

CHAIRPERSON: Representative Michael
D'Agostino.

REP. D'AGOSTINO (91ST): Wanted to mull over the weekend whether there was any way to achieve some consensus and see if we could arrive at something we could all agree to, but regrettable we could not.

So, what we are going to do shortly is recess and -- we -- we have agreed on sections one and two, The Procedural History and Facts. We received -- we received some input from Representatives Candelora and Perillo on that. That's been incorporated. So, we'll generate a final report that has the two agreed upon sections and then the two sections where The Committee diverges. Myself and Representative Haddad have our conclusions and then we will fold in Representatives Candelora and Perillo's sections and come back with a final report shortly. Any other -- so we are going to recess to do that shouldn't take too long, maybe 15 to 20 minutes, and then hopefully we will have the final draft for distribution and filing for The Court, so thank you. We are going -- [laugh] for The Court, for The Clerk excuse me. We'll recess now.

[Recess]

REP. D'AGOSTINO (91ST): We'll call The Committee in Contested Elections back to order at 10:34 a.m. We've distributed to Committee Members and the press, and certainly we'll have available for public consumption the final report on The Committee on Contested Elections. As I mentioned it before our

recess, we -- we worked hard [cough] over the weekend amongst ourselves trying to find some agreement specifically we were discussing, as Representatives Candelora and Perillo mentioned in their section of the report, the possibility of a district only election, but -- at Bunnell -- but we couldn't quite get there. Therefore, what this report does is it has the first two sections, The Procedural History and The Facts, on which we do agree. A brief third section and we note that -- that we worked hard to try to come to some agreement, but we couldn't. And then, the rest of the report sets forth the conclusions of the two Democratic members and the conclusions of the two Republican members with respect to the final outcome.

No surprise from the conversation on Friday that -- that Representative Haddad and I have concluded that even though there was an error and a mistake had been held, that we do not feel like a district wide election should be ordered for the reasons that we discussed on Friday and we can touch up on here again, but -- but principally because we did not feel that it met -- that the evidence before us, such as it was met the applicable standard and we couldn't disenfranchise the 10 thousand people who had already voted validly, based on that evidence, as applied to that standard. However, Representatives Candelora and Perillo will speak for themselves with respect to their report, but they obviously came to the opposite conclusion and feel that a district wide new election should be ordered. Open up for comments to The Committee and then we'll -- we'll wrap up because I'm sure there's going to be some questions about where do we go from here.

Representative Perillo.

REP. PERILLO (113TH): Thank you. As the Representative mentioned, we reached different conclusions as to the remedy. And -- and the basis for that, for Representative Candelora and myself, really came down to the case law, and -- and there were three primary cases that have significant relevance here. The first is *Bortner* and *Bortner* became the basis for our -- for much of our discussion. And, this is a case ironically that had no new vote ordered by The Supreme Court. In this case there were 56 -- the margin was 56 votes, but -- and I would agree the court ruled that at no point could The Plaintiff -- The Complainant get any sense of what those missing votes were. It was agreed that they was some degree of miscount, but in this particular case the burden of proof was not met, and I would agree that was true.

But that case did a few important things, it set for us a standard. That a miscount had to be substantial and that there had to be serious doubt about the, and I will use this word intentionally with emphasis, about the reliability of the election, not the outcome of the re-election -- the election, the reliability of that election. Even more powerful though, in a concurring opinion, and Justice mentioned it, the public -- while the public has an interest in the stability of the election, they have an even more powerful interest in the integrity and accuracy of that election.

And, that's very, very important because it takes us to our next case, *Rutkowski*. In this case, the court ordered a new vote and the fact patterns

actually very similar to the fact pattern that we have here. In this case, there was a margin of three votes with 17 votes uncounted because individuals were given an incorrect ballot. And from this case, in which a new vote was ordered throughout the district, and again this was a municipal race, the court stated that the new election should minimize differences between the first and the new election. So, we have *Bortner*, which establishes a set of standards. We have *Rutkowski*, which utilizes those standards and determines that indeed a new election is needed.

