

CHAIRPERSON: Representative Michael
D'Agostino

REPRESENTATIVES: Candelora, Haddad, Perillo

REP. D'AGOSTINO (91ST): All right, we'll call the Committee on Contested Elections to order 11:05 on February 1st. We have obviously concluded our acceptance of evidence and testimony we received from the parties briefing on Wednesday morning and then reply briefs on Thursday morning so that concluded. I haven't heard from them about anything else they might have wanted submitted so I am going to assume we received everything we wanted, that they wanted to send to us. We also received, the Committee has interest, the absentee ballots from the Town of Stratford as well as the spoiled ballots. I may want to talk a look at those at the break but we do have them and that should be reflected in the record as well that the Committee received those as well.

So in preparation for today, based on everything that we received the Committee did draft, and I think we'll talk about this now, is an agreed upon, at the very least some threshold items which is for a report is the history of the Committee, the recitation of what we received and what we did, as well as factual conclusions based upon, factual findings based upon that evidence and testimony that the Committee received and reviewed that was circulated amongst all Committee members. Received some comments from Committee members, those will be all incorporated and I think, subject to further discussion, which I will open up now, that we are in

agreement on, that procedural history and most importantly those factual findings. Is that correct?

REP. CANDELORA (86TH): Yes, I think the perhaps the actual findings that you submitted to us and then we have that one change that was recommended from our staff to make sure it was incorporated on why Attorney Proloy did not appear before us, that being concerned about the ethical role under Practice Book 3.7 and so incorporating that I think we would be in support of the fact as written. And I want to just thank you for all your work in putting that together for us.

REP. D'AGOSTINO (91ST): No problem. That will be reflected, we will specifically reference the Rule that Attorney Das wanted referenced in his reason and rationale for not appearing before the Committee so that will be included. Aside from that, so I think we're, well I'm not going to read those facts into the record, I mean the bottom line for people who are interested is that we have settled on the fact that 75 voters in the 120th received the wrong ballot. That is the number that we have agreed upon based on reviews of the checklist and comparing it to the voter list, etc., etc. so that is the number.

REP. HADDAD (54TH): Just one very minor, and I'm not, I think I'm looking at the latest draft, but I'm not sure, but in the list of witnesses, or people, I mean it indicates that Joseph Collier and Dave Harriot are Democrats. I don't think this is a significant correction but my recollection is that one was a Republican and one was a Democrat.

REP. D'AGOSTINO (91ST): When we checked, actually they both were registered Democrats. One was appointed by the Republican and one was appointed by the Democrat. They are both indeed registered Democrats. These are the two assistant registrars who were at Bunnell, Mr. Collier and Mr. Hariot. I'll confirm, I mean before we submit this, I'll reconfirm that but that is, we did ask our staff to double check it. So 75 impacted voters, and we've got some other facts that we can refer to today. So I wanted to kick-off the discussion today by turning to what we do next and that is what do we do with those facts. What is the standard of review if you will that we will apply or should apply to those facts in order to come to a decision and I think we will help inform our discussion today. So I wanted to just take a moment to put my thinking into the record and open that up for discussion and if you will indulge me for a couple of minutes.

So from my perspective, we start by recognizing as the Connecticut Supreme Court recently did that the Connecticut Constitution vests the State House of Representatives with the "exclusive jurisdiction over Mr. Feehan's Election Challenge." That was in the recently released Feehen v. Marccone written opinion by the Supreme Court. And as the "Final Judge vested with such exclusive authority, the House and by extension, this Committee, created pursuant to House Rule 19, acts effectively in a Judicial capacity." That is what the Supreme Court said in it's opinion, in fact I will quote from them, "The exercise of this judicial power necessarily involves the ascertainment of facts, the attendance of witnesses, the examination of such witnesses with the power to compel them to answer

pertinent questions to determine the facts and apply the appropriate Rules of Law and finally to render a judgement which is beyond the authority of any other tribunal to review." That is our Connecticut Supreme Court in the recently released Feehan Decision. So this Committee as noted has indeed compelled the attendance of witnesses, it has conducted the examination of such witnesses, it's taken evidence and based upon that it has determined the facts as we just discussed. So it now must in affect, "Apply the appropriate Rules of Law" to use the Supreme Court's formulation and apply those Rules to the facts and make a recommendation to the full House so that the House may render a judgement. But what Rules of Law?

