

APPENDIX 1

**Order Denying Reversal of Appellate
Division Opinion, in the New Jersey
Supreme Court (October 27, 2020)**

SUPREME COURT OF NEW JERSEY
C-309 September Term 2020
085026

Hirsh Singh,

Plaintiff-Petitioner,

v.

Philip D. Murphy,

Defendant.

FILED

OCT 27 2020

ORDER

Heather J. Baker
CLERK

This matter having come before the Court on plaintiff's application for emergent relief (S-26-20), pursuant to Rule 2:9-8, seeking reversal of the Appellate Division's opinion filed on October 21, 2020; and

Plaintiff having informed the Court that he wished for the Court to consider his request for relief on the merits based on the briefs submitted to the Appellate Division; and

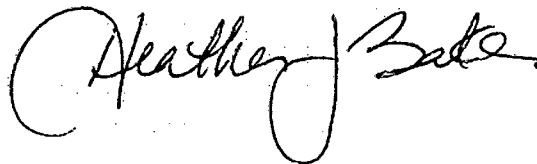
The Court having determined to treat plaintiff's submissions requesting merits-based review and reversal of the Appellate Division's judgment as an

expedited notice of petition for certification and petition for certification,
consistent with the Rules of Court applicable to final judgments; and

The Court having reviewed expeditiously plaintiff's application and the
record in this matter, including the parties' Appellate Division briefs; it is

ORDERED that the petition for certification is DENIED.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this
27th day of October, 2020.

A handwritten signature in black ink, appearing to read "Heather J. Bate". The signature is written in a cursive, flowing style with a large initial "H" and "B".

CLERK OF THE SUPREME COURT

APPENDIX 2

Opinion, in New Jersey Superior Court,
Appellate Division (October 21, 2020

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0323-20T4**

HIRSH SINGH,

Plaintiff-Appellant,

v.

**HONORABLE PHILIP D.
MURPHY, in his official
capacity as Governor of
New Jersey, HONORABLE
TAHESHA WAY, in her
official capacity as New
Jersey Secretary of State,**

Defendant-Respondent.

**IN THE MATTER OF THE
PETITIONS OF
HIRSH SINGH FOR
RECOUNT AND RECHECK.**

Argued October 15, 2020 – Decided October 21, 2020

Before Judges Sabatino, Currier and Gooden Brown.

**On appeal from Executive Order No. 144 and related
Executive Orders, pursuant to a transfer from the**

Superior Court of New Jersey, Law Division, Morris County, Docket No. L-1757-20.

Hirsh Singh, appellant, argued the cause pro se.

Beau C. Wilson, Deputy Attorney General, argued the cause for respondents Philip D. Murphy, Governor and Tahesha Way, Secretary of State (Gurbir S. Grewal, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Beau C. Wilson, on the brief).

Joseph J. Bell argued the cause for respondent Holly Mackey, County Clerk, County of Warren (Bell & Shivas, P.C., attorneys; Joseph J. Bell, on the brief).

PER CURIAM

Plaintiff Hirsh Singh¹ is a New Jersey resident who was a candidate in the 2020 New Jersey Republican primary election for the United States Senate. Self-represented, he challenges the validity of the mail-in voting procedures that were utilized in the July 7, 2020 primary. The modified procedures were implemented pursuant to Executive Orders of the Governor issued in the wake of the COVID-19 pandemic. Plaintiff further challenges the validity of the modified mail-in voting procedures now being used for the 2020 general election in accordance with an additional Executive Order and a cognate statute enacted

¹ As he pointed out in a motion with the trial court, plaintiff's first name had been misspelled in some previous court documents, but it is correctly shown here.

by the Legislature this summer. He seeks injunctive and other relief, including an order nullifying the announced results of the July 2020 primary election for Senate and the House of Representatives, directing a new primary election to be conducted, and enjoining the continued use of the modified mail-in system for the November 2020 General Election.

Plaintiff brought lawsuits in several counties to obtain relief, contending that if the modified mail-in voting procedures were nullified, he would have been declared the winning candidate in the statewide primary election. After the lawsuits were consolidated, plaintiff abandoned his efforts to seek a recount of the primary results and narrowed his focus to seek to invalidate the modified voting procedures under federal law. Insofar as that claim entails a facial challenge to the validity of the Governor's Executive Orders, it was transferred to this court procedurally for appellate review under the Court Rules, thereby leaving to the trial court any lingering as-applied factual disputes or other claims.

For the reasons that follow, plaintiff's facial challenges and his associated requests for injunctive relief are denied. As to his claims that the modified voting procedures for the primary election prescribed by Executive Order 144 did not comport with the federal constitution, we conclude that exercise of

authority was permissible under the emergency powers the Legislature delegated to the Governor under the Emergency Health Powers Act, N.J.S.A. 26:13-1 to -31, and the Civilian Defense and Disaster Control Act, N.J.S.A. App. A:9-30 to -63. Given the unassailable severity of the COVID-19 pandemic and the need to reduce the risk of infection to New Jersey voters and polling workers, the Governor was authorized to exercise those delegated emergency powers and revise customary in-person voting processes in order to protect the public health and safety.

As to plaintiff's claims that the modified voting procedures now being implemented for the general election violate the federal constitution and federal law, similar arguments were very recently rejected by the United States District Court in a persuasive October 6, 2020 published opinion, and we likewise decline to declare them invalid.

Further, plaintiff has not demonstrated a right to the extraordinary and summary injunctive relief he seeks, applying the well-established criteria of Crowe v. De Gioia, 90 N.J. 126 (1982). Among other things, plaintiff has not established that his claims of invalidity are supported by settled law, that alteration of the present status quo is equitably warranted, or that the public

interest favors nullification of the statewide primary results and the immediate cessation of the ongoing vote-by-mail processes for the general election.

Lastly, plaintiff's non-facial claims, including his claim of a deprivation of free speech rights by the Attorney General, are reserved for the trial court for disposition. The claims he has attempted to assert under the federal Freedom of Information Act, 5 U.S.C. § 552(a)(4)(B), seeking records and information from the United States Postal Service are dismissed without prejudice, for lack of jurisdiction in this state court.

I.

The Executive Orders at Issue

On February 3, 2020, three days after the United States Department of Health and Human Services Secretary declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19, Governor Philip D. Murphy issued Executive Order 102. That order created the state Coronavirus Task Force, to be chaired by the Commissioner of the New Jersey Department of Health (DOH), and consisting of the heads of the Department of Human Services, the Department of Law & Public Safety, the New Jersey State Police, the Department of Education, and the Office of

Homeland Security and Preparedness. Exec. Order No. 102 (Feb. 3, 2020), 52 N.J.R. 366(b) (Mar. 2, 2020), ¶ 2-3.

On March 9, when there were more than 500 confirmed cases of COVID-19 in the United States, and eleven in New Jersey, Governor Murphy issued Executive Order 103, declaring a public health emergency and directing the "State Director of Emergency Management, who is the Superintendent of State Police, in conjunction with the Commissioner of DOH, to take any such emergency measures as the State Director may determine necessary." Exec. Order No. 103 (Mar. 9, 2020), 52 N.J.R. 549(a) (Apr. 6, 2020), ¶ 1.

Thereafter, on April 8, Governor Murphy issued Executive Order 120. The Executive Order noted in a preamble that public health officials were predicting that New Jersey's COVID-19 public health emergency was anticipated to peak in April 2020, and to continue for an indefinite time beyond the peak. Given those circumstances, Executive Order 120 postponed the statewide primary elections for United States Congressional and state local elections from the first Monday in June, as is normally called for by statute in N.J.S.A. 19:2-1, and rescheduled that primary election for July 7. Exec. Order No. 120 (Apr. 8, 2020), 52 N.J.R. 957(a) (May 4, 2020), ¶ 1.

According to the DOH, in the three weeks that followed the issuance of Executive Order 120, there were 6,285 additional confirmed COVID-19 deaths in New Jersey.²

More election-related changes designed to deal with the COVID-19 crisis followed. On May 15, the Governor, through Executive Order 144, instituted a series of changes to the election infrastructure for the July 7 primary elections. Exec. Order No. 144 (May 15, 2020), 52 N.J.R. 1238(a) (June 15, 2020). In the preamble to that order, Governor Murphy referred to data received from the Center for Disease Control and Prevention (CDC) reporting that, as of that time, there were more than 4,000,000 COVID-19 cases worldwide, with nearly 300,000 deaths. Of those, more than 1,000,000 cases and 80,000 deaths were in the United States. As of that point, the Governor continued, there had been more than 100,000 cases and nearly 10,000 deaths in New Jersey. The severity of the pandemic had "ma[d]e it difficult for election officials, candidates, and voters to properly plan and prepare for and fully participate in the July primary elections if they were to proceed as they would under normal circumstances." Ibid.

² See N.J. COVID-19 Information Hub, <https://covid19.nj.gov/index.html> (last accessed on October 9, 2020).

The Governor further stated in Executive Order 144 that social distancing measures were necessary "for a period of as-yet-undetermined duration," and that "the COVID-19 outbreak may have significant effects on New Jersey's voting systems as long as social distancing measures are in place." Ibid. The order recognized a danger that, without an alternative way of voting, the pandemic would "hinder public participation in the democratic process, particularly among elderly and immune-compromised voters," and thereby would "undermine the legislative intent of N.J.S.A. 19:8-2 and 19:8-3.1," statutes aimed at securing the "right to vote," including for individuals with disabilities and the elderly. Ibid.

Based on these risks to public health and safety recited in the preamble, Executive Order 144 directed that "[a]ll elections that take place on July 7, 2020, shall be conducted primarily via vote-by-mail ballots," which would be sent automatically to all voters registered as Democrats or Republicans. Id. at ¶ 1. The order further directed that each county would be required to keep polling places open for the primary election and that voters who went to those polling places would be able to fill out provisional ballots there. Id. at ¶¶ 8, 10.

The primary election took place as planned on July 7, with most voters taking advantage of the vote-by-mail method for casting ballots.

Additional measures ensued. On August 14, Governor Murphy issued Executive Order 177, titled "[A]n Order to Protect Public Health by Mailing Every Active Registered Voter a [Vote-By-Mail] Ballot Ahead of the General Election." Exec. Order No. 177 (Aug. 14, 2020), 52 N.J.R. 1701(b) (Sept. 21, 2020).

Two weeks later, on August 28, the Legislature enacted N.J.S.A. 19:63-31, essentially incorporating the universal vote-by-mail procedures set forth in Executive Order 177 into statutory law, to be operative for the November 2020 General Election.

The Primary Election Results and Plaintiff's Challenges

The tabulated results for the primary election, certified by the Secretary of State, revealed that plaintiff received 146,139 votes, which was 8,727 votes less than Rikin Mehta, who received 154,866 total votes, and was declared the winner of the Republican Party nomination for United States Senate.³

On September 1, plaintiff filed in the Superior Court in Morris County a statewide petition to contest the primary election. Eight days later, on September 9, the Assignment Judge for the Morris/Sussex Vicinage issued an

³ See Official Primary Election Results: U.S. Senate, N.J. Div. of Elections, <https://www.state.nj.us/state/elections/assets/pdf/election-results/2020/2020-official-primary-results-us-senate-amended-0826.pdf>.

order consolidating that petition in Morris County, along with various other recount petitions which plaintiff had, as of that time, filed throughout the State. On September 14, plaintiff filed an application for "partial summary judgment" on his consolidated Morris County claims.

On September 16, the Attorney General, representing both the Governor and the Secretary of State, entered opposition to plaintiff's motion for partial summary judgment and simultaneously cross-moved to dismiss plaintiff's petition, arguing that it was both unsupported and untimely. On the same day, plaintiff filed an order to show cause seeking a temporary restraining order and injunction to prevent the printing of mail-in ballots for the general election containing the names of the candidates certified to have won the primary election of July 7, 2020. Plaintiff also moved, as he phrased it, to "disqualify" the Attorney General's response papers, which he alleged had been submitted late. He asked the trial court to rule on the papers that had been submitted in his motion for partial summary judgment. The Attorney General filed opposition.

On September 22, the trial court denied plaintiff's motion to disallow defendants' motion to dismiss but did not rule on the merits of the dispositive motions. On the same day, the court denied plaintiff's order to show cause for

a temporary restraining order and preliminary injunction. Plaintiff concurrently filed an amended verified petition to contest the Republican primary election for United States Senator.

The next day, on September 23, the Chief Justice issued an order stating that, pursuant to N.J.S.A. 19:29-2, any of plaintiff's still-pending recount petitions or previously filed petitions to contest the primary election would be consolidated in the trial court in Morris County.

On September 28, plaintiff filed a motion in the trial court seeking to, among other things, withdraw from all pending recount applications he had filed, and obtain a prompt resolution of his partial motion for summary judgment on his petitions to contest the election. In that application, plaintiff argued that only the in-person provisional ballots were constitutionally valid, that the mail-in-ballots were constitutionally invalid, and that the court should "declare the entire primary election null and void" and "hold it again" to avoid disenfranchising voters.

Transfer to the Appellate Division of the Facial Challenge to Executive Order 144

On September 30, the trial court transferred the consolidated matters to the Appellate Division for review under Rules 1:13-4(a) and 2:2-3(a)(2), and Vas v. Roberts, 418 N.J. Super. 509 (App. Div. 2011). Two days later, on

October 2, plaintiff filed an application for emergent appellate relief challenging Executive Order 144, the primary election based on it, and the use of the results of the primary election on the ballots for the general election to be held on November 3, 2020.

On October 5, Presiding Judge for Administration Carmen Messano issued an order of this court denying plaintiff's application for emergent relief, noting that the matter had already been fully briefed in the Law Division and had been transferred to the Appellate Division under Rule 1:13-4. The order further stated plaintiff's application for emergent relief would be treated as a motion seeking acceleration of the matter, which the court granted. The order established an expedited simultaneous deadline for optional supplemental briefs, "limited to the constitutional challenge plaintiff has brought to the Executive Order issue," in anticipation of a prompt calendar date.

The following day, on October 6, plaintiff sent an email to this court, asking for a dispositive ruling on the papers already submitted to the Law Division. He also sought clarification as to whether an argument he had raised under the federal Freedom of Information Act (FOIA) remained a part of the case. The Attorney General separately advised this court that he intended to

submit a supplemental brief by the court's specified October 13 deadline, and that he requested oral argument rather than a disposition on the papers.

Later that same day, this panel issued a follow-up order, setting oral argument for October 15, and clarifying that "[t]he discrete issues for which the Appellate Division has accepted jurisdiction solely concern appellant's facial challenges to the Governor's Executive Orders and the voting procedures for the 2020 election, and not any factual disputes or other disputes." The order further made clear that "[t]he various County Clerks and U.S. Senate candidate Rik Mehta who had responded to the trial court with regard to non-facial issues concerning the 2020 U.S. Senate Republican Primary need not participate as respondents in this appeal" unless they filed briefs by the common October 13 deadline.

In accordance with this scheduling order, plaintiff filed on October 13 a twenty-nine-page submission, which he labeled as a "motion for summary judgment."⁴ The submission concludes with these numerous requests for relief:

⁴ Consistent with appellate practice, we treat the pro se submission as a motion for summary disposition under Rule 2:8-3, and, because it presents legal arguments and citations to case law and various codified provisions, as an appellant's brief. We have also considered plaintiff's various submissions to the trial court.