Now *Bauer* takes it even a step further. In this case a new vote was ordered. The margin, again and this, to be clear, this is a margin between the 12th and 13th place candidates and a race for City Council. The margin was 102 votes. Statistics indicated that 1 of 31 -- 1 of 31 voting machines was not functioning properly. The exact number of individuals who had intended or may have intended to vote for one of the candidates was never determined, never determined. In this case we know it was 75, but in -- but -- but in the case before us it was 75, but in *Bauer* that was never determined, and again 1 of 31 machines for the 12th and 13th positions on the ballot. So, what is different in this matter? I would argue that in -- that in fact we have stronger evidence before us. It was mentioned in previous meetings that there was no evidence. The evidence we have; we have 75 pieces of evidence, 75 ballots cast by individuals in the 120th -- 120th Legislative District. Ballots utilized that were from the 122nd, 75 people showed up to vote in the 120th for a candidate in the 120th and were not given the opportunity to do so, that's

a fact. It's a fact upon which we all agree. I reach the conclusion, I will let Representative Candelora speak for himself, I reach the conclusion that -- that in and of itself, that margin of 13 votes with 75 voter's intention unknown, that in and of itself obviously needs through a substantial miscount and that substantial miscount clearly, in my eyes, clearly calls into serious doubt the reliability of the election.

I would argue it goes even further and calls into doubt the outcome, but at a minimum it calls into doubt the reliability and as was stated in concurring opinion in *Bortner*. Even more powerful interest is the integrity and accuracy of the election itself. In this case, as in *Bauer*, as in *Rutowski*, the reliability of the election is cause -- is -- cause serious doubt -- serious doubt it's caused. Because of that, I just don't see how we can reach any other conclusion but to order a new district wide election. I just don't see it. It defies logic and I would argue that if anyone of the 151 members of The House of Representatives were in a situation where they lost a race by 13 votes and a few days later found out that 75 people showed up to cast a ballot and were given the wrong ballot, I can't imagine that any of the 151 of us would feel differently than I do today.

All -- all of us would say wait a second, that can't be; we've got to do this again. But, here we are with a situation where we don't have universal agreement on that here and it boggles my mind. But that said, I do hope and expect that we will have another crack at this when these items come before us on the floor of The House in the form of a

Resolution. It's unfortunate that we are in a situation where we don't have universal agreement. I -- I -- I have more to say on this but I'll -- I'll hand it over to someone else. This is really unfortunate. It's sad.

REP. CANDELORA (86TH): Thank you. Good Morning. I just want to start out by thanking The Members for -- for working well together and -- and keeping those open lines of communication. I also want to thank the Town of Stratford, I think their organization, their forthright on providing us the information, the evidence made this a lot smoother than I thought. And, I want to say the level of professionalism and knowledge, not just of the law but of the -- the actually inner workings of that election; how they discovered this error, how they pinpointed the number of ballots that were in error, you know, was impressive. And, I think they do deserve credit for taking something that was sort of chaotic and unfortunate and putting it together in a clear way for us to be able to do our job.

And I think, obviously we -- we've agreed upon the facts in part because of all of that. And I think, we're -- I'm really stuck and troubled. As I said on Friday, elections are a snap shot in time, but clearly the evidence has shown us that this election was taken with a broken camera and how skewed that picture came out, to me doesn't really matter the fact is the picture is skewed. And, it is impossible given this evidence to ascertain really with any certainty who -- who won the election. But, my concern is when The Supreme Court ruled last Wednesday on what our job was, they made a finding that we have exclusive jurisdiction over contested

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elections, which to me puts a lot more of a burden on all of us to recognize the fact that we are arbitrating something, we are creating precedent that an individual that -- that this body is going to be adhering to in future precedents, and given this fact pattern, and given all the fact patterns of the cases that we've seen that The Connecticut Courts rule on, I'm concerned we're setting a standard so high that individuals will never be able challenge State Senate elections or State Representative elections.

And, that is why we sort of diverged off the path and are focusing on Supreme Court Precedent as opposed to attempting to bring in the rules of The United States Supreme Court, which is a, you know, Federal separate body of ours to create a standard that we need to prove that the election outcome would have been different. Given the secrecy of our election process and to The Constitution under our state laws, it's almost impossible for anybody to ever determine how somebody is going to vote and, therefore that standard to me is -- is much too high. Additionally, to continue to take into account the disenfranchisement of the voters who were able to vote correctly is another standard that I don't see any of our courts applying. And, in fact in *Bauer v. Souto* they made the -- the acknowledgement, here you had, you know, over 10 thousand people voting for 12 different elected seats and they ordered an entire new election for the entire slate, all 12 candidates because No. 13's voting booth might have been broken, one of the machines at one precinct.