As a threshold matter, I believe, and I think this Committee believes that the parties to this proceeding and the parties to any future investigation by a Committee on Contested Elections are entitled to Due Process. That is they should be given an opportunity to be heard, to submit testimony evidence and arguments should they so desire, that obviously occurred here. Beyond that however, there are no "Rules of Law" or any other legal standards that govern how this Committee is to analyze the facts before it. The Connecticut Constitution does not set-forth any, nor do the House Rules, nor does Mason, nor does the resolution empowering this Committee. And a historical review of prior General Assembly Contested Election Committee report reveals no guidance either. And given that the "Exclusive Jurisdiction" to resolve this matter lies with the House and this Committee precedence from our Supreme Court or from the U.S. Congress do not control. They are however

persuasive in my opinion. When direct authority is lacking courts routinely look for guidance from other courts or other authorities that have considered the same or analogous issues.

Here, this Committee, can look to our Connecticut Supreme Court or congress for guidance as to the applicable standards to apply. Now in a series of cases deciding municipal election contests brought under applicable state statutes, the Connecticut Supreme Court has applied a two-part test to determine whether or not a new election is warranted. This is the Bortner Case that I started off reading from when we opened this Committee and there the Court said this, "The Court must be persuaded that (1) there were substantial errors in the rulings of an Election Official or Officials or substantial mistakes in the count of the votes and (2) as a result of those errors or mistakes, the reliability of the results of the election as determined by the election officials is seriously in doubt." That is Bortner v. Town of Woodbridge our Connecticut Supreme Court. And since Bortner the Court has consistently applied that standard in election, municipal election contests before it.

Further in Bortner and in those cases, the complainant, the candidate seeking a new election, bears the Burden of Proof by a preponderance of the evidence. Similarly the United States House of Representatives acting in cases of contested elections has applied certain standards, as we learned, set for in Deschler's Precedents assembled by the Former House Parliamentarian. Of note and like the Bortner test, the House has found that in order to set-aside an election there must not only

be proof of an irregularities or errors but it must be shown that such irregularities or errors did affect the results. And again in cases before Congress the contestant has the Burden of Proof to establish his case by preponderance of the evidence.

So with those standards in mind, the way I've thought about this and what I've sort of concluded in my head is that in this Committee and frankly in any future Committee on Contested Elections we should establish standards when considering a challenge to election results and that test should be as follows:

First, is there evidence that a substantial irregularity, mistake or error occurred? In this regard, in my opinion, intentional conduct by an election official or candidate to influence an election improperly is always evidence of a substantial irregularity. A substantial irregularity, mistake or error can also result from unintentional conduct such as the counting of votes that should not have been counted, for example counting invalid absentees or the failure to count votes that were properly cast, for example rejecting proper military ballots, or a machine error that rejects a valid vote, or a substantial irregularity, mistake or error can also result from depriving valid electors the opportunity to vote. Whether an irregularity, mistake or error is substantial in terms of gravity and/or volume will depend on the circumstances of each case.

Second and perhaps most importantly for this Committee, if a substantial irregularity, mistake or error occurred, did it affect the election results

such that the official result is seriously in doubt? In this regard, in my opinion, mathematical certainty is not required, nevertheless there must be, in my opinion, some concrete verifiable evidence before the Committee that demonstrates to a reasonable certainty that a different electoral result would have occurred but for the substantial irregularity, mistake or error. Guess work or conjecture does not seem to me to be an option.

Third, I do think it is the complainant's responsibility to present evidence to the Committee, this one or a future one, so that it can answer these two questions and I think a standard that is fair going forward is that the failure of a complainant to do so may be in a Committee's discretion be a basis to dismiss a complaint. Nevertheless a Committee on Contested Elections may consider other evidence not presented by a complainant when deciding these two questions.

So why such a standard? Why such a two-part standard? Why adopt and effectively kind of reformulate that Bortner Standard, well again to me, Bortner provides an answer. And again, I'll go back to what I said when we opened this Committee which is what the Court said in Bortner. "When a Court orders a new election it is really ordering a different election. It is substituting a different snapshot of the electoral process from that taken by the voting electorate on the officially designated election day. Consequently all of the electors who voted in the first officially designated election", there were more than 10,000 in this case, "have the powerful interest in the stability of that election because the ordering of a new and different election

would result in their election day disenfranchisement." In short, what I think what Bortner was getting at is, in that case, the Bortner Court was getting at, was that the power to order a new election is obviously an awesome and powerful and potentially dangerous power especially when it's in the hand of a political body which is what we, and obviously the House is. So we must be careful. So establishing a set of standards that we can follow and that futures Committees can follow will help balance the interest of the candidates, the voters impacted by any mistake and the voters that did vote. And so I just wanted to put that out there as a set of standards, a two-part test that really follows Bortner but adopts it as our own to help guide our discussion about that happened here and I want to open that up for discussion, Representative Perillo.