- i. Declare the Executive Order 144 issued by Governor Phil Murphy to be unconstitutional and in contravention of the Elections Clause and the Due Process [Clause] of the United States Constitution[.]
- ii. Restore the status quo ante as to the manner of conducting elections[.]
- iii. Declare the primary election of July 7, 2020 for all political parties unconstitutional and hence null and void[.]
- iv. Forbid the use in the General Election of ballots with names of candidates nominated through the process of the unconstitutional primary election created through the Executive Order 144 of Governor Phil Murphy[.]
- v. Direct the [S]tate of New Jersey to conduct fresh primary elections in accordance with the law for all races to fill up the offices of Senators and Representatives mentioned in the Elections Clause of the U.S. Constitution[.]
- vi. Declare the cease and desist letter sent by New Jersey's Attorney General to be election interference and in violation of the due process clause[.]
- vii. Declare the cease and desist letter sent by New Jersey's Attorney General to be in violation of the free speech clause[.]
- viii. Direct the Attorney General's office to rescind the letter and clarify that they were in violation of the Constitution and admit that the Petitioner acted in accordance with the Constitution and all laws[.]

ix. Declare the entire system of mail-in ballots except as provided by previously defined procedures for the absentee ballots to be issued to the members of the Armed Forces to be in violation of the Freedom of Information Act[.]

x. Issue an injunction forbidding the use of the mail-in ballot system for the general election of November 3, 2020[.]

On October 13, the Attorney General submitted a timely supplemental brief opposing plaintiff's application. The Attorney General argues that plaintiff's claims are procedurally untimely and that he should be equitably estopped from seeking relief. As to the merits, the Attorney General further argues that the Executive Orders at issue are facially and constitutionally valid, and that no injunctive or other relief is warranted.

In addition, the County Clerk of Warren County submitted a short letter brief requesting that plaintiff's appeal be denied in its entirety. The County Clerk argues that the special circumstances of the COVID-19 pandemic supported the Executive Orders modifying customary election processes, that the County dutifully carried out those processes, and that there is no reason at

this juncture to nullify the outcome of the primary election or to alter the ongoing voting methods in the general election.⁵

No other county clerks or parties submitted briefs or appeared in the appeal, including the declared Republican Party nominee for Senate. Oral argument was conducted on October 15, and the issuance of this opinion has been expedited.

The District of New Jersey Federal Decision

Meanwhile, on October 6, 2020, the United States District Court for the District of New Jersey issued a 31-page published opinion in Donald J. Trump for President, Inc. v. Way, __ F. Supp. 3d __ (D.N.J. 2020) (slip opinion). In that case, the Republican National Committee, along with President Donald J. Trump for President, Inc., and the New Jersey Republican State Committee, primarily sought a preliminary injunction enjoining N.J.S.A. 19:63-31. The plaintiffs argued the newly enacted statute violated the Elections Clause of the United States Constitution. The plaintiffs argued the new state statute violates the Elections Clause because it authorizes the canvassing of mail-in ballots beginning up to ten days before election day and the canvassing of ballots not

⁵ The County Clerk also observes that plaintiff received the most tabulated votes in Warren County in the Republican Senate primary.

postmarked but received within forty-eight hours of the polls' closing. Way, slip op. at 16, 21. The plaintiffs asserted this was inconsistent with the Elections Clause because Congress had set forth the time, place, and manner of holding national elections by federal statute in establishing a uniform general election day to be the Tuesday following the first Monday in November. 2 U.S.C. §§ 1, 7.

The District Court in Trump v. Way declined to enter the injunction and allowed the ongoing mail-in voting procedures to continue. Among other things, the opinion found no violation of the Elections Clause or federal law occurring as the result of the modified procedures.⁶

II.

Pursuant to Rule 2:2-3(a)(2), "appeals may be taken to the Appellate Division as of right . . . to review final decisions or actions of any state administrative agency or officer." Under this rule, "agencies whose actions have been held to be reviewable in the first instance by the Appellate Division are those located within the principal departments in the executive branch of state government." Vas v. Roberts, 418 N.J. Super. at 517. As "the Governor is the

⁶ We discuss the opinion in more detail, *infra*, with respect to plaintiff's arguments to enjoin the vote-by-mail processes being used in the present general election.

State's chief executive or administrative officer," id. at 519, a challenge to the constitutionality of an Executive Order of the Governor falls within the scope of a challenge to a final administrative decision or order under Rule 2:2-3(a)(2), Comm'n Workers of Am., AFL-CIO v. Christie, 413 N.J. Super. 229, 251 (App. Div. 2010).

Plaintiff's main argument of facial invalidity rests upon the application of the Elections Clause set forth in Article I, Section 4, Clause 1 of the United States Constitution. That clause reads:

The Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of [choosing] Senators.

[U.S. Const. art. I, § 4, cl. 1.]

Plaintiff contends that Executive Order 144 violated this provision because the Elections Clause requires a state's "Legislature thereof" to enact the procedures for holding elections for Senators and members of Congress. He argues that Executive Order 144 was a unilateral action of the Governor that needed to be concurrently adopted by the New Jersey Legislature in order to be constitutionally valid. However, that argument is not supported by settled law. In fact, precedents of the United States Supreme Court have adopted a more

expansive notion of the form of state legislative power that may satisfy the Elections Clause.⁷

The Elections Clause authorizes each state to enact processes to be followed in electing members of the House and Senate from their respective states. As the Supreme Court recognized in Storer v. Brown, 415 U.S. 724 (1974), states retain the power of establishing the time, place, and manner of primary elections under the Elections Clause. "[A]s a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." Id. at 730. The Court explained in Foster v. Love, 522 U.S. 67, 69 (1997), that the Elections Clause "is a default provision; it invests the States with responsibility for the mechanics of congressional elections." The Court reiterated in U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 832 (1995) that the Framers intended the Elections Clause to grant states the authority to create procedural regulations for such federal elections.

⁷ Respondents do not dispute that the Elections Clause and federal power potentially extend to state primary elections for federal offices. See Foster v. Love, 522 U.S. 67, 71 n.2 (1997) ("Congressional authority extends not only to general elections, but also to any 'primary election which involves a necessary step in the choice of candidates for election as representatives in Congress.'" (citing United States v. Classic, 313 U.S. 299, 320 (1941))).

Recent Supreme Court precedent has established that the reference to the "Legislature" in the Elections Clause encompasses more than just legislative lawmaking bodies. In Arizona State Legislature v. Arizona Indep. Redistricting Comm'n, 576 U.S. 787, 806-09 (2015), the Court upheld the validity of an independent congressional redistricting commission created by a voter ballot initiative rather than through a statute enacted by the Arizona Legislature. The Court rejected the challengers' argument that only the Arizona Legislature could specify the district boundaries and electoral processes. Tracing the history of Article I, Section 4, Justice Ginsburg's majority opinion for the Court observed that "[t]he dominant purpose of the Elections Clause, the historical record bears out, was to empower Congress to override state election rules, not to restrict the way States enact legislation." Id. at 814-15.

The Supreme Court has made clear that the term "Legislature" as used in the Elections Clause does "not mean the representative body alone." Id. at 805. Instead, the term more broadly refers to a state's legislative power, "performed in accordance with the State's prescriptions for lawmaking." Id. at 808; see also Smiley v. Holm, 285 U.S. 355, 367-68 (1932) (holding that the Elections Clause allows a state's governor to exercise veto powers under state law to override

decisions made by the legislature concerning the time, place, and manner of elections).

In our own state, constitutional powers are distributed among the three classic branches of democratic government: the Governor, the Legislature, and the Judiciary. See N.J. Const. art. III. Lawmaking power is shared by the Legislature and the Governor in numerous ways, including the Governor's power to veto legislation, N.J. Const. art. V, § 1, and the Legislature's reciprocal power to invalidate certain administrative regulations, which otherwise have the force of law, issued by the Executive Branch, N.J. Const. art. V, § 4. Our case law has long recognized that the branches of state government are not "water-tight compartments," but rather that the "aim of the separation-of-powers doctrine is not to prevent such cooperative action, but to guarantee a system in which one branch cannot" usurp the powers of another. Commc'ns Workers of Am., AFL-CIO v. Florio, 130 N.J. 439, 449-50 (1992).⁸

The State convincingly argues that in issuing Executive Order 144 while the public health crisis caused by COVID-19 escalated, the Governor lawfully

⁸ Plaintiff's appellate brief states that "no challenge is made under the provisions of the New Jersey Constitution," although he has referred to its provisions at times for purposes of context. An issue not briefed on appeal is deemed waived. See Midland Funding LLC v. Thiel, 446 N.J. Super. 537, 542 n.1 (App. Div. 2016).

acted pursuant to his legislatively-assigned responsibilities vested in him by two statutes: The Emergency Health Powers Act, N.J.S.A. 26:13-1 to -31 (EHPA), and the Civilian Defense and Disaster Control Act, N.J.S.A. App. A:9-30 to -63 (Disaster Control Act). These statutes, duly adopted by the Legislature, respectively define emergencies to include "an occurrence or imminent threat of an occurrence" of disease that "poses a high probability of," among other things, "a large number of deaths, illness, or injury in the affected population," N.J.S.A. 26:13-2, and "any unusual incident resulting from natural or unnatural causes which endangers the health, safety or resources of the residents of one or more municipalities of the State," N.J.S.A. App. A:9-33.1.

The Disaster Control Act, the older and more invoked provision, is especially on point. Enacted in 1941, the statute bestows on the Governor broad authority "to utilize and employ all the available resources of the State Government and of each and every political subdivision of this State, whether of men, properties or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to avoid or protect against any emergency." N.J.S.A. App. A:9-34.

The purpose of the statute is to "protect the public by centralizing control over local government resources in situations whose remedies were beyond the

authority and power of local government." Worthington v. Fauver, 88 N.J. 183, 195 (1982). For this reason, the Governor is not required to "wait for a serious disruption to occur" before invoking the powers granted under the Act. Ibid. The Governor's broad delegated authority to issue emergency orders encompasses "any matter that may be necessary to protect the health, safety and welfare of the people," N.J.S.A. App. A:9-45(i), even where such action alters the rules that would govern in non-emergency periods. Cnty. of Gloucester v. State, 132 N.J. 141, 145 (1993).

Our courts on multiple occasions have sustained executive orders that "flow[] out of the Governor's legislatively-delegated emergency powers to act on behalf of the safety and welfare of the people of New Jersey under the Disaster Control Act." See Commc'ns Workers of Am., AFL-CIO v. Christie, 413 N.J. Super. at 259 (listing such cases in which the Governor invoked his or her emergency powers).

"Where the executive acts pursuant to an express or implied authorization from the Legislature . . . he exercises not only his own powers but those of the Legislature." Worthington, 88 N.J. at 208 (emphasis added). Hence, as a matter of established New Jersey law, the Governor may exercise powers that have been delegated to him by the Legislature in order to address emergency

situations. Such emergency action does not offend legislative hegemony in its delegated sphere.

Nor do the emergency statutes repose in the Governor, as plaintiff argues, unbridled “dictatorial” power. If the Legislature disagrees with a Governor’s emergency action it can respond by passing legislation, subject to veto, that repeals or amends the Disaster Control Act or EHPA with language disallowing a particular exercise of authority.

Judicial review of the exercise of delegated powers is limited. "In such circumstances the executive action should be 'supported by the strongest of presumptions and the widest latitude of judicial interpretation, and the burden of persuasion would rest heavily upon any who might attack it.'" Ibid. (quoting Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 637 (1952) (Jackson, J., concurring)) (concerning analogous concepts of federal separation of powers). "In such a case [the executive's] actions pursuant to that delegated authority are constitutionally valid as long as he has not exceeded his statutory authority and the government as a whole has the power to act." Worthington, 88 N.J. at 208.

Executive Order 144 was issued and implemented consistent with this legislative delegation of emergency authority. Plaintiff has not demonstrated

any basis on which to conclude that the Governor's issuance of Executive Order 144 to conduct the primary election in a way designed to canvass votes while minimizing person-to-person contact due to the COVID-19 emergency exceeded his broad authority "to utilize and employ all the available resources of the State Government and of each and every political subdivision of this State . . . to avoid or protect against any emergency." N.J.S.A. App. A:9-34.

Plaintiff's brief asserts that the Disaster Control Act does not support the Executive Order because the modifications of the election process "have nothing to do with property damage or destruction." But that argument overlooks the other language within the Act empowering the Governor to protect the "health, safety and welfare of the people." N.J.S.A. App. A:9-33. It is plain that the measures undertaken to reduce in-person contact at the polls are aimed at promoting the health and safety of voters and poll workers in the midst of a deadly pandemic that still has yet to be contained.⁹

⁹ The Attorney General has drawn our attention to a recent opinion of the federal district court in Montana involving parallel issues. In that case, the Montana Governor, under emergency powers delegated to him by the Legislature to suspend enforcement of regulatory statutes, issued a directive that the ordinary statutory prohibition on the use of mail-in ballots in the general election in Montana was going to be lifted for the 2020 general election due to concerns caused by COVID-19. Against a challenge that, among other things, the Governor's suspension of the regulatory prohibition on mail-in balloting
(continued)

Plaintiff argues that the Executive Order itself represents an improper delegation of authority to other executive agencies, such as the State DOH and the county departments of health, as well as the CDC. The Executive Order merely recites in this regard that vote-by-mail ballots shall be processed and canvassed "in accordance with guidelines provided" by such health agencies. The reference to health guidelines is not a misuse or transfer of the emergency powers delegated to the Governor. Rather, it bespeaks a commitment that those powers will be implemented in accordance with public health standards. If anything, the reference to such guidelines helps assure that the emergency powers are not implemented recklessly or arbitrarily.

Plaintiff has pointed out that on April 14, six days after Governor Murphy issued Executive Order 120, which postponed the primary election, the Legislature ratified the postponement of the primary date. L. 2020, c. 21, titled

violated the Elections Clause, the District Court held that by invoking his emergency powers under state law in enacting the regulatory suspension, the Governor acted within the scope of the delegated powers of the Legislature in affecting the time, place, and manner of Montana's federal elections. The Attorney General contends this result and reasoning, although not binding precedent, happens to be consistent with the similar delegation of emergency powers exercised by Governor Murphy in his Executive Orders under the EHPA and the Disaster Control Act. Because the opinion apparently has not been published, we do not cite to it or rely on it as precedential authority, see Rule 1:36-3, and mention it only for comparative and historical purposes.