And, The Court had found that, you know, the outcome

could be more expensive but once the trial court had nullified the first election, what needed to be recreated was a Democratic process surrounding the selection of The Council not the particular conditions surrounding the election. It is true that the results -- the result yield a more expensive and time consuming process that -- than either of the other two potential solutions. That, however, is the price of Democracy. And so, I feel that given the factual errors that we -- we have seen it rises enough to a level that we should be setting down a new election and -- and unfortunately we should be paying that price for Democracy. I am concerned that these standards that we are importing at a Federal level, which to me could be advisory, but we shouldn't be relying on them.

And I -- I think unfortunately, you know, my colleagues here are relying too heavily on that in order to avoid the result of a new election. That we are really creating a due process issue for the candidate that has brought their contest to us, because the nature of his complaint exclusive relies on Supreme Court Precedent, which I think is the rightful precedent to be relying on. And, we are importing a new standard into Connecticut law in order to try to frankly prevent a new election. And so, I am very concerned, I have said it before about that standard going forward, I think that remedy will foreclose even in the presence of fraud or intentional altering of an election. It would prevent this body from granting a new election because an individual might be unable to prove that the results of an election would be different. And so, with that unfortunately I -- I need to stand ground on Connecticut Supreme Court Precedent and

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make the recommendation that we do hold a new trial.
Thank you.

REP. D'AGOSTINO (91ST): Thank you Representative Perillo. And, I want to echo Representative Candelora's initial thoughts, at least in part [laugh] certainly -- certainly with respect to the -- the -- The Committee Members, even though this bipartisan result it was not a bipartisan process, at least I felt that way. I felt like we -- we approached everything together, worked together, tried to achieve consensus, and could not for the reasons that have discussed and I'll discuss a little bit further.

I want to thank our commit -- our -- our -- our staff who really were pulled in from their various other duties [laugh] that are going on right now, this is a special committee. They all have committees that they're working on and I really appreciate you all taking the time behind the scenes, which people didn't see. There was some tremendous work by lawyers for both sides of the -- of The House, incredibly skilled work by them and I want to thank them as well. I certainly want to thank our Clerk, Adam Square, who -- who was pulled off from The Judiciary Committee and his -- actually his expertise with respect to the subpoenas was appreciated. So, thank you Adam for doing that. I'm -- I'm -- I -- I certainly want to thank the Stratford Election Officials for coming in. Everybody was very candid, I -- I think, and -- and they -- they did do a great job getting everything to us.

I'm -- I'm -- I'm a little sanguine about some of

the things that I heard, and I'd -- and I'd -- I'd like us to get together after this and maybe see if we can come to agreement on proposing some -- some changes to the election process based on things that we heard. For example, I -- I was very disturbed to hear that there's just no requirement that election officials keep a record of when they reject a vote, I think that should in a log somehow, especially when there is a recount. Even though, obviously it's overseen by both sides and both sides sign off, it would've been helpful to -- to know that. And, there's some other things about the election process that were revealed to me, not having gone through a recanvas before. But, I think that maybe we can agree on to -- to recommend to The Full House, in a bipartisan fashion that -- that could be -- could help improve our election process and maybe help prevent mistakes like the one that occurred here going -- going forward.

With respect to the final conclusions, look I -- I certainly respect and appreciate, and that has been part of the process all along, the positions of Representatives Candelora and Perillo. And, I can understand exactly how they came out and why they came out. I wanna just address why we came out the way we did, it's all in the report, but we talked about some of this on Friday. And, I want to start with by noting that when we talk about a standard to be applied here, I think we all are in agreement that -- that what we're hoping to do with this is set forth some guidance for future Committees on Contested Elections. And, all four of us used the *Bortner* case as our touch stone, our beginning part of the analysis. In fact, if you remember when -- when we opened this -- this Committee it was the

first thing I said and quoted from was the *Bortner* case. And, in our analysis we do -- we do use *Bortner* as the frame work for our analysis and we don't -- we don't really use the Congressional standard to amplify that significantly or really change the *Bortner* standard. At the end of the day we are the concerned with rather or not if there was a mistake and there was here, the results -- the reliability of the results of the election. Just to be clear Representative Perillo, but *Bortner* says it's the reliability of the results, which to me does mean outcome or seriously in doubt. The question is what does seriously in doubt mean? That could mean anything to anybody if you ask them. And, so we tried to look at and -- and -- and put a bit more of an explanation on what seriously in doubt means by looking at how The Courts have applied that and what's happened in (inaudible-00:51:06)situations.