REP. PERILLO (113TH): Representative thank you. I think Bortner is a good place to start. I think it deals with facts that are similar and I think utilizing case law in the State of Connecticut makes sense. We are, I know we are not a Judicial Body but even as counsel for Mr. Young stated, we are acting like a judicial body and likened us to the Supreme Court, therefor it would seem to make sense to me that we would continue along the vain of using Connecticut Case Law in making our determination. Bortner is not the only case that is relevant. Rutkowski is relevant, Bower, DeSoto is relevant so that continual vain makes sense to me in terms of us generating a sense of where we should be going and what we should be utilizing as a standard. That said, when we start talking about Deshler we sort of divert from that trend. We are the Connecticut

House of Representatives governed by our own rules and Masons with many precedents determined based upon those rules and based upon Mason. The United States House of Representatives is governed by a different set of rules which is generated because of those rules a different set of practices. We are created under the Constitution of the State of Connecticut. The United States House of Representatives is created under the Constitution of the United States. So we are different bodies, with different rules and different presence based upon those rules formed under different documents. I think it, I don't want, the word isn't dangerous, but I think we start to head in a wrong path if we start looking to the U.S. House as the standard of review. We acknowledge that Bortner, U.S. Supreme, a Connecticut Supreme Court case is a good place to start, and I think we should continue on along that vain looking at other court cases here in the State of Connecticut.

REP. HADDAD (54TH): I actually prefer the approach taken by the Chairman and I think the Deschler's Precedent, I find actually to be far more compelling than U.S., than the Connecticut Court Cases, compelling because like this body and our Constitution, the U.S. Congress reserves the right to make a determination on it's own membership and is fashioned very similar to that responsibility that is granted to us in our Constitution. Also being two legislative bodies, I think the exercise of that responsibility and the thought they put into exercising that responsibility is actually far more instructive to us as a body than what the courts would provide. The courts are very different served sorts of bodies. We've given the courts the

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responsibility of hearing these kinds of cases for races outside of General Assembly races and I respect the thought that they put into that but the courts on the other hand are comprised differently. They're legally trained and I would suggest probably far more disciplined [Chuckles] as a result. They are not political. They're impartial and they are distant from the decisions that they made, they are making. None of those things apply to us. We are a body that is valued for being passionate and sometimes parochial [Chuckles].

We are a political body elected by, on two-year cycles. We organize ourselves by political parties. We are far more similar to the circumstances that Congress has than to the Court and these decisions are intimate to us, not distant. We, after all, we are deciding on a member of our own body and so I think the framers of both Constitutions recognized this and I think far from saying that I think we don't have the ability to make these decisions in a rationale manner, I think that we do as the courts have the responsibility for making those decisions in other kinds of elections. But I think that the guidance provided through, not just the precedents but the vast number of cases and contests that the U.S. Congress has heard, I think should be instructive for us, that we should act on this, in this regard very, very carefully and with a tremendous amount of - we should act very, very carefully and we should respect the authority that we have and make sure that we're not damaging the reputation of our body or too easily overturning the certified election results of elections as determined by voters who have cast their ballots. I think that we need to be very careful here and I

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find Deschler's Precedent very, very instructive to us and so I think that, and I think what we're really getting at is the second and the third components of the test that the Chairman outlined I think are appropriate for a body like our making decisions like these.

REP. CANDELORA (86TH): Frankly I'm a little alarmed in what I just heard. I agree that we should be looking to our Courts to create a legal standard. It has already been created by the Supreme Court. They've reviewed more election cases certainly than our political bodies have reviewed and quite frankly from day one I found it distressing that the review of a state election for state representative would be reviewed by its own members because I think we are naturally put into this situation of reviewing something by our peers. And so to suggest that we follow some sort of precedent that relies on politics or parochialness is something that I think is wrong. I think getting back to the point of Bortner, that court has set out standards that I think both Chambers, the Senate and the House, should be applying in reviewing these elections because this decision today is not about the Stratford seat but it is about going forward and we don't have any precedent in Connecticut history on how to handle these situations. And so Bortner, I think, is very informative and to the point, I think, the good points that Representative Haddad had made is that, you know, the Courts are impartial. You know, they are not emotionally attached to this. We are in a little bit of a unique situation where, you know, the current representative in Stratford has served one year, I think. I'm personally not familiar with him. I am

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not familiar with the Republican candidate so at least emotionally I'm a little bit detached to it and fortunately we are not in a situation where our Chamber is separated by one vote. God forbid that would have been the factual scenario. And so I think going into this for me has given me the ability to sort of keep that level head and keep an open mind to it.