"An Act Concerning the Date of the Primary Election." The complete text of that April 14 legislation reads:

1. a. Notwithstanding the provisions of [N.J.S.A. 19:2-1], [N.J.S.A. 19:23-40], any provision of Title 19 of the Revised Statutes, or any other law, rule, or regulation to the contrary, the 2020 primary election shall not be held on the Tuesday next after the first Monday in June, falling on June 2, 2020, and shall be held instead on the Tuesday next after the first Monday in July, falling on July 7, 2020. Any other election scheduled to occur between May 13, 2020 and July 6, 2020, inclusive, shall be rescheduled to be held on July 7, 2020.

b. Nothing in this act shall be interpreted to affect the deadlines prescribed under the provisions of Title 19 of the Revised Statutes for the nomination of candidates, filing of petitions, acceptance of nominations, certification of nominations, and any other deadline required to be met preceding the primary election, when that deadline occurs before April 11, 2020, including, but not limited to, the deadline for filing nominating petitions under [N.J.S.A. 19:23-14], for amending defective petitions under [N.J.S.A. 19:23-20], for the filing of objections to nominating petitions under [N.J.S.A. 19:13-10], for determining the validity of objections to nominating petitions under [N.J.S.A. 19:13-11], and for drawing for ballot positions under [N.J.S.A. 19:23-24], which dates shall continue to be determined by reference to June 2, 2020. All other deadlines prescribed under the provisions of Title 19 of the Revised Statutes for meeting statutory requirements for a primary election shall be calculated using the July 7, 2020 primary election date.

c. Notwithstanding the provisions of subsection b. of this section, or any other law, rule, or regulation to the contrary, the party affiliation deadline established under [N.J.S.A. 19:23-45] shall be calculated based on the July 7, 2020 primary election date.

d. Notwithstanding the provisions of Title 19 of the Revised Statutes, or any other law, rule, or regulation to the contrary, petitions for direct nomination for the general election required to be filed under [N.J.S.A. 19:13-3] through [N.J.S.A. 19:13-9] shall be due by 4:00 p.m. on July 7, 2020.

2. This act shall take effect immediately.

[Ibid.]

To be sure, the Legislature did not pass similar legislation ratifying the universal vote-by-mail procedures effectuated by Executive Order 144 between its issuance on May 15, and the primary election on July 7. As we have already shown, the passage of such cognate legislation was not vital, because the Governor already possessed the delegated authority to take emergency action to safeguard public health and safety.

Moreover, although it is not essential to our analysis, subsequent events are indicative of an arguable legislative ratification of, or acquiescence to, the health and safety measures undertaken in Executive Order 144. Such ratification or acquiescence is intimated by the statute that established the vote-by-mail

procedures for the 2020 general election, enacted on August 28, 2020. L. 2020, c. 71 (Chapter 71).

Chapter 71 states that "[n]otwithstanding any other law to the contrary, to allow enough time for the county clerks to print and mail the ballots to voters, the following deadlines are modified as follows . . . the last day a vacancy may occur for primary election nominees for the November 2020 General Election . . . shall be August 28, 2020," the date that the law went into effect. N.J.S.A. 19:63-31(k)(2). The statute further states that "the deadline to fill a vacancy in the primary election nominees for the November 2020 General Election . . . shall be August 31, 2020." N.J.S.A. 19:63-31(k)(3). By thereby foreclosing the possibility of a special election to fill any vacancy for primary election nominees for the 2020 general election, the Legislature appears to have implicitly ratified the outcomes of the July 7 primary election and, also by implication, the validity of the modified election procedures that were used in that election.

Additionally, the legislative fiscal estimate prepared by the non-partisan Office of Legislative Services for the 2020 general election legislation expressly references Executive Order 144, stating that "many of the requirements of [L. 2020, c. 71] coincide with those of Executive Order 144 requiring the procurement of secure ballot drop boxes for the July 7, 2020 primary elections.

This bill expands that requirement to any subsequent election in the State." Office of Legis. Servs., Fiscal Note to Assembly Bill No. 4475 (Aug. 26, 2020) (emphasis added).

Courts "may refer to [a] bill's fiscal note to ascertain legislative intent if necessary." Matter of 1997 Assessments, 311 N.J. Super. 600, 606 (App. Div. 1998). Here, the August 26 Fiscal Note's express declarations that the provisions of N.J.S.A. 19:63-31 "coincide with" and "expand" election procedures and "requirements" implemented by Executive Order 144 provide further indicia that the Legislature intended to ratify those emergency procedures. See In re Plan for Abolition of Council on Affordable Hous., 424 N.J. Super. 410, 419-20 n.3 (App. Div. 2012) (holding that legislative history referencing a reorganization plan enacted by the Governor through legislatively delegated powers constituted a ratification of executive action), aff'd as modified, 214 N.J. 444 (2013).

As we have said, we need not and do not rely on an inference of ratification to uphold the constitutional validity of Executive Order 144. We mention it simply as an indication that the Legislature itself evidently has not concluded that its institutional lawmaking powers were usurped. For that matter, the Legislature has not brought suit or moved to intervene in this

litigation, as contrasted with the lawsuit pursued by the Arizona Legislature in the redistricting commission case seeking to nullify the commission's authority under the Elections Clause. Arizona State Legislature, 576 U.S. at 787.

In sum, plaintiff's argument that Executive Order 144 was facially invalid and violated the Elections Clause of the United States Constitution is unpersuasive. Through the exercise of the emergency powers delegated to him by the Legislature, the Governor took authorized action to address a mounting pandemic and protect the public health, safety, and welfare.

Due Process and Equal Protection Clauses

Plaintiff's facial challenge to the Governor's actions under the Due Process Clause of the Federal Constitution is also unavailing. Plaintiff alleges he was deprived by Executive Order 144 of his due process right to cast ballots in an election created by the Legislature in accordance with the Constitution.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides that no state may "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. "[A] statute is invalid on substantive due process grounds if it 'seeks to promote [a] state interest by impermissible means.'" Caviglia v. Royal Tours of Am., 178 N.J. 460, 472 (2004) (alterations in original). "[A] state statute does not

violate substantive due process if the statute reasonably relates to a legitimate legislative purpose and is not arbitrary or discriminatory." Greenberg v. Kimmelman, 99 N.J. 552, 563 (1985).

Plaintiff offers no controlling legal authority for a claimed Due Process right to cast a vote by a particular method. Nor has he convincingly argued that by changing the primary rules to limit person-to-person contact and the spread of infection from COVID-19, Executive Order 144 was enacted with an illegitimate, arbitrary, or discriminatory purpose.

Although plaintiff has made factual contentions that the vote-by-mail processes for the primary election were incorrectly administered in certain locations and resulted in irregularities in the counting of ballots, those claims are beyond the scope of a facial challenge to the Executive Orders properly before this court. Any remaining as-applied factual contentions must be litigated in the trial court. R. 2:2-3(a)(2) (noting the appellate court's function as a reviewing court, and not as a fact-finder that can hear witnesses and make factual findings); see also State v. S.S., 229 N.J. 360, 365 (2017) ("the customary role of an appellate court is not to make factual findings but rather to decide whether those made by the trial court are supported by sufficient credible evidence in the record"); In re Contest of Democratic Primary Election of June

3, 2003 for Off. of Assembly of Thirty-First Legis. Dist., 367 N.J. Super. 261, 265 (App. Div. 2004) (reviewing a Law Division adjudication of an election contest petition brought under N.J.S.A. 19:29-1).

We similarly discern no basis for relief as to plaintiff's facial arguments under the Equal Protection Clause. U.S. Const. amend. XIV, § 1. He asserts that if the court nullifies the results of the Republican Primary Election, then it must likewise nullify the results of the Democratic Primary Election, or else that would give the other major political party an unfair campaigning advantage. We need not adjudicate that hypothetical situation, because, as noted above, plaintiff has failed to demonstrate that the Executive Order regulating the primary election as a whole was facially unconstitutional.

The Freedom of Information Act

Plaintiff alleges that the procedures implemented by Executive Order 144 violate the FOIA by creating an "opaque process," alleging he has no means of obtaining information regarding certain procedures followed by the county canvassing boards. In particular, plaintiff alleges that the United States Postal Service has failed to produce records relating to the election that he has requested, which also violates the FOIA. Plaintiff has not, however, made the United States Postal Service, or any federal entity, a party in this case.

The FOIA states that, absent certain exceptions, "each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person." 5 U.S.C. § 552(a)(3)(A).

State courts do not have jurisdiction over a FOIA claim. Jurisdiction for FOIA claims lies in "the district court of the United States in the district in which the complainant resides," not in state court. 5 U.S.C. § 552(a)(4)(B). Plaintiff has not pointed to any authority in which a state court has entertained such a claim in the context of an election contest, or in any other context. His FOIA claims against the United States Postal Service or any other federal agency must be brought in federal court, should he choose to pursue them.

Free Speech Claims

Plaintiff contends that a cease-and-desist letter he received from a Deputy Attorney General on June 25 directing him to stop asking voters to submit duplicate ballots and change their votes was a violation of his free speech rights under the First Amendment to the United States Constitution. U.S. Const. amend. I. The letter was apparently founded upon 52 U.S.C. § 10307(e), which makes it illegal for voters to vote twice in federal elections, subject to certain exceptions.

The factual, as-applied issue as to whether plaintiff's speech was unconstitutionally chilled by the Attorney General's letter is outside the narrow appropriate scope of this court's review of a final administrative decision under Rule 2:2-3(a)(2). The claim does not assert facial invalidity of the Governor's Executive Orders, which were the only claims properly transferred here pursuant to the appellate rules. Consequently, that particular claim must be adjudicated in the trial court.

Claims Concerning the General Election and for Injunctive Relief

Apart from his arguments concerning the primary election, plaintiff contends the administration of the present general election is likewise invalid under the federal constitution. He argues the inclusion of prevailing nominees for federal office from the primary election on the ballot for the general election violates the Due Process Clause, because the primary election itself was unconstitutional. The premise of that argument is incorrect, for the reasons this opinion has already noted.

Plaintiff specifically requests the court to "[d]eclare the entire system of mail-in ballots except as provided by previously defined procedures for the absentee ballots to be issued to members of the Armed Forces" to be invalid. He

further asks this court to "[i]ssue an injunction forbidding the use of the mail-in ballot system for the general election."

These and other requests for injunctive relief asserted by plaintiff implicate well settled principles under New Jersey civil law. In Crowe v. De Gioia, 90 N.J. at 126, the Court identified several factors to guide whether injunctive relief is appropriate.

First, a preliminary injunction should not be granted except to prevent irreparable harm, which the Court defined as harm that "cannot be redressed adequately by monetary damages," "severe personal inconvenience," or where the "nature of the injury or of the right affected" make it appropriate. Id. at 132-33. The second principle is that "temporary relief should be withheld when the legal right underlying the plaintiff's claim is unsettled." Ibid. Third, a preliminary injunction should not issue unless the plaintiff makes a preliminary showing of "a reasonable probability of success on the merits." Ibid. Fourth, a court must evaluate "the relative hardship to the parties in granting or denying relief." Id. at 134.

In addition, and germane here, a case that "'presents an issue of significant public importance' requires the court to 'consider the public interest in addition to the traditional Crowe factors.'" N.J. Election Law Enft Comm'n v.

DiVincenzo, 445 N.J. Super. 187, 195-96 (App. Div. 2016) (quoting Garden State Equal. v. Dow, 216 N.J. 314, 321 (2013)) (emphasis added).

These traditional Crowe factors likewise bear upon requests for permanent injunctive relief. See, e.g., Murray v. Lawson, 136 N.J. 32, 50-51 (1994), cert. granted, judgment vacated on other grounds, 513 U.S. 802 (1994); Horizon Health Center v. Felicissimo, 135 N.J. 126, 139 (1994).

The Crowe analysis has been applied in the context of injunctive relief sought concerning an election. See, e.g., Finkel v. Twp. Comm., 434 N.J. Super. 303, 310 (App. Div. 2013); McKenzie v. Corzine, 396 N.J. Super. 405, 416 (App. Div. 2007) (citing N.J. Democratic Party, Inc. v. Samson, 175 N.J. 178, 190 (2002)).

Applying those factors here, plaintiff has not demonstrated that injunctive relief of any kind should be ordered.

First, for simplicity, we will assume purely for sake of discussion that plaintiff has alleged that his rights as both a political candidate and voter will be irreparably harmed if the court does not compel an immediate halt to the processes being used in the general election. Even if that assumption were true, the other Crowe factors overwhelmingly tip against his requests for the extraordinary and massive injunctive measures he has sought.

On the second prong, plaintiff has not shown his legal theories of invalidity are supported by "settled law." Nor, on the related third prong, has he made a sufficient showing of a probability of success on the merits to justify enjoining the ongoing general election.

To the contrary, we have already dispelled above plaintiff's arguments of unconstitutionality under the Elections Clause. And, to the extent that plaintiff argues the mail-in voting procedures now being used for the general election violate "settled" federal law, the recent published opinion of the United States District Court in Trump v. Way shows otherwise.

The District Court in Trump v. Way declined to enter an injunction regarding the 2020 general election and rejected the plaintiffs' "broad construction" of the federal election laws, noting that states had historically been given wide discretion in permitting various forms of absentee voting and early voting. Way, slip op. at 16. As to the late-received ballots, the court held there was "no direct conflict" between New Jersey's law and the federal election day statutes. Id. at 24. The court also found, in balancing the harms, that entering an injunction against the universal vote-by-mail procedures "would frustrate . . . ongoing efforts to educate voters about the new by-mail election . . . at the risk of time and expense for the State and confusion for the voters." Id. at 29.

The court held, for the same reason, that enjoining a state's election procedures on the eve of an election would not be in the public interest and would risk voter disenfranchisement. Id. at 30.

"[I]t is well-established that under principles of comity, and in the interests of uniformity, federal interpretations of federal enactments" by federal courts in published cases, though not controlling on state courts, are nevertheless "entitled to our respect." Ryan v. American Honda Motor Co., Inc., 186 N.J. 431, 436 (2006). The District Court's precedential opinion in Trump v. Way appears to be soundly reasoned, and, at the very least, reflects that plaintiff's requests for injunctive relief are not supported by "settled" law and that they lack rather than possess a probability of success.¹⁰

The fourth and fifth Crowe factors—concerning the relative interests of the parties and the interests of the public at large—manifestly tip against granting the extraordinary measures plaintiff seeks. McKenzie, 396 N.J. Super. at 416 (including the consideration of the public interest in the Crowe analysis in the context of an election). The general election utilizing the mail-in voting

¹⁰ Since plaintiff's facial challenges lack merit, we need not ponder the legal and voter confusion that would ensue if a federal court ruled under federal law that an election may continue to proceed as planned and a state court separately ruled under federal law that it may not.

procedures has been underway for many weeks. According to the representation of the Deputy Attorney General made to us at oral argument, it is estimated that over a million New Jersey voters have already marked and mailed in their ballots. Disrupting that process now would inevitably cause widespread upheaval and potential voter disenfranchisement. Similarly, an order nullifying the primary election at this juncture and invaliding nominees on the general election ballot would produce comparable harm.

It must also be underscored that the entire state, including political candidates such as plaintiff, were on notice as of May 15 when Executive Order 144 was issued, that the procedures for the primary election would be modified to allow mail-in voting due to the COVID-19 pandemic. Apparently no one, including plaintiff, filed suit to enjoin that process before the primary election took place.