And, what I would note is that time and time again when The Supreme Court applies that standard it has before it some sort of concrete verifiable evidence on the basis of which they can overturn an election. And, all of those cases starting with *Bortner* begin with the concern that doing so is a remarkably serious thing to do and incredibly dangerous in my mind when invested solely in a political body like The Legislature. And, that you have to weigh not just the concerns of The Complainant, the Contestants, and not just the concerns of people who may have been impacted by an error, but by -- you also have to weigh the concerns of the, in this case, more than 10 thousand voters who did vote validly. We are in agreement on that, there was no other issue anywhere else with respect to this

election. So, how do you weigh all of those within the determination of whether or not the results of an election are seriously in doubt, and time and time again The Supreme Court, as I mentioned, has had verifiable evidence before it. Even in the *Bauer*, which my colleagues rely, there was testimony -- expert testimony from a mathematics professor, who not only looked at the machine but at the trial court level put in evidence -- undisputed evidence that had the machine been operating properly in that case The Plaintiff, The Contestant in that case would've gotten a 103 more votes. We did not have that here. We did not have any evidence like that here.

All we had at the end of the day were the results from Bunnell and they were the results at the end of the day, not even the results -- and there is no way to know exactly what the break down would've been between 2 o'clock and 3 o'clock when this incident occurred. And so, what we were left with, if you recall, on Friday we were talking about was -- was to do some guess work and apply -- do we apply the percentage at the end of day with what they would have gotten on the overall vote and can split it up that way and see if we can determine if the results would've been seriously in doubt. And, at the end of the day Representative Haddad and I are uncomfortable with disenfranchising 10 thousand people using a calculator and elementary level math skills, and that was all we were left with in this case. And, in those other cases, including *Bauer*, there was something more.

You could look at absentees and determine how they would've gone. You could look at a statistical

analysis and make a determination. We did not have that here and that is what gave us tremendous discomfort in finding that the results would have been seriously in doubt here, cause we just didn't know we were left with guess work and guessing to us was not enough.

The question now, I think, is really what -- what happens next. And, we're in a little bit of uncharted territory because this is the first time as far as we can tell that a Committee on Contested Elections has split like this. And so, we've got two different conclusions here. I -- I -- it -- it is probably above our pay grades, well maybe not mine but -- maybe mine but maybe Representative Candelora will be up in the room when this is discussed, but I -- I -- I think at the very least I would expect our Republican colleagues to offer resolution to The House floor that would adopt their report. I don't know if we would do the same cause we are calling for no new election. Our -- our leadership will have to determine exactly how this is going to be put forward.

I suppose you could put one forward on our end that would -- that would say to split report and therefore the complaint should be dismissed. Either way, what our hope is, is that we -- we've got a -- we've got a comprehensive report here, we've got our analysis, we've got the facts, we've got the arguments made by both sides. It will be distributed to The House Membership. There will be a debate on the floor, we think, and -- and that will help inform The Full House in terms of what they wanna do. And, I wanna -- I wanna emphasize again what I just said at the beginning, that even

though this may seem like a bipartisan result, it was not a bipartisan process. And -- and, I felt like at the -- at the very least we can say confidently that the two candidates were given every opportunity to be heard. We received input from their attorneys. We obviously took as much evidence as we could and this is the result we came with -- I agree with Representative Perillo, it is unfortunate we could not agree, I do -- I do agree with you with that. It would've been nice if we could've, we tried to get there, and we couldn't, and it's unfortunate that just -- that the lens that we had led to different conclusions, but -- but such as the nature of -- of what is ultimately a process that's -- that's -- that's difficult and that we approached it the best way we could, but this is -- this is where we ended up and we'll see what happens on the -- on The House floor.