You know, I've sat through many elections and I sat through the recount in the 101ST and I find Noreen Kokoruda a very good friend of mine and I thought, God forbid, if that race would have resulted in some sort of a situation where there was a contested election. And putting all those emotions aside and, you know, I have gone through all of that, I think it is important and required of us to do that. And one of the concerns that I have, I think factually we have all arrived at the same conclusion and I think the standard of Bortner which we seem to be concluding on, we are all in agreement, and I think where this potentially is going to be the issue of, you know, what is the substantial mistake that gives rise to a new election. And I agree with you, it is very dangerous for us to have this power to be able to vote on a new election but I also think it is equally dangerous to not have the proper standard and put forth and take a proper vote and what I have certainly struggled with, the facts aren't good here.

You know, it's a 13-vote differential. We have a roughly you know, 76-75 whatever the facts have said ballots that were incorrectly handed out and I think that the Democrat registrar, the Republican registrar and all the poll workers agree that it

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happened and we have been able to come to that conclusion and I think Representative D'Agostino and I, we talked about and we extrapolated the math that we came out to a 13-vote differential. Yeah, well and it potentially comes to a tie even with an extrapolation this is close enough to be causing doubt in what this outcome would be.

But I'm also, I come to the next conclusion and I think to the point of this issue is what evidence we're able to collect and what we are able to prove because on the one-hand, and I think this came out in the testimony, we don't have individuals that came here to say I would have voted otherwise and we probably could have paraded in, you know, a hundred Republicans that would say I would have voted for Feehan and I got the wrong ballot and Young's counsel could have paraded in a hundred Democrats to say I would have voted for Young and I got the wrong ballot. And so that to me is sort of a quandary on top of the fact that I think we would have been potentially committing felonies if we asked people to disclose how they voted. So where do we go with this? And that's sort of what I struggled with. I certainly think that there is enough evidence to call this election into question and to recommend a new election.

I'm mindful of the fact that elections are a brutal process. It is a snapshot in time that was taken but I think there was enough evidence here to show that snapshot was taken with a broken camera and that's what concerns me is how broken was that camera. What lens are we looking through and that is a conclusion I can't come to. So as much as there are roughly, you know, 50 percent of the people that

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voted from Representative Young there is 50 percent of the people that voted for somebody else and this election will always be called into question unless there was a new one that was set. As extraordinary I think that remedy is, I am comforted by the fact Stratford still holds, still has a Representative that serves all the way through. And so while a new election would certainly be, you know, a bit distracting, more work, more money, more aggravation we do have a Representative seated in that Stratford seat and I think there is a difference when we talk about Deschler and the different standards there is a difference between a bag full of ballots that were accidentally not counted, and I think we used to see that occur when there was more antiquated ways of voting, so if there is a bag of ballots that are found a day after the recount maybe 200 ballots that everybody forgot to count, the recanvass is over, that would be evidence I think that would, we would be in a position to show under the Deschler standard that the outcome would have been different because those votes would need to be counted.

We would have that legal ability to recount those votes and make that recommendation because the ballots are before us and that would be the only remedy that could be hand because it seems that the Supreme Court has said we review the contested races if a recount is had afterward. In this type of error, this type of situation, we don't have that ability to definitively determine would the outcome be different. And so that is what I struggle with and I think based on those standards, that's where I've come to this conclusion and I've always kind of thought this issue would be more of a factual one of, you know, how does this look and I think when we

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look at this from the 30,000 foot level and I would like to come to a different conclusion quite frankly, it would be much cleaner, I don't know how we get there.

REP. D'AGOSTINO (91ST): You touched on a lot of things there. I just want to make sure that we've got the conversation going where we want it to go. Just on the standard issue, I actually don't think we're all that far apart. I want to be very clear, what I said there did not adopt Deschler. I want to be very clear, that as I said, you know, given that we have exclusive jurisdiction to determine this matter, precedence from our State Supreme Court and Congress do not control. What I've tried to do is just formulate a standard for going forward that people can, that the Committees, that this Committee can use and that future Committees can use. Frankly the only actual language from Deschler that I've adopted is the word irregularity, did a substantial irregularity, mistake or error occur? In Bortner it's just a mistake or error. Deschler throws in the work irregularity and I think that is something that should be, just to be, as comprehensive as possible when we look at these things going forward is an irregularity, a mistake or an error. So the first part of the test that I articulated does incorporate Deschler but I don't think there is any real serious disagree amongst us that the question is did a substantial irregularity, mistake or error occur.