The voters and other candidates who participated in that primary election had a right to expect that the votes would be counted and that the results would be certified and used in the general election. Although we need not reach or rest upon defendants' argument that plaintiff is "equitably estopped" from bringing his claims, his inaction before the primary took place surely affects the

comparative equities.¹¹ Plaintiff took advantage of the extended opportunity to campaign and attract voters for the primary election and did not attempt to halt the process. It was only after he was not victorious in the primary that he went to court and argued that Executive Order 144 is unconstitutional. Meanwhile, other candidates for the Senate and the House of Representatives, as well as other offices, had their status as nominees (or, as the case may be, defeated candidates) determined.

In addition to the Crowe factors under state law, there is a wealth of federal precedent that weighs heavily against entertaining on-the-brink challenges to the voting procedures of upcoming elections. See, e.g., Purcell v. Gonzalez, 549 U.S. 1, 5-6 (2006) ("Court orders affecting elections, especially

¹¹ We recognize that plaintiff filed his election contest petition on September 1 apparently in compliance with the twelve-day deadline for such petitions under N.J.S.A. 19:29-3, as the last Senate recount from Sussex County was announced on August 20. Nevertheless, mere compliance with the statutory deadline for an election contest does not mean the equities and the public interest support the extraordinary injunctive relief he seeks. Plaintiff knew weeks before the July primary what Executive Order 144 said, and that it was allowing citizens to vote by mail without an advance request for a ballot. The change from usual voting processes was clear. There was no need to wait for the election to occur in order to bring a challenge to the procedures. Ideally, "[t]he time to protest [to the process] is before the election, and not, as here, after the event." Two Guys from Harrison, Inc. v. Furman, 32 N.J. 199, 233 (1960). Even if plaintiff's complaint is not time barred or estopped, its timing bears upon the balancing of Crowe factors for obtaining injunctive relief.

conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase."); Nader v. Keith, 385 F.3d 729, 736 (7th Cir. 2004) (disallowing third-party presidential candidate's suit challenging constitutionality of state election code that was not filed until June of an election year, which was four months after his candidacy was announced, and "created a situation in which any remedial order would throw the state's preparations for the election into turmoil"); Kay v. Austin, 621 F.2d 809, 813 (6th Cir. 1980) ("As time passes, the state's interest in proceeding with the election increases in importance as resources are committed and irrevocable decisions are made, and the candidate's claim to be a serious candidate who has received a serious injury becomes less credible by his having slept on his rights.").

To the extent we have not discussed them, any other arguments made by plaintiff that bear upon facial validity lack sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

III.

For these abundant reasons, plaintiff's facial challenges to Executive Order 144 and any other pertinent Executive Orders are denied, and his requests for injunctive relief and summary judgment/decision are likewise denied.

Jurisdiction in this appellate court is concluded, and the matter is remanded to the trial court to adjudicate in due course plaintiff's as-applied and other claims, including any necessary determinations of material fact.

Affirmed in part, remanded in part.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION

APPENDIX 3

**Order Transferring, Complaint(s)/Petition(s) to
the Superior Court, Appellate Division
(September 30,2020)**

PREPARED BY THE COURT

HIRSH SINGH,
Plaintiff/Petitioner,

v.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
MORRIS COUNTY

DOCKET NO.: MRS-L-01757-20

CIVIL ACTION

HON. PHILIP D. MURPHY, in his
official capacity as Governor of
New Jersey, et als.,
Defendant(s)/Respondent(s).


**ORDER TRANSFERRING COMPLAINT(S)/
PETITION(S) TO THE SUPERIOR COURT,
APPELLATE DIVISION, PURSUANT
TO R. 1:13-4(a)**

IN THE MATTER OF THE
PETITIONS OF HIRSH SINGH
FOR RECOUNT AND RECHECK

THESE MATTERS, having been opened to the Court by plaintiff, Hirsh Singh, pro se, upon his petitions for recheck and recount, and complaint contesting the outcome of the 2020 New Jersey Republican Primary Election; and the Court having consolidated all matters under a single docket; and upon having reviewed the petitions, complaint and first amended complaint; and it appearing that because the complaint contesting the results of the 2020 New Jersey Republican Primary Election substantively challenges the constitutionality and/or application of Governor Murphy's Executive Orders 120 and 144; and because pursuant to R. 2:2-3(a)(2) and Vas v. Roberts, 418 N.J. Super. 509 (App. Div. 2011), challenges to executive orders exceed the subject matter jurisdiction of this Court; and for good cause having been shown; therefore,

IT IS, on this 30th of September, 2020;

ORDERED, that because this Court lacks subject matter jurisdiction, pursuant to R. 2:203(a)(2), to adjudicate the petitions/complaints consolidated under docket number, MRS-L-01757-20, the matters are hereby transferred to the Superior Court, Appellate Division, in accordance with R. 1:13-4(a), and shall thereafter be heard in due course.



Stuart A. Minkowitz
Assignment Judge

A copy of this Order has been served on all parties of interest via eCourts and email.

APPENDIX 4

Plaintiffs' Motion for Summary Judgement to the
Superior Court, Appellate Division (October 13,
2020)

Hirsh Singh
Filing as Pro Se
P.O. Box 407 Linwood, NJ 08221
9 Wexford Lane Linwood, NJ 08221
(609)335-5289
info@hirshsingh.com

HIRSH SINGH,
Petitioner,

v.

HONORABLE PHILIP D. MURPHY, in
his official capacity as Governor of New
Jersey, HONORABLE TAHESHA WAY,
in her official capacity as New Jersey
Secretary of State; HONORABLE Joanne
Schwartz, in her official capacity as
Burlington County Clerk, BURLINGTON
COUNTY BOARD OF ELECTIONS and
COUNTY BOARD OF CANVASSERS;
HONORABLE Joseph Ripa, in his official
capacity as Camden County Clerk,
CAMDEN COUNTY BOARD OF
ELECTIONS and COUNTY BOARD OF
CANVASSERS; HONORABLE Stever
Peter, in his official capacity as Somerset
County Clerk, SOMERSET COUNTY
BOARD OF ELECTIONS and COUNTY
BOARD OF CANVASSERS;
HONORABLE Rita Marie Fulginiti, in her
official capacity as Cape May County
Clerk, CAPE MAY COUNTY BOARD
OF ELECTIONS and COUNTY BOARD
OF CANVASSERS; HONORABLE
Celeste M. Riley, in her official capacity as
Cumberland County Clerk,
CUMBERLAND COUNTY BOARD OF
ELECTIONS and COUNTY BOARD OF
CANVASSERS; HONORABLE Mary H.
Melfi, in her official capacity as Hunterdon
County Clerk, HUNTERDON COUNTY
BOARD OF ELECTIONS and COUNTY

APPELLATE COURT OF NEW JERSEY

LAW DIVISION

DOCKET NO. A-323-20

CIVIL ACTION

MOTION FOR SUMMARY
JUDGMENT

BOARD OF CANVASSERS;
HONORABLE Paula Sollami-Covello, in
her official capacity as Mercer County
Clerk, MERCER COUNTY BOARD OF
ELECTIONS and COUNTY BOARD OF
CANVASSERS; HONORABLE Elaine
Flynn, in her official capacity as Middlesex
County Clerk, MIDDLESEX COUNTY
BOARD OF ELECTIONS and COUNTY
BOARD OF CANVASSERS;
HONORABLE Christine Giordano
Hanlon, in her official capacity as
Monmouth County Clerk, MONMOUTH
COUNTY BOARD OF ELECTIONS and
COUNTY BOARD OF CANVASSERS;
HONORABLE Ann F. Grossi, in her
official capacity as Morris County Clerk,
MORRIS COUNTY BOARD OF
ELECTIONS and COUNTY BOARD OF
CANVASSERS; HONORABLE Danielle
Ireland-Imhof, in her official capacity as
Passaic County Clerk, PASSAIC
COUNTY BOARD OF ELECTIONS and
COUNTY BOARD OF CANVASSERS;
HONORABLE Joanne Rajoppi, in her
official capacity as Union County Clerk,
UNION COUNTY BOARD OF
ELECTIONS and COUNTY BOARD OF
CANVASSERS; HONORABLE Holly
Mackey, in her official capacity as Warren
County Clerk, WARREN COUNTY
BOARD OF ELECTIONS and COUNTY
BOARD OF CANVASSERS;
HONORABLE Jeff Parrott, in his official
capacity as Sussex County Clerk, SUSSEX
COUNTY BOARD OF ELECTIONS and
COUNTY BOARD OF CANVASSERS;
HONORABLE Dale A. Cross, in his
official capacity as Salem County Clerk,
SALEM COUNTY BOARD OF
ELECTIONS and COUNTY BOARD OF
CANVASSERS; HONORABLE Scott M.
Colabella, in his official capacity as Ocean
County Clerk, OCEAN COUNTY
BOARD OF ELECTIONS and COUNTY

BOARD OF CANVASSERS;
HONORABLE E. Junior Maldonado, in
his official capacity as Hudson County
Clerk, HUDSON COUNTY BOARD OF
ELECTIONS and COUNTY BOARD OF
CANVASSERS; HONORABLE James N.
Hogan, in his official capacity as
Gloucester County Clerk, GLOUCESTER
COUNTY BOARD OF ELECTIONS and
COUNTY BOARD OF CANVASSERS;
HONORABLE Christopher J. Durkin, in
his official capacity as Essex County Clerk,
ESSEX COUNTY BOARD OF
ELECTIONS and COUNTY BOARD OF
CANVASSERS; HONORABLE John S.
Hogan, in his official capacity as Bergen
County Clerk, BERGEN COUNTY
BOARD OF ELECTIONS and COUNTY
BOARD OF
CANVASSERS; HONORABLE Edward P.
McGettigan, in his official capacity as
Atlantic County Clerk, ATLANTIC
COUNTY BOARD OF ELECTIONS and
COUNTY BOARD OF CANVASSERS.

Respondents.

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Plaintiff moves for Summary Judgment on the Elections Clause Claim, Due Process Claim, Free Speech Claim, and the Violation of the Freedom of Information Act based upon the following:

I. INTRODUCTION

The claims upon which this motion for Summary Judgment has been moved are the violation of Article 1, Section 4 (“Elections Clause”), the Due Process Clause, and the Free Speech Clause of the United States Constitution, and the Violation of 5 U.S. Code § 552 (“Freedom of Information Act” or “FOIA”) as it applies to United States Postal Service (“USPS”). Although several provisions from the New Jersey Constitution and New Jersey laws are described in order to provide the legislative context, no challenge is made under the provisions of the New Jersey Constitution.

POTENTIAL REMEDIES

The Court must note that the action of moving the primary election from June 2, 2020 to July 7, 2020 was sanctioned by the legislature and was legitimate. However, Executive Order 144 (“EO 144”) that pertained to the mail-in ballots for all voters of the state, was issued by the Governor, and any election or election process for federal offices that arose as a result of EO 144 is illegal and unconstitutional. The court could potentially rule that only the ballots from in-person voting on July 7, 2020 and the absentee ballots that were requested in compliance with the law that existed prior to EO 144 be counted while discarding all other mail-in ballots. Alternatively, the court could determine that such a ruling would deprive the voting rights of millions of voters who in good faith believed their mail-in ballots were legal votes, and instead void the entire primary election for the federal offices. In either case, the printing and mailing out of ballots for the general election in November based on the result of the illegal primary election must be stopped.

II. FACTS

This lawsuit is brought by Republican Primary Candidate for the U.S. Senate seat in New Jersey, Hirsh Singh (“Petitioner”), who has standing as a candidate as he ran in the primary election held on July 7, 2020 for the aforementioned seat. The candidate was injured by the fact that while he was in the midst of campaigning as a candidate participating in a lawfully created election, he was forced to redirect his resources as well as the resources of his campaign to contest in the illegitimate election, the manner of which was created by Executive Order 144 issued by the New Jersey Governor. The Petitioner was also deprived of the opportunity to participate both as a candidate and as a voter in a lawfully created primary election because of the Governor’s Executive Order.

During the primary election created by the Executive Order, the petitioner also received a cease-and-desist letter from the Attorney General’s office that asked the Petitioner to cease and desist from his political speech asking voters to seek a duplicate ballot and change their vote in case they had wrongly marked their ballots. (Petitioner’s message to voters – **Exhibit A of Singh Declaration**; Attorney General’s cease and desist letter – **Exhibit B of Singh Declaration**)

Petitioner’s message to the voters included the following lines, “As a patriot, if you have been hoodwinked into voting for Rik Mehta, it is your patriotic duty to contact your county clerk and request a duplicate ballot to vote for the only Conservative Hirsh Singh. Your duplicate ballot will replace your earlier ballot.” The cease and desist letter informed the Petitioner that his message to the voters was in violation of the law and threatened a fine and imprisonment. It highlighted the line stating “Your duplicate ballot will replace your earlier ballot” and wrongly claimed this was a false statement and directed the petitioner and stop disseminating the information to voters, “You are to immediately cease and desist from any further mailing, emailing or any other dissemination of the attached letter.” The letter was also publicized in the press and the Petitioner was characterized as a wrongdoer.

The immediate effect of the cease and desist letter was for the campaign to comply with it under the impression that there must have been some law that had been inadvertently violated, and to deal with the negative fallout in the media as a result of the cease and desist letter. The Petitioner had to cease working on campaign related activities such as drafting policy, crafting messages for voters, and sending out mailers, and instead spent time researching the law and creating a press release to deal with the media fallout of the threatening cease and desist letter. (*See Singh Declaration*)

At the time the cease and letter had been received, the official Camden County website under the heading “Common reasons to request a replacement ballot are:” listed various reasons for requesting a duplicate ballot and one such reason was “Your ballot was not voted correctly.” (**Exhibit C of Singh Declaration**) The ballots of Atlantic County and Ocean County also clearly stated that voters can request duplicate ballots if they incorrectly marked them. (Atlantic County ballot – **Exhibit D of Singh Declaration**; Ocean County ballot – **Exhibit A of Rullo Declaration**)

Petitioner Hirsh Singh visited the Post Offices of the United States Postal Service located at Toms River, Ocean County and spoke to the Post Master Thomas Wagner and sought information related to the ballots of the primary election of July 7, 2020. (*Singh Declaration*) Petitioner also visited the municipal post offices of the Atlantic County and spoke to the postmaster at the location in order to obtain information about the ballots. (*Singh Declaration*) All communication with the postmasters as well as the state representative occurred on July 22, 2020 or prior to that date, and there has been no response from them so far. (*Singh Declaration*)

Neither were the Postmasters able to provide the information, nor was there a well defined procedure to seek information related to election ballots under the Freedom of Information Act to which all federal agencies including USPS are subject to. Mr. Thomas Wagner provided by scribbling on the back of his business card, the name one Mr. John DAlessio as the individual who was responsible for all mail-in ballots at USPS in New Jersey, but the Petitioner was not able to get a response from Mr.DAlessio after

several attempts at calling and leaving a voice message, emailing him, and going to his USPS Belmar place of business, as he was not responsive to the Petitioner's attempts to obtain the information.

(Singh Declaration; front and back sides of Thomas Wagner's business card – Exhibits E and F of Singh Declaration)

The entire mail-in-ballot system except for the well established procedures for the absentee ballots for Armed Services Personnel lacks transparency, and the use of USPS to transport the ballots without a proper procedure for making the information about such transportation available for public inspection flies in the face of the concept of an open and transparent election process as well as the Freedom of Information Act.

