165 cause is transferred has jurisdiction.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2023</i>	9-176
Sec. 2	<i>October 1, 2023</i>	9-315
Sec. 3	<i>October 1, 2023</i>	9-316
Sec. 4	<i>October 1, 2023</i>	9-317
Sec. 5	<i>October 1, 2023</i>	9-318
Sec. 6	<i>October 1, 2023</i>	9-319
Sec. 7	<i>October 1, 2023</i>	51-199(b) and (c)

Statement of Legislative Commissioners:

In Section 1(a)(2), "position" was changed to "office" for internal consistency; in Section 4, "his election" was changed to "[his] such election" for consistency with standard drafting conventions; in Section 5(b)(1), "Comptroller and Attorney General" was changed to "Comptroller or Attorney General" for clarity and accuracy; in Section 6(a), "his election" was changed to "[his] such person's election" for consistency with standard drafting conventions; in Section 7, "sixteen" was changed to "[sixteen] sixteenth" for consistency with standard drafting conventions, and Subsec. (c) was added to conform with such change.

GAE *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 24 \$	FY 25 \$
Governor's Off.; Treasurer; Attorney General; Secretary of the State	GF - Potential Cost	See Below	See Below

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 24 \$	FY 25 \$
Various Municipalities	Potential Cost	See Below	See Below

Explanation

The bill does create some potential cost to the state. The bill creates criminal penalties for faithless electors at the national level; and empowers state residents to bring a writ of mandamus action against specific officers to complete certification duties. Any mandamus case would be given jurisdiction to the Connecticut Supreme Court. The bill does note that if a resident were to prevail in their lawsuit, they would be able to recover their court costs and reasonable attorney's fees. While it is not specifically stipulated who those potential fees could be recovered from, if it were state government, some costs could be involved.

Because registrars and municipal officials are responsible for some election related certification it is possible that they too could face a mandamus lawsuit. Should the individual suing prevail like state government local government could face costs of recovery.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 6872*****AN ACT CONCERNING FAITHLESS PRESIDENTIAL ELECTORS AND AUTHORIZING MANDAMUS ACTIONS RELATED TO THE CERTIFICATION OR DECLARATION OF ELECTION RESULTS.*****SUMMARY**

This bill creates several practices regarding the certification and election of public officials. Specifically, the bill does the following:

1. establishes procedures for nullifying the vote of, and removing and replacing, a presidential elector who does not vote as pledged (i.e., a faithless elector);
2. establishes a criminal penalty for becoming a faithless elector and a bar from serving as a presidential elector in the future; and
3. authorizes any state resident to bring mandamus actions against certain officials charged with certifying election results.

The bill also makes technical changes.

EFFECTIVE DATE: October 1, 2023

FAITHLESS ELECTORS

Under existing law, when a voter casts a ballot for a presidential candidate, the ballot is cast for a slate of presidential electors who have pledged to vote for that candidate when all state electors convene to choose the president and vice president of the United States (CGS § 9-175). State law currently requires presidential electors to vote for the presidential and vice-presidential candidates under whose names they ran on the official ballot, but it does not impose consequences if they fail to do so.

In the case of a presidential elector who does not vote for the candidates under whose name he or she ran on the ballot, the bill does the following:

1. nullifies the vote;
2. requires the elector to forfeit his or her office as presidential elector, causing a vacancy;
3. requires the other electors present to elect by ballot a replacement elector to fill the vacancy;
4. requires the replacement elector to vote for the candidates to whom the elector being replaced was pledged;
5. bars future eligibility as an elector; and
6. subjects the elector to a fine of up to \$1,000, up to a year in prison, or both.

The bill also applies these provisions to replacement presidential electors who fail to vote for the candidates to whom the elector being replaced was pledged.

WRIT OF MANDAMUS

The bill allows any state resident to bring a mandamus action directly to the Connecticut Supreme Court to compel certain officers to comply with laws relating to certification or declaration of election results (see the table below, organized by bill section number). The bill also establishes the court's jurisdiction to hear such cases. If a resident prevails in the action, the bill authorizes the recovery of court costs and reasonable attorney's fees.

A writ of mandamus is a court order that compels a public official or agency to perform a specific duty. However, under Connecticut Supreme Court precedent, a writ is only proper when "(1) the law

imposes on the party against whom the writ would run a duty the performance of which is mandatory and not discretionary; (2) the party applying for the writ has a clear legal right to have the duty performed; and (3) there is no other specific adequate remedy” (*Miles v. Foley*, 253 Conn. 381 (2000)).

Table: Covered Offices and Certifying Officials

§	Office to be Certified	Certifying Officials
2	Congressional legislators and presidential electors	Treasurer, secretary of the state (SOTS), and comptroller
3	Vacancy for Congressional seat	Treasurer, SOTS, and comptroller
4	Congressional senator	Governor and SOTS
5	Governor, lieutenant governor, and constitutional officers	People authorized to receive and count the votes and the General Assembly
6	State legislators and probate judges	Treasurer, SOTS, and comptroller

BACKGROUND

Related Case

In 2020, the U.S. Supreme Court affirmed a Washington Supreme Court decision, holding that a state may constitutionally enforce a presidential elector’s pledge to support his or her party’s nominee – and the state voters’ choice – for president (*Chiafalo et al. v. Washington*, 140 S. Ct. 2316 (2020)).

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable

Yea 13 Nay 6 (03/15/2023)