On the second part, what I really am formulating is Bortner, you know, did it significantly affect the election result such that the official result is "seriously in doubt." That is straight out of

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Bortner. I'm trying to clarify that by saying a mathematical certainty is not required and I've only seen, I think one or two states were actually by statute that they say it is mathematically required. But what I'm trying to get at is that, you know, and you touched on this, you know, what is the evidence before us and that is really where I think Deschler comes into play and where we can have a debate as to when do the facts rise to that level of did it affect the results, such that the official results is seriously in doubt.

Deschler has a number of precedence, a number of cases that one can look at and we have a number of Connecticut Supreme Court cases that we can look at that can inform our decision but that's not really a question of the standard, to me it's again I formulated it as it there has to be some concrete verifiable evidence before us that demonstrates to a reasonable certainty that a different result would have occurred. That really is, Bortner, is the result seriously in doubt. So I don't think we're far apart on the standard. I am not adopting Deschler in there, I'm trying to, I think really the question now is how do we determine whether or not the result is seriously in doubt and Representative Candelora you went into this and so the second part of your statement really went into that and I guess what I would say on that, and this is really the debate, I don't think we are far apart on the standard.

I think we've certainly agreed that 75 people didn't get the correct ballot, that's factual. I think that we're all in agreement that the fact that they didn't get those ballots constitutes the substantial

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irregularity, mistake or error. The question is did that mistake or error affect the results such that it is seriously in doubt. How do you determine that? And when I worked at the Bortner and its progeny what I see are cases where the Court ordered a new election like the Keely Case and the Rin Case where the Court was able to, they had before it absentee ballots. So they had some indication how people were voting or who they were, in the Rin Case where the plaintiff was defeated by a margin of eight votes, the Court determined that 25 out of 26 improperly mailed absentee ballots had been cast for the opponent. That is verifiable evidence. The Rutkowski Case which I know Representative, excuse me, Counsel Das for Mr. Feehan relied upon is a Superior Court Case and it is the only case that I could find that I'm aware of, maybe there are others, but whether we look at Deschler's Precedent or Connecticut case law, where the Court actually did have the ballots before it but just went on the fact that it was 17-13. Although in that case I would note that even in that case the Court was able to determine that those people would have voted. They were able to look at those ballots and say these people actually intended to vote for council person and didn't have the right ballot so we know that they wanted to vote.

Here we don't even have that. We don't even know of the 75 how many intended to vote for State Representative. We have an absolute sort of dearth of evidence and I do, I do wish, I hear what you're saying about people could have paraded in. The fact is we didn't get any of that. I wish we would have. I mean I wish we would have had a hundred Republicans come in and say, "I didn't get the right

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ballot" because that would have been evidence. We could have decided whether or not we wanted to believe those people or not. There is a credibility issue that we would have to assess but at least it would have been something. I feel like we didn't get, despite asking get anything from Mr. Feehan except in his reply brief some math and I want to talk about because I couldn't figure out how they got 59 percent.

Representative Perilla and I have talked about this in terms of the only numbers, if you will we seem to have before us are the results from Bunnell 859 people voted at the end of the day for Mr. Feehan out of 1500, 608 out of 1500 voted for Representative Young, 33 voted for Mr. Palmer or cast no vote at all in the race. Those are the only numbers we have before us and I can, you know I can do it on my calculator and I come up with 57.266 percent for Mr. Feehan, 40.53 percent for Mr. Young, 2.2 percent for other and when I apply that to 75 I get 42.949, 30.399 and then 1.65 for a difference between Mr. Feehan and Young of 12.5 voters. I have no idea what you do what that, no idea. And again that is me doing, me writing on a piece of paper. This cannot possibly be a good basis to order a new election [Chuckles]. I wish we had some statistical analysis as we've seen in other cases, some testimony from voters about how they intended to vote, something. This gives me pause. This being the only "evidence before us" when I weigh this against 10,000 people who did vote, I've got issues with disenfranchising those 10,000 and now this is where the rubber meets the road because I completely understand. I can look at the other side of it and say the margin is enough.