The Post Office has also indulged in decision-making in the election process by determining which ballots postmarked July 8 could be counted. It has not provided any information on how it makes these decisions or who authorized them to make such decisions. Nor can we provide any such information because those decisions were arbitrary and in violation of the law.

**III. EXECUTIVE ORDER 144 OF THE NEW JERSEY GOVERNOR, THE
PRIMARY ELECTION BASED ON IT, AND THE INCLUSION OF NOMINEES
FROM THE PRIMARY ELECTION ON THE BALLOT FOR THE GENERAL
ELECTION VIOLATE THE ELECTIONS CLAUSE OF THE UNITED STATES
CONSTITUTION**

(a) *Provisions in the United States Constitution and the related provisions in New Jersey's Constitution*

Article 1, Section 4 of the United States Constitution provides, "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators."

Consequently, the New Jersey Legislature has created laws related to the times, places and manner of holding elections. Article IV, Legislative Section 1(1) of the New Jersey Constitution clearly states, “The legislative power shall be vested in a Senate and General Assembly” while Article IV, Legislative Section 7(6) states, “The laws of this State shall begin in the following style: "Be it enacted by the Senate and General Assembly of the State of New Jersey."”

Additionally, Article III of New Jersey’s Constitution provides, “No person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution.”

Thus the New Jersey’s lawmaking powers related to the elections are completely vested in the legislative branch of the government and there is nothing in the New Jersey Constitution which expressly provides for the Governor to take over the powers of the legislature with regards to the framing of election laws.

(b) *Executive Order 144, which modified several election related laws related to the time and manner of holding elections, and which transferred the powers of the NJ Legislature to the Secretary of State, and which replaced laws passed by the legislature with guidelines created by the Centers for Disease Control and Prevention and other federal and state government entities, is in violation of the Elections Clause of the United States Constitution*

On May 15, 2020, Governor Phil Murphy signed Executive Order 144 (“EO 144”), By issuing this order, the Governor interfered with and changed several laws related to the time and manner of holding elections including N.J.S.A. 19:8-4, N.J.S.A. 19:63-9, N.J.S.A. 19:63-22, N.J.S.A. 19:63-18, N.J.S.A. 19:6-2, N.J.S.A. 19:8-2, N.J.S.A. 19:52-6, N.J.S.A. 19:14-9, N.J.S.A. 19:23-54, N.J.S.A. 19:29-3, N.J.S.A. 19:23-55, N.J.S.A. 19:28-1, N.J.S.A. 19:52-6, N.J.S.A. 19:53B-21, N.J.S.A. 19:53C-21, and N.J.S.A. 52:14B-1.

EO 144 (1) provides, “All elections that take place on July 7, 2020, shall be conducted primarily via vote-by-mail ballots, which will automatically be sent to all “Active” registered Democratic and

Republican voters without the need for an application to receive a vote-by-mail ballot.” This is an instance of the Governor determining the manner of conducting elections through the Executive Order.

EO 144 (14) provides that “the ballot-return deadline in N.J.S.A. 19:63-22 shall be suspended” and that “[e]very vote-by-mail ballot that is postmarked on or before July 7, 2020, and that is received by July 14, 2020, at 8:00 p.m. shall be considered valid and shall be canvassed.” By suspending the ballot return deadline of 48 hours after the election that is specified in N.J.S.A. 19:63-22, and extending this deadline by five days, EO 144 (14) extended the time of voting through mail-in-ballots by five days and is hence unconstitutional.

Further, each enumerated point in EO 144 is an unconstitutional action by the Governor that changes either the time or the manner of holding elections, or both the time and manner of conducting elections, by modifying or overriding laws created by the legislative branch which are related to the time and manner of conducting elections.

The Executive Order delegated the power of modifying N.J.S.A. 19:31-21 related to the manner of conducting elections to the Secretary of State when it stated, “The Secretary of State may modify the requirements of N.J.S.A. 19:31-21 concerning the use of poll books and the information contained therein as necessary to address the procedure by which the July 7, 2020 Primary Election will be conducted under this Order, and the needs resulting therefrom.”

The Executive Order also effectively and illegitimately replaced the powers of the legislature to determine the time and manner of conducting elections by guidelines of bureaucratic departments such as the Centers for Disease Control and Prevention, the State Department of Health, and various county departments of health, when it stated, “Vote-by-mail ballots shall be processed and canvassed in accordance with guidelines provided by the Centers for Disease Control and Prevention, the State Department of Health, and the respective county departments of health.”

- (c) ***New Jersey's Constitution provides the proper manner for the Governor to act whenever public interest shall require such action but the Governor chose to bypass such a method eventually leading to the violation of Article 1 Section 4 of the United States Constitution***

Article IV, Legislative Section 1 (4) of the New Jersey Constitution deals with the manner in which the Governor could have acted during times of emergency without violating the Constitution when it provides: "Special sessions of the Legislature shall be called by the Governor upon petition of a majority of all the members of each house, and may be called by the Governor whenever in his opinion the public interest shall require."

If the Governor believed that the public interest required the action of the legislature, nothing stopped him from calling for a special session of the legislature and working with the legislative branch to change the law in accordance with the proper procedure without hijacking the powers of the legislature.

- (d) ***None of the laws granting emergency powers to the Governor which Phil Murphy claimed granted him the power to take over the powers of the legislature and change election laws actually grant him such powers; even if they granted him such powers, it would be unconstitutional***

Governor Phil Murphy in his Executive Orders 120 and 144 has listed N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A:9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4, and claimed that they grant him emergency powers that allowed him to pass the two Executive Orders.

If any of these statutes granted the powers of changing election laws and performing the functions of the legislature to the Governor, they would still be unconstitutional.

In reality, nothing in N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A:9-33 et seq., N.J.S.A. 38A:3-6.1, or N.J.S.A. 38A:2-4 can be construed as either transferring the power of the legislature to the Governor in times of emergencies or granting the power to the Governor to unilaterally frame election laws for the state of New Jersey.

N.J.S.A. 26:13-1 deals with the powers of the Commissioner of Health and Senior Services during a public health emergency such as directing health care workers and registered support services personnel, safe disposition of human remains, making a determination to investigate any deaths, and perform similar related functions. The Governor's Executive Orders includes declaring the health emergency, describing the nature of emergency and the geographic area subject to the declaration, impacting reimbursement claims, and exercising the powers of the Commissioner of Health and Senior Services if a disaster has been declared.

N.J.S.A. App. A:9-33 describes the objective of the civilian defense act and disaster control act using the words, "The purpose of this act is to provide for the health, safety and welfare of the people of the State of New Jersey and to aid in the prevention of damage to and the destruction of property during any emergency." Elections have nothing to do with property damage or destruction, and nothing in the portions that follow this statement of purpose grant to the Governor the rights of changing election laws or taking over the functions of the legislature. An example of powers under N.J.S.A. App. A:9-33 would be for the Governor to determine the control and direction of the flow of vehicular traffic on any State or Interstate highway, and its access roads, including the right to detour, reroute or divert any or all traffic, and to prevent ingress or egress from any area to which the declaration of emergency applies, but there is nothing to let the Governor change the law to determine the time and manner in which elections prescribed by the United States Constitution are conducted.

N.J.S.A. 38A:3-6.1 grants the power to "order to active duty, with or without pay, in State service, such members of the New Jersey National Guard, that in his judgment are necessary to provide aid to localities in circumstances which threaten or are a danger to the public health, safety or welfare" and to "authorize the employment of any supporting vehicles, equipment, communications or supplies as may be necessary."

N.J.S.A. 38A:2-4 is the power to order militia to active duty.

(e) Supreme Court Precedent (*Arizona State Legislature v. Arizona. Independent Redistricting Commission*) supports case for declaring the Governor's actions unconstitutional

In *Arizona State Legislature v. Arizona. Independent Redistricting Commission*, the Supreme Court citing *Smiley v. Holm* stated:

Lawmaking, we further noted, ordinarily “must be in accordance with the method which the State has prescribed for legislative enactments.”

The Supreme Court further added:

Nothing in the Elections Clause, we said, “attempt[ed] to endow the legislature of the State with power to enact laws in any manner other than that in which the constitution of the State ha[d] provided that laws shall be enacted.” *Id.*, at 368.

The State of New Jersey has not prescribed lawmaking to be in the form of arbitrary decrees issued by the Governor based on his own imagination that the emergency powers allow him to usurp the powers of the legislature and change the election laws.

IV. EXECUTIVE ORDER 144 OF THE NEW JERSEY GOVERNOR, THE PRIMARY ELECTION BASED ON IT, AND THE INCLUSION OF NOMINEES FROM THE PRIMARY ELECTION ON THE BALLOT FOR THE GENERAL ELECTION VIOLATE THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION

Executive Order 144, by upending the power of the New Jersey legislature and replacing the election for the offices of the U.S. Senator and the members of the House of Representatives by an election created by the executive order, deprived the petitioner from participating as a candidate as well as from voting as a voter in a lawfully created election created by the New Jersey legislature. The Executive Order, the election it created, and the results of the election violate both the Substantive Due Process rights and the Procedural Due Process rights of the Petitioner and are all unconstitutional. Any inclusion of the results of the primary election on the ballots for the general election to be held on November 3, 2020 would also be unconstitutional.

In *Reynolds v. Sims*, 377 U.S. 533 (1964), the U.S. Supreme Court quoted from *United States v. Classic*, 313 U.S. 299, 313 U.S. 315, "Obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a state to cast their ballots and have them counted." In the current context, the act of casting ballots refers to an election created by the legislature in accordance with the Constitution and that right has been taken away as the primary election of July 7, 2020 was not constitutional.

Additionally, the cease and desist letter of the Attorney General amounted to election interference as it interfered with the Petitioner's campaign communications, and is hence in violation of the Due Process Clause.

V. THE NEW JERSEY ATTORNEY GENERAL'S LETTER IS IN VIOLATION OF THE FREE SPEECH CLAUSE OF THE UNITED STATES CONSTITUTION

The New Jersey Attorney General's letter in Exhibit B to Singh Declaration is in violation of the Free Speech Clause of the U.S. Constitution as it had the effect of chilling the free speech rights of the Petitioner and his campaign by getting them to stop regular campaign communication and instead redirect their resources to researching the law and dealing with the negative effects of the letter. This letter continues to cause harm to the Petitioner and other voters as it has the effect of falsely informing voters that they may not replace their vote.

In *Mills v. Alabama*, the U.S. Supreme Court held that "no test of reasonableness can save a state law from invalidation as a violation of the First Amendment when that law makes it a crime for a newspaper editor to do no more than urge people to vote one way or another in a publicly held election." That holding is applicable in this case to the Petitioner and the Attorney General's letter must be declared as having violated the Free Speech Clause of the First Amendment.

**VI. THE MAIL-IN BALLOT SYSTEM VIOLATES THE FREEDOM OF
INFORMATION ACT AS IT APPLIES TO THE POSTAL SERVICE WHICH IS A
COMPONENT IN WHAT SHOULD BE A TRANSPARENT GOVERNMENT
PROCESS**

While Article II (4) of the New Jersey Constitution grants the legislature the power to provide for absentee voting by members of the armed forces, and while this process is well defined and based on members of the armed forces requesting absentee ballots, the same is not true for the general mail-in-ballot system created through Executive Order 144. The lack of proper definition of the entire process from end to end for the mail-in-ballot system, with many unknowns especially when the chain of custody of the ballots passes to the United States Postal System, means that a large part of the election process is out of control of the State of New Jersey and it is impossible to obtain proper information about the election process. As the United States Postal Service is a federal entity that derives its power from the United States Constitution, the Freedom of Information Act is applicable to it. Petitioner Hirsh Singh's case of contacting post offices, as described in the section on facts in this Motion, is evidence of such impossibility and only underscores the problems with the mail-in ballot system. Unlike in the case of the armed services personnel where the voters request absentee ballots leaving a paper trail, it is not possible to determine what occurs in the mail-in system created by EO 144. The lack of ability to obtain information and the lack of proper government procedures to obtain such information makes the mail-in voting system an opaque process and hence it is in violation of the Freedom of Information Act. The lack of information on proper procedures to obtain information on how to request records from the Post Office means that the mail-in ballot system violates 5 U.S. Code § 552 (a)(1). The lack of production of records by USPS is a violation of 5 U.S. Code § 552 (a)(3)(A) as all communication with the postmasters as well as the state representative occurred on July 22, 2020 or prior to that date, and there has been no response from them so far.

VII. PETITIONER DID NOT WAIT UNTIL THE EVE OF ELECTION; IT IS THE DEFENDANTS WHO OBSTRUCTED THE PETITIONER'S EFFORTS AND WASTED TIME; YET IT IS STILL NOT THE EVE OF THE ELECTION; PRECEDENTS FAVOR PETITIONER'S ARGUMENTS BOTH ON TIME AND VOIDING THE PRIMARY

Petitioner's actions were timely and in good faith, Defendants' actions were malafide and caused

delays: Defendants are squarely to blame for obstructing the efforts of the Petitioner and causing delays. At all points in time. Petitioner has acted in a timely fashion. Upon learning of various irregularities, the Petitioner sent emails to the Secretary of State's office as early as July 17.

Petitioner filed for recounts as early as July 24. It was the Attorney General's office that interfered in several counties and blocked this process. It is due to their efforts that the decision on recounts have not been arrived at yet, and Sussex County only gave their decision on August 20. Even after filing this complaint, the Attorney General's office has shown no sense of urgency and has attempted to slow down the process despite claiming that they believe this matter is time sensitive.

It is also the fault of the Defendants that the illegitimate primary election was certified only on August 9. It is for them to create a process that includes the granting of sufficient time to candidates who wish to challenge the election results. Petitioner cannot be held responsible for the failure of Defendants. Some actions resulting in injury to the Petitioner occurred after the elections and are ongoing injuries. They are the inclusion of his opponent's name on the ballot despite his opponent not winning an election sanctioned by the legislature, and the injury due to the violation of the Freedom of Information Act.

None of the cases cited by the Defendants include an unconstitutional action, and none of them include a challenge to an unauthorized election, the result of which is used in a general election.

Unsurprisingly, when the Defendants quote from *Purcell v. Gonzalez*, they changed the meaning of a sentence by snipping out the key words "especially conflicting orders." The original sentence read, "Court orders affecting elections, **especially conflicting orders**, can themselves result in voter

confusion and consequent incentive to remain away from the polls.” (words snipped out by the Defendants are emphasized). The solution is for the court not to issue conflicting orders.

The passage of time is clearly to the advantage of the State Defendants and to the disadvantage of the Petitioner. It is therefore disingenuous on the part of the Defendants to accuse the Petitioner of delays when it is the Defendants who have used delaying tactics. The election was more than 60 days away as of the date of filing with the court and more than 40 days away when all necessary filings for summary judgment were submitted and the court still has time to stop the unconstitutional actions and ensure that the election is conducted in accordance with the law.