Any further comments from Committee Members?
Representative Haddad.

REP. HADDAD (54TH): I am sure I can't speak as eloquently as many of my colleagues on -- on this issue, but I'll just add just a few final remarks from my perspective.

Again, though, thank you to the staff who helped us serve through this process. We appreciate, you know, the -- the degree in which you jumped in and helped above and beyond your other responsibilities. I think it is important to know that all of you have regular jobs in the building and [laugh] -- and that don't include man -- helping to manage The Committee of Contested Elections, and so pulling double duty is sometimes a challenge but we appreciate the

effort. And, I'd like to sort of single out, you know, from my perspective, the work of the Chairman of this Committee who, I think, did a really great job at not just managing the process and taking really the lion's share of burden of doing that process, but -- but also in drafting for my comment and -- and input but doing most of the drafting -- all of the drafting of the -- of the decision that we -- that -- that Representative D'Agostino and I sure will sign our names to. But also, I wanted to thank my Republican colleagues for, I think, a very respectful dialogue and -- and I should think that there's something good to come out of this, which is to despite the fact that we have not been able to agree on precisely on a standard to apply, or a remedy. Yeah, this is a decision that ultimately didn't rely -- wasn't our responsibility, we're making a set of recommendation to The Full House and it's The Full House that, I think, will, you know, depending on how our leaders are managing this process can have a pretty robust debate about.

And, the two arguments are the two perspectives, I think, are pretty well outlined in the different sections of the report, and I think, to that extent I think, that The House will have an opportunity to weigh in and offer some definitive decisions on how we should proceed into the future. I want to say additionally, that I think that the strength of the report that Representative D'Agostino and I agree on -- the part of the parts of the report that we agree on is not that it just depends on the -- The Connecticut Court cases, which is the basis for it. But it also includes the -- the wisdom and the experience and considered the wisdom and experience of -- of the *Deschler* Precedence, which I think, you

know, I'm surprised that -- that those precedence's aren't acknowledged at all in -- in the other part of the report. It seems to me that -- that is really important. I've said it a number of times and I find the precedence and rules that are set up by Congress and -- and determining exactly these kinds of contests are important for us to consider. And, that seems to have been rejected by the other half of the report and I'm not sure why. It is after all, you know, very --very precisely almost identical to the exercise of the authority that we are about to embark on as Full House Membership. A political body making a decision about a contested election and I think the strength of, you know, our report is that it -- it -- it considers that and I think it's an important consideration given the similarities.

Nonetheless, I find myself, actually you might be surprised to hear this, but I found myself through the proceedings and through our deliberations very tempted to support a more [laughing] permissive standard. It is much more in keeping, I think, with my own sort of personal philosophy, I mean I support things like Automatic Voter Registration and Election Day Registration and other policy decisions that we make appear to try to encourage people to vote and that participation and to really value and hold those -- those votes really high.

What I continually came back to though, is the serve responsibility that we had to the 10 thousand folks who already cast a valid and unquestionably valid ballot in this election. And, the fact that the results were certified by election results by local elections officials. That -- that to me, I think,

is part of what *Deschler* sort of indicates, it's by clearly outlining the burden of proof on the contestant and also, I think, setting up the -- the -- the sort of prima facie standard that since we've -- we have an elected representative who's taken the oath of office, that -- that -- that -- that the burden of proof and responsibility of demonstrating that a -- that a remedy is required falls on the contestant. And, I think that our standard that we would recommend The House adopting takes into account those things. Far from being a high standard that would be impossible to proof in all circumstances, I think, you know, we can engage in theoretical conversation about what kind of evidence could have been provide to committee to meet that standard.

I think there's plenty out there had it been presented and had it existed; I guess is the -- the concern that I have. Voluntary testimony from voters could have been presented. Expert testimony by statistician, evidence that of specific -- even -- even evidence specific party activity during the suspect time period, I think might have provided a hook for this Committee to hang it's hat on, but none of that was presented. And, instead we are left with just a simple numbers and no guidance at all about what those numbers would mean for us.