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REP. CANDELORA (86TH): So here's the question. What if the person handed out the ballots said to us, I intentionally handed out those 75 ballots in order to try to affect the outcome of the election. To create this standard of proving how those 75 would have voted is disconcerting to me. That is where I'm getting concerned going forward because any election that has any kind of error the contestant, whether it be the incumbent or the challenger, would lack the ability to challenge that election if they can't prove how individuals showed up to vote and given the fact that it is a legal impossibility because our Constitution and our State Law protects the privacy of the vote puts us in a situation where under our election laws challengers and incumbents would have no recourse at the state level if an election is done incorrectly. And when I think of that being applied globally, talk about disenfranchising of voters, we're telling every voter in the State of Connecticut that if it's a local election you can go to court and challenge it. Good Luck if it's your State Rep or State Senator. I don't, I don't think that level of proof should come into play. Now if the day is done and you decide that we shouldn't be moving forward with a new election that, you know, is your choice but I think it is a dangerous standard to say we have to prove how these 75 people would have otherwise voted. The only way to do that is to change our election laws and eliminate the privacy of the vote.

REP. PERILLO (113TH): Thank you and you talk about numbers and I think that is important, you know, I didn't go to law school I went to math class [Laughter] and I get the same numbers you get, I get

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13. And with that said, that entire argument is talking about the reliability of, I'm sorry, the placing the outcome in serious doubt. But that is not the standard in Rutkowski, it is the reliability of the outcome, not the outcome itself. In this case, we have a 13-vote margin and 75 after the recanvass unaccounted votes. If we take that 58ish percent that Mr. Feehan got at the polling place and apply it to those 75, yes he gets 13 which of course fortunately or unfortunately is the exact margin in the race. I would argue that is not really at play here. That is not the core point of this. The core point of this is to look at what is in Rutkowski which says that the reliability of the election is in serious doubt. When you've got 75 ballots in a race with a margin of 13, I think that matters and when you look at the fact pattern of that case, in many ways it is very similar to ours. The margin of three votes and 17 votes that weren't accounted for. Ironically in order to get that margin of three it is the same percentage that 58ish percent that we're looking at right here. It is not about whether the outcome would have changed it is about whether we have serious doubts about the reliability. So I think it is very, very clear that we need to identify that those are two very different things, doubt about the outcome and doubt about the reliability. And when you look at the numbers, I just don't see any other way to say, hey you know what, there's a margin of 13, we lost 75 people. I'm doubting whether or not the outcome here is reliable or not.

REP. HADDAD (54TH): You know, I appreciate the difficulties that we have sorta working on this issue and yeah at the outset I intended to say

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earlier on that I feel particularly bad for the two candidates who are involved in this race, one who feels grieved by the mistake, the other who you know, no matter who they are, who'll occupy the seat if we let the current election results stand without, but have that election be somewhat in doubt right, so both challenge for different reasons. Like the Chairman though I am also mindful of the fact that our obligation, but what I think what I was trying to say about Deschler Standards Principles is that the responsibility to invalidate certified results and to cast aside 10,000 over 10,000 undisputedly valid cast ballots I think is a, it's a very, it's a very significant action taken by, if it were to be taken by the House and is one that I think it has to be taken only in the rarest of circumstances. And I find that Deschler's Principles really adhere to that notion and I find that instructive, not controlling, but instructive.

The responsibility is very, very significant, the possibility of invalidating a certified election with over 10,000 votes cast. And so I think we're all taking that responsibility really seriously here as we're discussing that and the question gets to be, for me, is what is the burden of proof, whose burden of proof is it to demonstrate that the results were unreliable as you say, and I think the only way you can get to unreliable results is to have some evidence that the election result may have, could have, might have been different, some evidence and what frustrates me I think about where we sit today, is that we received no evidence of that, none. We know that there are 75 missing ballots but there has been no indication provided by either of the parties, or by expert testimony or any

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other indication that how we might allocate, if you were to go down that path of allocating those votes, and I don't think we should allocate the votes.

In many of the other cases that are being cited today, there was some indication of a statistical, it one case it was a statistical analysis that was done that showed that the way that voters were randomly assigned to one voting booth or the other would have yielded, potentially yielded a different result. There was another where the error that was occurring on the voting machine particularly aggrieved a particular candidate, I think it was a write-in candidate, and so there is reason to believe that particular candidate was being deprived of votes rather than the other. I'm not suggesting that, I'm not suggesting that I'm dismissive of the kind of allocation of. I'm not suggesting that, that I think that the results would have been different or, what I'm expressing frustration about is that there is no evidence provided to us that would indicate that the reliability of the election, in fact was in doubt or that the result could have been different and I don't know you get to one without addressing the other.