Precedents support Petitioner’s claim on the remedy as well as time: Defendants are also wrong that the relief sought goes against all prior case law. In a previous lawsuit, the Superior Court ruled, “New Jersey’s election laws require that respondent’s certificate of election be annulled, that the election be set aside, and that a new election be held in November 2012.” *In re Contest of November 8, 2011 General Election of Office of N.J. General Assembly, Fourth Legislative Dist.*, 427 N.J. Super. 410, 486 (N.J. Super. 2012).

In that case, even though the challenge was brought after the election, the court ruled:

Respondent also argues that petitioner Shelley Lovett’s post-election challenge comes too late and seeks the wrong remedy... **Although petitioner’s challenge did not come too late**, she does request the wrong remedy. (emphasis added)

In re Contest of November 8, 2011 General Election of Office of N.J. General Assembly, Fourth Legislative Dist., 427 N.J. Super. 410, 418 (N.J. Super. 2012).

Likewise, on October 2, 2002, the Supreme Court of New Jersey ruled that there was sufficient time to replace the name of Robert G. Torricelli by the name of a candidate to be selected by the Democratic Party. In its opinion, the Supreme Court stated:

On the record before the Court, and with due regard to the representations of the Attorney General and counsel for the county clerks at oral argument, we find that there is sufficient time before the general election to place a new candidate’s name on the ballot. In respect of absentee voters, particularly military and civilian New Jersey citizens dwelling abroad, we are informed

that of approximately 19,000 absentee ballots authorized as of October 2, 2002, some 1,700 had been mailed and few had been returned. We are also informed that if the printing of new absentee ballots was expedited, most could be prepared and mailed within five business days. We understand that express mailing, both outgoing and return, is available to and from most overseas locations, and that if a source of funding for those activities is available, they can be carried out expeditiously.

New Jersey Democratic Party, Inc. v. Samson, 814 A.2d 1028, (N.J. 2002) 175 N.J. 178

The same opinion also states that the printing of ballots was stayed by the court, On September 30, 2002, Senator Robert G. Torricelli announced his withdrawal as the New Jersey Democratic Party's candidate for the United States Senate in the November 5, 2002, general election...

...

Also on October 1, 2002, the trial court issued an Order to Show Cause and stayed the printing of the ballots for the general election. *Id.*

The fact that the court issued its order staying the printing of ballots only on October 1, and issued its order permitting the replacement of the name of the candidate on October 2 for the general election to be held on November 5 of that year demonstrates that there is still sufficient time to remedy the outcome of the unconstitutional and illegal election processes in this case.

The Petition shows misconduct, fraud and corruption at all levels, and Defendants are wrong in claiming that the Secretary of State is exempt from such charges which apply only to lower level election workers

By arguing that the constitutional claims must not be considered, Defendants make an innovative argument that the terms misconduct, fraud and corruption apply only to the actions of low level election workers and do not apply to the misconduct, fraudulent actions, and the corruption of the Secretary of State who is the highest level official in charge of conducting elections.

They argue that any unconstitutional act by the Secretary of State is exempt from the purview of the terms misconduct, fraud and corruption described in NJSA 19:29-1(a).

By ignoring the sanctity of the legal and constitutional election authorized by the legislature, and instead combining it with an illegal and unconstitutional election, the Secretary of State indulged in misconduct and committed fraud on the candidates as well as the voters of the state of New Jersey. The

correct response by the Secretary of State to the Governor's illegitimate Executive Order 144 was to ignore it and continue with the legal and constitutional election which was already underway.

The certification of the primary election by the Secretary of State is improper; it is of no moment that the Board of Canvassers did not meet

Defendants present an argument that the Board of Canvassers do not meet during a primary election, but miss the point that the certification of the election by the Secretary of State before the counting was complete is, and continues to be, illegal. This allegation has been properly made under 19:29-1(a) and is also properly challenged in the Petition under 19:22-3.

Defendants quibble on the language in 19:29-1(f); Injury for legal standing purposes occurred only upon certification, yet the Petitioner complained as early as July to the Secretary of State about ongoing fraud; estoppel is inapplicable for mistakes of the law and where Petitioner had no role; Petitioner signed up for a legal election and not the illegal one

Defendants quibble about language but the required language is part of the Petition: Defendants complain that the petition does not use the words "upon information and belief" but the verification section on page 49 (**FIRST AMENDED VERIFIED PETITION TO CONTEST THE PRIMARY ELECTION**) has the statement, "I have read the contents of the Petition and incorporate same by reference and state that the contents herein are true to the best of our knowledge, information and belief." Additionally, these words also appear within the main body of the Petition. Many of the points in the Complaint are based on the much stronger foundation of personal knowledge as the petitioner provides first hand information under oath.

There were two elections in parallel: A legal election with In-Person voting sanctioned by the legislature, and an illegal election with mail-in-ballots based upon EO 144

It should be noted that there were in fact two elections going on at the same time. One was an election on July 7, 2020 sanctioned by the legislature while the other was a mail-in election created by

Executive Order 144 which was illegal. Petitioner did not use the mail-in system to cast his vote but went in person to the County Clerk's Office.

The traditional estoppel principles favor the Petitioner: All the traditional principles of estoppel actually favor the Petitioner. These principles are (i) the government knew the facts (ii) the government intended that its conduct be acted upon or be acted in such a way that the Petitioner had a right to believe the government so intended (iii) the Petitioner was not aware of the true facts (iv) the Petitioner detrimentally relied upon the government's conduct. See *USA Petroleum Corp. v. U.S.*, 821 F.2d 622, 627 (Fed. Cir. 1987); *American Electronic Lab., Inc. v. U.S.*, 774 F.2d 1110, 1113 (Fed. Cir. 1985); *Broad Avenue Laundry & Tailoring v. U.S.*, 681 F.2d 746, 749 (Ct. Cl. 1982); *Emeco Indus., Inc. v. U.S.* 485 F.2d 652, 657 (Ct.Cl. 1973); *Manloading & Mgt. Assoc., Inc. v. U.S.*, 461 F.2d 1299, 1303 (Ct. Cl. 1972).

Petitioner was not consulted and had no role in the conduct of the illegal election: Defendants purport to read the mind of the Petitioner and cite from other lawsuits and use the words, "voluntary conduct of a party" and "prevent injustice by not permitting a party to repudiate a course of action on which another party has relied to his detriment" to argue for estoppel, but this argument fails at many levels. First, the Petitioner did not sign up for the unauthorized election but the legal election. The deadline for signing up for the legitimate election sanctioned by the legislature was March 30, 2020 which was met by the Petitioner. The Executive Orders for the illegal election were passed after this date. The inclusion of the Petitioner's name in the unauthorized election based on EO 144 was without any consultation with him and he himself had no idea of the nuances of the actions of the office of the Secretary of State in duplicating the names of the candidates in the legal election to the mail-in ballots of the illegal one. It is patently dishonest to claim that it was "voluntary conduct" on the part of the Petitioner when the Petitioner gathered signatures for the legitimate election and was under the impression that he would get to participate in a legitimate election.

Secondly, the Defendants did not “rely on” (whether to their detriment or otherwise) Petitioner Singh’s decision or actions before going ahead with the parallel illegal election. That decision by the Defendants was a unilateral one without the Petitioner having any say in it. Defendants decided to go forward with it and the Petitioner’s position was not a factor in the decision of the Defendants. Thus it is dishonest to claim that Defendants relied on the Petitioner to conduct the illegal election. Defendant Murphy did not consult the Petitioner before passing Executive Order 144. (**Second Singh**

Declaration)

Detriment was the other way round with Petitioner not being given full facts, and even the legislature realized the full facts only in late August while the Defendants possessed full facts: It was the Petitioner who was made to act in the manner the government intended him to act by making him participate in the illegal election while his intent was to participate in the legal election. Petitioner was not in possession of all the facts surrounding the election processes that the government possessed, and Petitioner was made to act in a manner detrimental to him. Even the New Jersey Assembly was not aware of the unconstitutional nature of the actions of the Defendants and they only fixed it in late August and passed legislation to match similar the Executive Orders similar to EO 144 for the General Election EO 177 & EO 179 so as to permit mail-in ballots for the general election of November 3. Petitioner cannot be blamed for learning after the legislature that there existed an underlying unconstitutionality to the injustice which was already opposed by him for other reasons, and acting within a week of the legislature’s actions. In any case, this action was timely too and well in advance of the general election as described in a later section.

Estoppel does not apply to mistakes of law: The election based on EO 144 is clearly a mistake of the law and the government is clutching at straws by trying to disenfranchise millions of voters in the state of New Jersey by asking that there be no challenge against the illegal election. The simple remedy is either to count only the ballots cast in person on July 7, 2020 along with the absentee ballots cast by members of the armed forces, or conduct a new election. In either case, the inclusion of the candidates

nominated through the illegal election on the ballots for the general election of November 3, 2020 must be stopped. Instead, Defendants ask this court to legitimize the illegal election and accept the mistake of the law thus imposing on millions of voters the results of an undemocratic, unconstitutional, and arbitrary nomination process.

Injury began only after July 7 due to mixing of results from the legal and illegal elections, and fraudulent activities even by the State's own standards occurred. and Petitioner objected to the Secretary of State's Office as early as July 17: Petitioner first objected to the illegitimate activities related to the election by sending emails to the Secretary of State's office, Attorney General's office, and all Boards of Elections on July 18 but did not receive any response.

(See Exhibit E to Second Singh Declaration)

VIII. DEFENDANTS ARE WRONG TO OPPOSE THE COMPLAINT BEING A CONSOLIDATED ONE, THE CONSTITUTIONAL CLAIMS ARE CLEARLY WITHIN THE PURVIEW OF DISPUTES RELATED TO NJSA 19:29-1, AND COURTS HAVE A HISTORY OF ADDRESSING THEM

Defendants do not offer any arguments on the merits of the claims based on the federal and Constitutional laws, but merely complain that the First Amended Petition is a consolidated case that deals with multiple election related matters and wrongly object to considering the federal and constitutional matters as part of this election contest. First, the decision to consolidate all election related claims was made by the judiciary and not the Petitioner. Defendants also erroneously argue that this case must narrowly deal with the allegations of fraud against the low level election workers to the exclusion of fraud by the Secretary of State which would be the case if Constitutional claims are not considered. In making their argument, Defendants have omitted a key sentence from *Iannone v. McHale*, 245 N.J. Super. 17, 31 (App. Div. 1990)., the case they cite. The full quote that is relevant is as follows:

Defendants make much of what they assert to have been an **improper joinder of election contest issues with tort and civil rights causes attended by damages claims**. We assume they are correct that a statutory election-contest petition pursuant to N.J.S.A. 19:29-1, because of the need for swift deposition, may not be joined with other claims. (emphasis added)

That court was clearly talking about tort and civil rights causes attended by damages claims. All election related challenges have been consolidated by this court and they must include Constitutional and Federal claims challenging the validity of the election. Defendants try to make the fantastic interpretation that Constitutional claims related to the election are not encompassed by the word 'legally' which is present in the language of NJSA 19:29-1(a). To claim that the United States Constitution should not be considered to be part of the word 'legal' is clearly a false claim.

In fact, the judiciary in New Jersey has a history of hearing and ruling upon Constitutional claims in the context of election contests. See *In re Contest of November 8, 2011 General Election of Office of N.J. General Assembly, Fourth Legislative Dist.*, 427 N.J. Super. 410, 48 A.3d 1164 (N.J. Super. 2012), in which the court ruled upon the constitutionality of the residency requirement for candidates under the Equal Protection Clause.

This is no surprise as in *Magura v. Smith*, the court took a broad view of the term malconduct and stated, "This position takes an expansive view of "malconduct" interpreting that term to mean a failure to follow affirmative statutory requirements and not "bad" or illicit conduct. Such a reading was adopted in *Richards v. Barone*, 114 N.J. Super. 243 (Law Div. 1971)" *Magura v. Smith*, 131 N.J. Super. 395, 399 (N.J. Super. 1974).

To quote from *In re Contest of November 8, 2011 General Election of Office of N.J. General Assembly, Fourth Legislative Dist.*, 427 N.J. Super. 410, 486 (N.J. Super. 2012):

On December 1, 2011, petitioner **filed a petition pursuant to N.J.S.A. 19:29-1...**

...

This court is also aware that a special election, even when conducted with a general election, entails effort and expense. This court also appreciates the uncertainty and disruption that may result.

This court's obligation, however, is to apply the United States Constitution, the New Jersey Constitution, and New Jersey's election laws. The New Jersey Constitution set a

qualification for election that respondent did not meet. The United States Constitution does not invalidate that qualification. New Jersey's election laws require that respondent's certificate of election be annulled, that the election be set aside, and that a new election be held in November 2012.

(emphasis added)

It is thus clear that courts have an obligation to apply the United States Constitution, the New Jersey Constitution and New Jersey's election laws in contests brought under NJSA 19:29-1.

**IX. PETITIONER WINS IF ONLY CONSTITUTIONAL BALLOTS ARE COUNTED;
UNLIKE EO 144 BASED BALLOTS, ABSENTEE BALLOTS ARE GOVERNED BY
EXISTING FEDERAL LAWS AND ARE NOT CHALLENGED IN THIS ACTION BUT
IF THIS LAWSUIT RESULTS IN THE AUDIT OF THAT PROCESS, IT WILL
BENEFIT THE COUNTRY**

Petitioner Wins if only Constitutionally Valid votes are Counted

Petitioner has obtained information related to the breakdown of provisional ballots (in-person ballots) and mail-in ballots from Atlantic, Cape May, Cumberland, Salem, Gloucester, Camden, Burlington, Ocean, Monmouth, Mercer, Middlesex, Somerset, Hunterdon, Warren, Morris, Union, Hudson, Essex, Sussex, Passaic and Bergen counties. Considering only the provisional ballots (Constitutionally valid ballots) in these counties puts Petitioner Hirsh Singh in the lead with 19104 votes and the candidate with the next highest number of Constitutionally valid votes, Rik Mehta, gets 12072 votes. Three other candidates, Tricia Flanagan, Natalie Rivera, and Eugene Anagnos get 6084, 2144, and 1044 votes respectively. (**Third Singh Declaration**). No breakdown of provisional ballots and mail-in ballots has been posted on the websites of the clerks of Cape May, Salem, Gloucester, Mercer, Middlesex, Somerset, Warren and Hudson counties. (**Third Singh Declaration**).

The results in three counties – Essex, Salem and Morris – also show a reversal in the results with Petitioner Hirsh Singh winning them if only the Constitutionally valid ballots are counted.

Although this is sufficient reason to order all other counties which have withheld the breakdown of their ballots according to provisional ballot type and mail-in ballot type, and order a recount based solely on the Constitutional validity of the ballots, and although Petitioner is confident that he will

emerge victorious if such an exercise is carried out, Petitioner acknowledges that millions of voters in the state who voted in good faith using the unconstitutional mail-in ballots would be disenfranchised, and admits that a better solution would be for the court to declare the entire primary election null and void and hold it again.