And so, I worry about the precedent that is being -- will be set by this decision. And, we heard, I think, some concern about a precedent that would rule that standard that would be set to high. I think, Justice, much of a concern for us and for The House when it makes its decision is -- should -- is -- is establishing -- we should be careful not to

establish a standard that's so low that's an invitation for every candidate who loses a close election to present their case before the -- before The House of Representatives because there are irregularities. So, though certainly it's their right, I think that as we exercise that -- that responsibility we need to be very clear about what the standard is. I find that one inconsistency and that this -- yeah, and I appreciate the effort by Representative Candelora and Perillo in -- in their comment on page 24, which says that they feel that they wanna make sure that we understand that in hypothetical election where a 100 ballots were misplaced and the margin was 95, that error would not cast serious doubt in the reliability.

And that, I think, is sort of an interesting comment to make, because -- because it implies that of course that there is some -- that there is some breaking point where -- based on the evidence that there should be some breaking point between when election is obviously required and one where it is not. What we try in our decision and our recommendation to do is sort of define for folks what -- who's responsibility it is for declaring where that -- that -- that breaking point has been met and providing some guidance to election -- to contestants about what that breaking point should look and -- and despite the -- the -- the comment and I don't find there to be any clarity at all and the recommendation -- the other recommendation about where that breaking is, and I think that that again -- I think that leads us to a point where every close election is invited to come to the -- and encouraged to come to The House, so that they might get a second bite at the apple. And, I'm not sure

that that's what we want to set up as a political body and I'm sure that -- that's not a position that the majority of The House Members wants to be in to routinely make decisions about close elections.

And, so I think that this will be an interesting debate moving forward and I'm glad that Members will hear from both sides of this Committee. I think that -- that's an opportunity more than anything else for us to -- to fully debate the issue and to -- to come to some resolution that we can use moving forward. And, I appreciate the effort by every member of The Committee this will argue, I think what -- you know -- the -- you know -- argue clearly what they believe in. Ultimately, I think that the recommendation that Representative D'Agostino and I serve and making, I think should be the one that prevails on The House but that's a debate for another day. And, I appreciate all of the work of -- hard work of The Members of this Committee. Thank you.

REP. CANDELORA (86TH): I don't wanna blather and go back and forth, but I just wanna sort of clarify and respond to this. As I view our body, this Committee, we had a complaint before us calling into question of a particular election, and I don't -- I don't think we necessarily have to take up every complaint. It's certainly within the jurisdiction of The House of Representatives and The Speaker to determine if facts presented rise to the level of an investigation and -- and the fact that we've only had two in the last 50 years sort of provides evidence that there's not an open door policy for anybody just to complain to us as a trigger or contest. So, I just want to make that clear, cause

I think regardless of how our decision moves going forward, which ever standard we apply, it doesn't open up any sort of flood gates. And, -- and, just a second point about setting a standard high or low. I -- I don't view either of one us as taking a standard that is lower, there're -- there're just different.

I think clearly from what Representative Haddad has said we have adopted a standard that's based on Supreme Court Precedent, and he has chosen to incorporate the rules of the elect house and bringing in *Deschler* and Federal Law, which is his choice and his right as a Committee Member. But, I don't wanna pit the two standards as one being high, one being low, I think that there're both very different. And, I think also in terms of burden of proof, if I thought I needed more evidence to make a different decision -- if I felt we needed a statistician to come in, it's certainly within our right as a Committee to make that request and to bring somebody in. This isn't a Court of Law, this is a Deliberative Committee. But, I don't feel that we needed that type of information in order to come to my conclusion. So, I just wanted to make that clear, because had any member of this committee wanted a statistician to provide the information, I think we certainly could've requested that and pay for it. But, given the standard set by The Supreme Court I just didn't think that was necessary. So, I just want to put those two issues on the record and -- and thank you for comments.

REP. D'AGOSTINO (91ST): All right, that concludes The Committee on Contested Elections. We've got our final report that will instruct The Clerk -- our

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February 4, 2019
10:00 a.m.

Clerk to transmit to The Clerk of The House. Thank you all again, thank -- thanks to the staff, thank you all for your patience I appreciate it.

I think we all are in agreement -- I -- just for the record; we all are in agreement that this final report, we should ask our Clerk to transmit to The Clerk of The House. Thank you. We are concluded.