REP. PERILLO (113TH): I would count it as plenty of evidence. There are 75 pieces of evidence and that's all we need, 75 pieces of evidence. And I want to take it further, we heard the word statistics quite a bit and I want to clarify what that statistical analysis is used for. It was used in a race where there were 31 voting machines. One of them seems to indicate a possible malfunction. The statistical analysis is utilized to determine that indeed it was most likely that that machine was

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not functioning properly. The math was not used to determine who would or would not have won if the machine were working properly. Let's take that aside. That said, to say that there is not evidence here, I think is just not accurate. It is egregiously not accurate. We don't need nor can we to prove how those 75 people would have voted, we don't, we can't. And if we were able to do that we would be able to determine what the outcomes reliability was. But again to repeat what I said before, we are not talking about the reliability of the outcome. We are talking about the reliability of the election itself.

REP. D'AGOSTINO (91ST): The only thing that I would ask you to think about there for further discussion is, I mean taken that argument to its logical conclusion then what we wind up with as a sort of de facto standard is what I mentioned before which is anytime the ballots in question exceeds the margin, you order a new election. That seems to me, I mean, just in terms of a standard, seems too low to me because then you're saying there's no need for any evidence but, except for the results and the determination of the mistake and elections and I would imagine that happens quite a bit and that's when I look at something like Deschler you see a lot of examples like that and time and time again you see a Court, you see the body, the legislative body or Court say something more is required precisely because to order a new election throws into chaos and disenfranchises all the people who did validly vote.

So whether it is 17-3, or 75-13, or 10-5 or whatever it may be, that gives me some consternation. And so

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if I was gonna be arguing for or supporting some sort outcome here I would want to rely on some kind of math and I think that we have to just acknowledge that the only math, evidence, however you want to call it before us are those results and the other thing I would just throw in the mixture in terms of the record is that math that I did:

- A) I don't quite get the 13, you have to round up to get there.
- B) It's based upon the results at the end of the day when 60, I can't remember the number, 61 or 65 percent of the entire electorate in the 120TH had voted this occurred between 2:00 and 3:00 p.m. when between 38 and 43 percent of the electorate had voted at Bunnell.

I have just no base of knowledge to know how that impacts an analysis statistically. I'm sure some statistician could tell me based on probabilities and the numbers versus the final numbers. But that is beyond my ability to do so and that is what kinda gives me some discomfort. But I mean, I really think we are getting sort of at the core of the issue here, but I just wanted to note that. I'm not comfortable with just saying that anytime you have the ballots in question exceed the margin, new election. I think you have to have something. The question to me is, is the something that we have before us, such as it is, those numbers enough

REP. CANDELORA (86TH): And I think just getting off the facts and back to the standards which is what concerns me the most quite frankly is I continue to hear the comments of no evidence, which I disagree with. We know that there are 75 votes that we cannot count. There were 75 people that showed up

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at the polls and weren't entitled to count for, to vote for the candidate in their district and I think those facts are uncontroverted. And what we do with that is the question. But to again suggest that there needs to be some sort of evidence of voter intent is highly problematic for me because under the construct of our election laws, we are not entitled to ask for or obtain voter intent. And so if that is where our discussion goes we are creating a legal impossibility and there would be no ability for anyone to contest an election if that is the standard under these circumstances.

REP. D'AGOSTINO (91ST): But we have seen cases where new elections have been ordered precisely because there has been some evidence of voter intent whether it is to absentees or whatever, the Courts did order a new election because they had something more than just the margin, they did.

REP. CANDELORA (86TH): So to put those cases aside because I think there are court cases where they didn't necessarily have that and they ordered new elections exactly. The standard that we're creating right now doesn't acknowledge the Rutkowski case at all. I mean we are going to set the bar and that is what concerns me number one where this is going. The second part of talking about disenfranchise again, I don't think that is a standard that we've really seen. It certainly is the impact, the result of the decision but it is not the standard that we should be applying because as I said previously there are people that voted for the challenger that feel very disenfranchised right now. So the disenfranchise swings both ways and I also look at it more broadly is what are the votes in the State

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of Connecticut gonna say cause that impacts their enfranchisement or disenfranchisement of voting if the decision, what decision we make.

So I don't think we should be taking any that into consideration because it could impactful either way. And I comeback to the conclusion in looking at the Bortner Standards and looking at the fact that we have here today has the standard been met. And for me to be able, after seeing everything, say that Representative Young properly won the election, I can't say that because I don't know where those 75 votes would have gone and I frankly wish I could. That is the easy decision is to make here and everyone moves on. I can't get there.