Unlike Mail-in ballots, the Tracking of Ballots in the Absentee Ballot System is Governed by Federal laws and a FOIA Based Ruling Will Not Affect Them; Absentee Ballot System Is Clearly Not A Matter for This Court to Address

Unlike in the case of the mail-in ballots which have no federal laws and procedures supporting them, the absentee ballot system is governed by federal laws that ensure the privacy of voters and also mandate for the ability to track the ballots. The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) was passed in 1986, and expanded significantly in 2009, when Congress passed the Military and Overseas Voter Empowerment (MOVE) Act. The Help America Vote Act of 2002 created the Election Assistance Commission which certifies voting systems and audits election processes. The MOVE Act has a requirement to “allow UOCAVA voters to track the receipt of their absentee ballots through a free access system.” None of these federal laws apply to the mail-in ballot system created by the Executive Order 144 of Governor Phil Murphy.

Petitioner has already provided to this court an Exhibit in the form of a photograph where the mail-in ballots in a tray were lying in the open without any supervision outside of a Board of Elections in Burlington County. Clearly, that photograph is evidence that the lack of procedures to govern the mail-in ballot system has resulted in the lack of integrity of the mail-in ballot system. In a clear violation of the Freedom of Information Act (FOIA), the post offices too had no idea about the procedures and have been unable to provide information either regarding the data or regarding the procedures for tracking ballots as already described earlier.

However, it must be added that if a favorable ruling in this lawsuit triggers an audit process for the absentee ballot system, that can only benefit the country.

Since Defendants provide no arguments on the merits of the federal and Constitutional claims, the Motion for Summary Judgment should be granted immediately.

X. SUMMARY JUDGMENT

The Standard for Summary Judgment is that the court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Nothing in the section challenging the legitimacy of the election for violating Article 1 Section 4 of the U.S. Constitution or with the Due Process Clause deal with material facts but is based purely as a matter of law. The facts listed in the sections on the violation of Petitioner's rights under the free speech clause and Defendants' violation of the Freedom of Information Act are undisputed.

(a) *The General Election of November 3, 2020 would be an illegitimate and unconstitutional election if it included candidates chosen through an unconstitutional process*

The General Election of November 3, 2020 would be an unconstitutional election if candidates chosen through an unconstitutional mechanism created by the unconstitutional Executive Order 144 were permitted to run in the election.

(b) *The entire primary election process including the primary election of each political party and the nomination of independent candidates through EO 144 must be declared null and void; partial nullification would be in violation of the Equal Protection Clause*

The nomination of candidates for Senate and the House of Representatives – from every political party including the Republican Party and the Democratic Party, as well as independents – for the general election to be conducted on November 3, 2020 through the primary election conducted on

July 7, 2020 based on EO 144 is unconstitutional. The primary election of each political party and the nomination of independent candidates based on EO 144 must be declared null and void.

Declaring the primary election for the Republican candidate null and void without doing the same for the Democratic Party candidate or the candidates from other political parties or candidates who are independents would not only be an endorsement of the unconstitutional actions of the Governor, but would also violate the Equal Protection Clause and give an unfair advantage to the Democratic Party who would be able to prepare for the general election while the Republican Party was still caught up in the process to determine their candidate.

For the above reasons, Plaintiff seeks Summary Judgment and requests the court to:

- i. Declare the Executive Order 144 issued by Governor Phil Murphy to be unconstitutional and in contravention of the Elections Clause and the Due Process of the United States Constitution
- ii. Restore the status quo ante as to the manner of conducting elections
- iii. Declare the primary election of July 7, 2020 for all political parties unconstitutional and hence null and void
- iv. Forbid the use in the General Election of ballots with names of candidates nominated through the process of the unconstitutional primary election created through the Executive Order 144 of Governor Phil Murphy
- v. Direct the state of New Jersey to conduct fresh primary elections in accordance with the law for all races to fill up the offices of Senators and Representatives mentioned in the Elections Clause of the U.S. Constitution
- vi. Declare the cease and desist letter sent by New Jersey's Attorney General to be election interference and in violation of the due process clause

- vii. Declare the cease and desist letter sent by New Jersey's Attorney General to be in violation of the free speech clause
- viii. Direct the Attorney General's office to rescind the letter and clarify that they were in violation of the Constitution and admit that the Petitioner acted in accordance with the Constitution and all laws
- ix. Declare the entire system of mail-in ballots except as provided by previously defined procedures for the absentee ballots to be issued to the members of the Armed Forces to be in violation of the Freedom of Information Act
- x. Issue an injunction forbidding the use of the mail-in ballot system for the general election of November 3, 2020

APPENDIX 5

Defendants' Brief to the Superior Court,
Appellate Division (October 13, 2020)



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Governor

SHEILA Y. OLIVER
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October 13, 2020

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P.O. Box 006
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Re: Hirsh Singh v. Hon. Philip D. Murphy, et al.
Docket No. A-323-20

Constitutional Challenge to Executive Order No. 144

Letter Brief of Respondents, Governor Murphy and
Secretary Way, in Opposition to the Appeal

Dear Mr. Orlando:

Please accept this letter brief on behalf of Respondents, Governor Murphy and Secretary Way, in response to the challenge to Executive Order 144. (App. Div. Oct. 5, 2020 Order). This court should reject this constitutional challenge to this year's Primary Election, which Petitioner filed only after it had concluded. And even if this court reaches the merits, this court must reject the baseless challenges to Executive Order 144.



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Preliminary Statement

Faced with the spread of a virus that has already claimed the lives of 200,000 Americans and over 14,000 New Jersey residents, New Jersey enacted a number of changes to the operations of this year's elections. As the Governor explained, these changes were necessary to ensure that no voter was faced with choosing between their health and their right to vote, including elderly voters and at-risk voters, and to ensure that election officials could run an election safely and effectively. To that end, on May 15, 2020, the Governor announced that the July 7, 2020 Primary Election would be conducted primarily by mail. That order went unchallenged, and the Primary Election was conducted successfully on July 7.

Having finished second in his effort to obtain the Republican nomination for United States Senate, Hirsh Singh is now challenging the validity of Executive Order 144. But as courts have long held, equitable doctrines preclude late-filed constitutional challenges to elections rules. Singh had ample opportunity to seek to enjoin Executive Order 144 from taking effect before the Primary Election occurred but he did not do so, engaging instead in a form of heads-I-win-tails-you-lose gamesmanship: try to prevail in the election and seek to throw it out if not. There is a good reason the courts uniformly reject such tactics: they work major disruption in State elections. At this point, under New Jersey law, the ballots for the General Election have been printed and mailed the voters, and over half a million voters have already cast ballots. And federal law requires the General Election be complete by November 3, 2020. Singh cannot be granted relief at this late hour.

Although there is no reason for this court to reach the merits of Singh's claim, his constitutional challenges notably also lack merit. As every court to consider this claim found, the Elections Clause of the Constitution does not bar a governor from exercising the authority delegated to him by the legislative branch to expand voter access through vote by mail during a public health emergency. That makes sense: the Elections Clause sought to empower states to oversee elections, not to control the distribution of authority in a state, let alone in the midst of an emergency. This court should

decline to be the first to overturn longstanding Elections Clause precedent and to hobble the State's emergency response.

Procedural History and Statement of Facts¹

Coronavirus Disease 2019 ("COVID-19") is a highly contagious, deadly disease without a vaccine or cure and has claimed the lives of over 200,000 Americans, including over 14,000 New Jersey residents. See Exec. Order No. 186 (Sept. 25, 2020).² As this crisis began to unfold, on March 9, 2020, Governor Murphy invoked the statutory powers vested in him by our Legislature under the Civilian Defense and Disaster Control Act ("CDDCA"), N.J.S.A. App. A:9-30 to -63, and Emergency Health Powers Act ("EHPA"), N.J.S.A. §§ 26:13-1 to -31, and declared a State of Emergency and a Public Health Emergency. See Exec. Order No. 103 (Mar. 9, 2020).³ As the spread of the virus continued, the Governor declared the Public Health Emergency continues to exist every thirty days, as required by law. See, e.g., Exec. Order No. 186 (Sept. 25, 2020).

On April 8, 2020, Governor Murphy issued Executive Order 120, which moved the Primary Election from June 2, 2020 to July 7, 2020.⁴ Thereafter, on May 15, 2020, the Governor issued Executive Order 144 ("EO 144"), which ordered that the July 7, 2020 Primary Election was to be conducted primarily via vote by mail. EO 144

¹ Because they are closely related, the procedural and factual histories are combined for efficiency and the court's convenience.

² Available at nj.gov/infobank/eo/056murphy/pdf/EO-186.pdf.

³ Available at nj.gov/infobank/eo/056murphy/pdf/EO-103.pdf.

⁴ Available at nj.gov/infobank/eo/056murphy/pdf/EO-120.pdf.

at ¶ 1.⁵ EO 144 explained that the State was making these changes to ensure that voters, candidates, political parties and election officials could effectively participate in free and safe elections while protecting New Jersey residents from the dangers of COVID-19. Id. at 2. No party filed a legal challenge to EO 144 before July 7, 2020, and the election was conducted primarily by mail.

In the Primary Election, Singh sought the Republican Party's nomination for United States Senate and was on the ballot in each county. (MRS-L-1757-20, Trans ID: LCV20201616572 at ¶1).⁶ Singh received a total of 146,133 votes, while Rikin Mehta received a total of 154,817 votes. Ibid. After losing the election, on July 24, 2020, Singh filed petitions in every single county for a hand recount and recheck. (MRS-L-1757-20, Trans ID: LCV20201616572 at 7). The majority of these petitions have been heard and denied by Superior Court Judges across the State. They resulted in a recount in only two election districts in Sussex county, (SSX-L-304-20, Trans ID: LCV20201407950), which did not change the results. See (MRS-L-1757-20, Trans ID: LCV20201637567 at 5).

Thereafter, on September 1, 2020, Singh filed a state-wide election contest. (MRS-1757-20, Trans ID: LCV20201591415). On September 14, 2020, Singh amended his Petition and filed a motion for partial summary judgment, challenging EO 144 as violative of

⁵ Available at nj.gov/infobank/eo/056murphy/pdf/EO-144.pdf.

⁶ Available at nj.gov/state/elections/assets/pdf/election-results/2020/2020-official-primary-results-us-senate.pdf.

the U.S. Constitution. (MRS-L-1757-20, Trans ID: LCV20201616572; LCV20201616797). Respondents argued Singh's motion for partial summary judgment was procedurally improper as it sought to use an election contest as a substitute for filing a proper challenge to EO 144. (MRS-L-1757-20, Trans ID: LCV20201637567 at 20-23).

On September 30, 2020, the Honorable Stuart Minkowitz, A.J.S.C., sua sponte, transferred this matter to the Appellate Division under Rule 2:2-3(a)(2) because "challenges to executive orders exceed the subject matter jurisdiction of [the trial court]." (MRS-L-1757-20, Trans ID: LCV20201731882). The State now responds to the constitutional challenge to EO 144.

ARGUMENT

POINT I

THIS BELATED CHALLENGE TO THE PRIMARY ELECTION IS BARRED UNDER EQUITABLE ESTOPPEL AND LACHES

This court should reject Singh's challenge without reaching the merits because he did not challenge EO 144 before the Primary Election, and only does so when the General Election is underway. Even were his claims to have merit (and they do not, see Point II, infra), granting relief now would produce untenable results.

The doctrines of equitable estoppel and laches preclude the assertion of late-filed claims that work prejudice if successful. As to the former, estoppel "prevent[s] injustice by not permitting a party to repudiate a course of action on which another party has

relied to his detriment." Knorr v. Smeal, 178 N.J. 169, 178 (2003). Equitable estoppel applies if the "voluntary conduct of a party" precludes him or her from "asserting rights which might perhaps have otherwise existed . . . as against another person, who has in good faith relied upon such conduct." W.V. Pangborne & Co. v. New Jersey Dep't of Transp., 116 N.J. 543, 553 (1989). And laches operates in a similar manner: it "is invoked to deny a party enforcement of a known right when the party engages in an inexcusable and unexplained delay in exercising that right to the prejudice of the other party." Knorr, 178 N.J. at 178. Laches bars a claim where "the delaying party had sufficient opportunity to assert the right in the proper forum and the prejudiced party acted in good faith believing that the right had been abandoned." Ibid. The "factors to be considered in deciding whether to apply the doctrine are the length of the delay, the reasons for the delay, and the changing conditions of either or both parties during the delay." Ibid. "The core equitable concern in applying laches is whether a party has been harmed by the delay." Ibid.

Courts have recognized that both principles have an important role to play in elections cases, denying claims as barred by laches and/or estoppel if a suit was filed after the close of a nomination period, or an election day, or the like. See, e.g., Perry v. Judd, 471 F. App'x 219 (4th Cir. 2012) (claim barred where candidates challenged law governing circulation of candidate petitions after

deadline for petitions); Dobson v. Dunlap, 576 F. Supp. 2d 181, 187-88 (D. Me. 2008) (claim barred where voters took three months to file challenge to rejection of petition, by which time ballots had been printed); Kay v. Austin, 621 F.2d 809, 813 (6th Cir. 1980) (claim barred where candidate waited to file suit until two weeks after not being listed on ballot); Nader v. Keith, 385 F.3d 729, 736-37 (7th Cir. 2004).⁷ It is thus no surprise that when our Supreme Court faced a challenge to a ballot question that was filed after the election, the Court rejected it out of hand, explaining "the objection comes too late. The time to protest is before the election, and not, as here, after the event." Two Guys from Harrison, Inc. v. Furman, 32 N.J. 199, 233 (1960).

The reasoning in Perry v. Judd is instructive. There, two candidates challenged a statute that governed candidate petitions after the deadline for submitting petitions. The Fourth Circuit denied the claim as barred by laches, explaining that the candidate "chose to sit on his right to challenge this provision until after

⁷ Indeed, these doctrines apply with such force in the elections context that lateness can still bar claims filed even before the consummation of an election. See Purcell v. Gonzalez, 549 U.S. 1, 4-5 (2006) ("Court orders affecting elections . . . can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase."); Republican Party of Pa. v. Cortés, 218 F. Supp. 3d 396, 404 (E.D. Pa. 2016) (holding that delay in filing a challenge "weighs decidedly against" providing relief particularly when "an election is looming" and "a State's election machinery is already in progress"). All the more so if the election has happened.

he had been denied a place on the ballot." 471 F. App'x at 224. Allowing late claims would "encourage candidates to wait until the last minute to bring constitutional challenges to state election laws. Once a candidate learned he had been denied a place on the ballot, he would take his disappointment to the courthouse and hapless state election boards would be forced to halt their scheduled election processes to wait for a ruling." Id. at 225. And the harms from such claims would be legion, from "expensive reprinting of ballots" and "send[ing] a second and different ballot to each voter, which would risk confusion on the part of those voters and increase the cost and difficulty of administering the election," id. at 227, to "restricting the voting rights of other voters, including overseas members of the military." Dobson, 576 F. Supp. 2d at 187-88. For these reasons, equity prohibits such gamesmanship, and "deliberate delay ... precludes the possibility of equitable relief." Perry, 471 F. App'x at 224.