REP. D'AGOSTINO (91ST): The only thing I want, from my perspective I want the record to reflect with respect to Rutkowski in my opinion is: A) It's a Superior Court Case and so I have no problem giving some weight in my consideration to Bortner and its progeny at the appellate level where I look at cases where the Supreme Court overturned elections and always had something more.

Again I want to be clear that at least in Rutkowski the Court had some indication of intent that all those people indeed want to vote in that race. How they would have voted the Court said I'm not going to get into. So I'm less inclined to give a lot of weight to Rutkowski nonetheless I certainly acknowledge that it exists and that Mr. Feehan's counsel has relied upon it. So again I don't know if we are that far off in terms of standards here and the analysis, we're just struggling to come up with the conclusion and I appreciate that's really

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the issue, is the fact that these 75 people didn't get the right ballot and whatever you base it on in terms of the results enough to order a new election and I do think it is important that it is part of our calculus here cause again it is an awesome power. It's I think something that is woven into all these decisions that consideration with respect to ultimately the remedy that the Court is gonna order.

REP. HADDAD (54TH): Only to say that I think that the numbers 75 and 13 are an indication, we don't doubt that the first qualification or standard that the Chairman sort of enunciated was met, that there is an irregularity, a mistake. I don't doubt that.

The question about whether or not to order a new election, I think though has to hinge on an analysis based on the evidence that the outcome might have been different, would have been different and that comes from Deschler. I mean I'm relying heavily on to some extent and I know that is somewhat in conflict with what Rutkowski says. But again Rutkowski is a case that's interpreting statute enacted by the legislature and where there was some legislative precedence. I think they were being consistent with what the Statue says with respect to municipal elections and this, and now we are here essentially writing the standard that would apply to our own races and I'm and I'm not, I am personally not convinced that we should ignore the Deschler Precedence. That the entire body of work that Congress has put in the and the body of thought that they put in to deciding exactly these kinds of cases shouldn't be included and that's why I think the standard is, I think is I recognize is slightly tougher Deschler than what might exist in Bortner if

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it stood alone. But I think in this case it is appropriate because of the nature of the election and because of the body making the decision.

REP. D'AGOSTINO (91ST): Representative Perillo.

REP. PERILLO (113TH): Thank you. I just don't see how we say that a book of precedence from a body other than our own is of greater value than the Supreme Court's interpretation and rulings in the laws of the State of Connecticut. I just don't see that. Rutkowski looks very much like this, very much like this situation and the Supreme Court ruled that there should be a new election. Thank you.

REP. D'AGOSTINO (91ST): Superior Court.

REP. PERILLO (113TH): No, Supreme Court.

REP. D'AGOSTINO (91ST): Rutkowski is Superior Court.

REP. PERILLO (113TH): Superior? I'm bad. Very similar in Bowers as well. Representative Haddad had mentioned that, you know, ordering a new election is a very serious thing and I would agree 100 percent. He went on to say it should be reserved for the rarest of circumstances. Well welcome to it! [Laughter] This is the rarest of circumstances. We keep on saying over and over there is no precedence for this, there is no precedence because it is very, very rare and, you know, maybe we're gonna go round and round in circles here. I hope not. I just don't see how we, or anyone, can look at these 75 votes knowing they weren't recorded in a race with a margin of only 13 and say, yeah, you know what I'm comfortable with

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the reliability of this race. I just don't see that.

I mean I can see where it might be inconvenient to say that and I'll be honest, I wouldn't want to be Representative Young. I get it. But the facts are the facts. I think at some point in time here, whether or not we are the Judicial Branch, whether or not we are passionate I agree, but our passion doesn't mean we're not capable of rational thought. In fact the decision on this case from the Supreme Court demands that we act in a judicial character, not just a judicial manner, a judicial character and that is what we are charged with here today. So how we can look at these 75 ballots, that were not these voters who were not granted the opportunity to cast a ballot, how we can look at that and say that yes, we are confident that this was reliable. No there is no serious doubt as to reliability. How we can just do that escapes me. There is just no other way, you can't reach any other conclusion. We might. [Laughter] But from my vantage point this is extraordinarily clear. Extraordinarily clear. I don't know. I'll keep listening.

REP. D'AGOSTINO (91ST): So I think it's probably a good time. Why don't we take a recess till 12:30. Good? We'll recess until 12:30.