These equitable doctrines dispose of Singh's claim. First, Singh could have brought his challenge sooner. The Governor issued EO 144 on May 15, 2020, 53 days before the Primary Election. Singh was aware of this order at the time - it covered the entirety of an election in which he was a candidate. And he could have filed a lawsuit. Instead, Singh participated as a candidate and did not file any challenge until two months after he lost, and 122 days after the Governor issued Executive Order 144. Given the timelines

governing elections, and the short time period between the Primary Election (July 7, 2020) and General Election (November 3, 2020), there is no doubt that Singh delayed inexcusably.

The prejudice to the State and the public from that delay can hardly be overstated. If this court were to rule in Singh's favor and set aside the Primary Election, then the General Election would not be able to take place - in contravention of voters' rights and both federal and state law. Under federal law, every state must hold the General Election for this office on November 3, 2020, in just 21 days. See 3 U.S.C. § 1; 2 U.S.C. §§ 1, 7. Although it is not entirely clear from his papers, Singh appears to demand a new Primary Election be held, one not conducted pursuant to the terms of EO 144. Bluntly, it would not be possible to grant Singh his relief and meet the deadline required by federal law. The doctrine of laches exists to prevent these sorts of impossible requests.

Other facts amply demonstrate the extreme prejudice the State and the general public would suffer. Singh was made aware of the time-sensitive nature of and advance preparations for the General Election, including the requirements under the "Uniformed and Overseas Citizens Absentee Voting Act" (52 U.S.C. §20302) and N.J.S.A. 19:63-9. See (CUM-L-481-20, Trans ID: LCV20201368509, at 8). Further, state law required all active voters be mailed their ballot by October 5, 2020, N.J.S.A. 19:63-9, and more than half a million voters have returned their ballots. U.S. Election Project,

N.J. Early Voting Stats., <https://electproject.github.io/Early-Vote-2020G/NJ.html> (last accessed Oct. 12, 2020). Singh's request would disrupt the General Election, where voting has already begun and which concludes in 21 days.

Singh's reliance on N.J. Democratic Party, Inc. v. Samson, 175 N.J. 178 (2002), lacks merit. Samson involved a candidate who voluntarily withdrew from the race in late September and plaintiffs requested to have the ballots reprinted to replace the candidate's name. Id. at 1031-32. There, the legal claim could not have been brought earlier, the election had not yet occurred, and the Court granted relief in part because it was concerned that voters would be confused and disenfranchised. Id. at 1038. Here, by contrast, the claim could have been pursued sooner (in May 2020), the Primary Election has concluded, and the General Election is well underway with over half a million ballots returned. The instant action is thus readily distinguishable from Samson, and the concerns of voter confusion and disenfranchisement cut the other way.

Because granting the relief requested at this late date would disrupt the General Election, the relief must be denied.

POINT II

**THE PRIMARY ELECTION WAS VALID AS EXECUTIVE ORDER 144
DID NOT VIOLATE THE UNITED STATES CONSTITUTION.**

A. EO 144 Did Not Violate The Elections Clause.

The Elections Clauses permitted Governor Murphy, exercising

the authority delegated to him by the state legislature, to expand access to voting by mail during a public health emergency.

The Elections Clause provides that the "Times, Places and Manner of holding Elections ... shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the places of choosing Senators." U.S. Const., art. I, § 4, cl. 1. Singh now claims that the use of "Legislature" prevents any state's governor from having a role in crafting election procedures, even during an emergency. But that is contrary to the text, "history and purpose of the [Elections] Clause," Ariz. State Legislature v. Ariz. Independent Redistricting Comm'n, 576 U.S. 787, 813 (2015) ("AIRC"), a consistent line of Supreme Court precedent, and two rulings that rejected the same claims during this emergency.

Begin with the Clause itself. As the Supreme Court explained, founding-era dictionaries broadly "define the word 'legislature'" simply to mean the lawmaking power, not a particular body. Id. at 813-14 (collecting dictionary definitions, e.g., that Legislature means the "Authority of making Laws, or power which makes them"). Indeed, "[t]he dominant purpose" of the Clause "was to empower Congress to override state election rules, not to restrict" how States legislate. Id. at 814-815. There is thus "no suggestion" in the Elections Clause "of an attempt to endow the Legislature of the state with power to enact laws in any manner other than that

which the Constitution of the state has provided that laws shall be enacted." Smiley v. Holm, 285 U.S. 355, 368 (1932). In other words, the purpose of the Elections Clause was to delineate the broad role of state governments in elections, not to decide which branches within the state enjoyed what authority.

In accordance with this view, the Supreme Court consistently has held that "Legislature" as used in the Elections Clause does "not mean the representative body alone." AIRC, 576 U.S. at 805. Instead, the term refers more generally to a State's legislative power, "performed in accordance with the State's prescriptions for lawmaking." Id. at 808. The Court thus held that the people of Ohio could override by referendum a redistricting law enacted by the Ohio legislature. Ohio ex rel. Davis v. Hildebrant, 241 U.S. 565, 567-69 (1916). Because the "referendum was 'part of the legislative power' in Ohio," the referendum did not run afoul of the Elections Clause. AIRC, 576 U.S. at 805 (quoting Davis, 241 U.S. at 569). And in AIRC, the Court affirmed an Arizona voter initiative amending the state constitution to vest redistricting authority in an independent commission, not the legislature. Id. at 792. Because "redistricting is a legislative function, to be performed in accordance with the State's prescriptions for lawmaking," there was "no [federal] constitutional barrier to a State's . . . embracing" the ballot initiative. Id. at 808-09. These cases instruct that because "the [Elections] Clause surely

was not adopted to diminish a State's authority to determine its own lawmaking process," id. at 824, the State retains its usual sovereign authority to determine, in a manner permitted by the State constitution, who may craft election procedures.

Smiley v. Holm illustrates this rule. Like this case, Smiley addressed whether the Elections Clause permitted a Governor to be involved in decisions regarding the time, place, and manner of elections. 285 U.S. at 363-64. The state Supreme Court held "the Elections Clause placed redistricting authority exclusively in the hands of the State's legislature." AIRC, 576 U.S. at 806. But the Supreme Court disagreed, holding that "legislative authority includes not just the two houses of the legislature," but also the Governor's veto. Id. The Elections Clause "respected the State's choice to include the Governor in" the legislative process. Id. In short, the Clause allows States to give the Executive a say in elections rules. See Smiley, 285 U.S. at 368 ("Whether the Governor of the state ... shall have the power in the making of state laws, is a matter of state polity."). The constitution "neither requires nor excludes such participation." Id.

Recent decisions involving analogous challenges to emergency orders are in accord. In Montana, the legislature has granted the Governor the power to "suspend the provisions of any regulatory statute prescribing the procedures for the conduct of state business" in response to "an emergency or disaster," Mont. Code

Ann. § 10-3-104(2)(a). See Donald J. Trump for President, Inc. v. Bullock, No. CV 20-66-H-DLC, 2020 U.S. Dist. LEXIS 181109, at *28-29 (D. Mont. Sep. 30, 2020). In response to the COVID-19 pandemic, their Governor exercised this power to suspend a state prohibition on holding elections via the mail. Id. at *10-11. The District of Montana concluded that this gubernatorial action was a valid "use of the legislatively created suspension power" and therefore was constitutional under the Elections Clauses. Id. at *11-*12. Likewise, the District of Nevada rejected a challenge to the Nevada Secretary of State's implementation of an all-mail election for the Nevada primary "in order to diminish the spread of COVID-19." Paher v. Cegavske, No. 3:20-cv-00243-MMD-WGC, 2020 U.S. Dist. LEXIS 76597, at *2 (Apr. 30, 2020). In upholding the action, the Court explained that "the Plan [was] effectively prescribed by the state's legislature, because the Nevada Legislature has in the first instance authorized the Secretary to adopt regulations to carry out the state's election laws." Id. at *23-24. That the State's executive was relying on delegated authority to adopt new elections rules was of no moment.

As in Bullock and Paher, the Governor here was acting pursuant to his legislatively-assigned responsibility during an emergency. In New Jersey, the Governor is vested with broad power in times of emergency under the Emergency Health Powers Act ("EHPA"), N.J.S.A. 26:13-1 to -31, and the Civilian Defense and Disaster Control Act

("CDDCA"), N.J.S.A. §§ App.A.:9-30 to -63. These statutes define emergencies to include "any unusual incident resulting from natural or unnatural causes which endangers the health, safety or resources of the residents of one or more municipalities of the State," N.J.S.A. § App.A.:9-33.1, and "an occurrence or imminent threat of an occurrence" of disease that "poses a high probability of," inter alia, "a large number of deaths, illness, or injury in the affected population." N.J.S.A. 26:13-2. COVID-19, which has spread to every corner of the state, led to 14,000 deaths and more hospitalizations, and still presents a threat without vaccine or cure, obviously qualifies as an emergency. See N.J. Exec. Orders 103 (Mar. 9, 2020), 144 (May 15, 2020), and 186 (Sept. 25, 2020) (describing in detail the public health emergency).

And those emergency powers the Governor may implement during an emergency plainly include the sorts of measures he took relative to the Primary Election, which may be why Singh did not see fit to challenge EO 144 when it first issued in May. Under the CDDCA, in an emergency the Governor is expressly empowered by the Legislature to exercise "broad . . . authority to issue emergency orders" on "any matter that may be necessary to protect the health, safety and welfare of the people," even where that action requires changes to the rules that would govern in non-emergency periods. Cnty. of Gloucester v. State, 132 N.J. 141, 145 (1993) (citing N.J.S.A. § App.A.:9-33). That power has been upheld by the courts. See,

e.g., Worthington v. Fauver, 88 N.J. 183, 208 (1982) ("Where the executive acts pursuant to an express or implied authorization from the Legislature [a Governor] exercises not only his own powers but those of the Legislature. In such circumstances the executive action should be 'supported by the strongest of presumptions and the widest latitude of judicial interpretation, and the burden of persuasion would rest heavily upon any who might attack it.'"); Commc'ns Workers of Am., AFL-CIO v. Christie, 413 N.J. Super. 229, 259 (App. Div. 2010) (noting that an emergency action will be valid if the "executive order flows out of the Governor's legislatively-delegated emergency powers to act on behalf of the safety and welfare of the people of New Jersey").

Those emergency powers clearly apply to EO 144. As the Order explains in detail, because COVID-19 spreads via person-to-person contact, the State needed to take steps to limit contact, and stem the tide of cases, hospitalizations, and deaths from the disease. EO 144 at 1. That presented a special problem for an election, because in-person voting requires individuals to leave their homes and interact with poll workers and voters, such that "allowing the July primary elections to proceed as they would under normal circumstances during this unprecedented COVID-19 health crisis will create hardships and health risks for voters, poll workers and candidates alike." Id. at 2. The concerns were magnified by the fact that "the COVID-19 emergency and its impact are likely to

extend for an as-yet-undetermined period of time," which "makes it difficult for election officials, candidates, and voters to properly plan and prepare for and fully participate in the July primary elections if they were to proceed as they would under normal circumstances." Ibid. And, most importantly of all, "failing to offer voters a ready alternative to reporting to public polling places to vote in July in the midst of the COVID-19 crisis will hinder public participation in the democratic process, particularly among elderly and immune-compromised voters." Id. at 3. By taking steps to ensure that individuals could vote without getting sick and/or spreading the virus in their communities, this Order fits comfortably with the powers assigned to the Governor to protect the health and welfare in the middle of an emergency. And because it fits within the governing state statutes, the Elections Clause has nothing to say on the matter.

AIRC, Smiley, and Davis thus compel the same conclusion here that they did in Bullock and Paher: EO 144 did not violate the Elections Clause because Governor Murphy was using his valid "legislatively created" powers to address a crisis.

B. The remaining constitutional claims are baseless.

Singh asserts that EO 144 violates his rights to procedural due process and equal protection. See (MRS-L-1757-20, Trans ID: LCV20201616572 at 44 ¶¶ 5D-E). Not so.

Procedural due process ensures "fair procedure" under which

a state may not take or deprive a person of property or liberty "without providing appropriate procedural safeguards." Rivkin v. Dover Twp. Rent Leveling Bd., 143 N.J. 352, 363-64 (1996); see Tumpson v. Farina, 218 N.J. 450, 489 (2014) (stating federal courts have found "a deprivation of a procedural due process right when a defendant improperly causes an actual loss of that right opposed to a delay or a temporary obstruction of its exercise."). A threshold question regarding "any procedural due process case is whether the deprivation was caused by random and unauthorized conduct or whether it resulted from an established state procedure." Id. at 374. Singh, and all candidates, officials, and voters were apprised of EO 144 on May 15, 2020. Singh has not shown that he was deprived of any due process rights.

Any allegation of an equal protection violation fails as well. Courts have repeatedly upheld "generally-applicable and evenhanded restrictions that protect the integrity and reliability of the electoral process itself." Anderson v. Celebrezze, 460 U.S. 780, 788 n. 9 (1983). And this is precisely such a claim: EO 144 did not discriminate against any candidates in the Primary Election, and instead applied the same election procedures evenly for each office and each candidate. Even were there differential treatment, a claim that a law treated candidates differently still fails if the law is "reasonably and suitably tailored to further legitimate governmental objectives." Matthews v. Atl. City, 84 N.J. 153, 169

(1980). EO 144 was plainly addressed to such a purpose - to ensure voters access to the franchise despite a public health crisis - and the use of mail-in voting was tailored to that goal. EO 144 does not violate principles of equal protection.

CONCLUSION

For these reasons, the court should uphold Executive Order 144.

Respectfully submitted,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ Beau C. Wilson
Beau C. Wilson
Deputy Attorney General
Attorney ID# 265042018
Beau.Wilson@law.njoag.gov

Melissa H. Raksa
Assistant Attorney General
Of Counsel

Via Email

C: All Parties of Record

APPENDIX 6

Singh Declaration (Filed in Superior Court,
Appellate Division October 13, 2020)

2. I am a resident of, and, a registered voter in Atlantic County in the State of New Jersey and I voted in the primary election in Atlantic County held on July 7, 2020.

3. I empowered Mr. King Penna to act as an official representative of myself and the campaign to gather information on the election and to speak on my behalf where it is needed.

4. I submitted my election contest on September 1st 2020 at 4:28pm 12 days after the completion of the Sussex County Recount on August 20th 2020.

Exhibit A is a true and correct copy of the submission via New Jersey Judiciary Electronic Document Submission (JEDS) application.

5. On July 7th, election day I took it upon myself to visit different Boards of Elections across the state as a statewide Challenger. When I visited the Bergen County Boards of Elections, I was physically barred from entering the location of counting. I was illegally told I was not allowed to be present. That due to COVID-19 I was not allowed to be in the building.

6. I was present at the Atlantic County Board of Elections when the decision was made to count 37 ballots stamped July 8th at the discretion of a letter received by the Post Office. I personally accessed the website of the Press of Atlantic City https://pressofatlanticcity.com/politics/atlantic-county-board-of-elections-deals-with-another-postal-service-glitch/article_17a52630-3759-5ff8-9923-300883b20096.html and found that it had a webpage shown in **Exhibit B** containing a true and correct copy of screenshots of the article from the Press of Atlantic City that was put into print.

7. I nor any member of my campaign was consulted by Governor Phil Murphy in his formulation or execution of Executive Order 144.

8. I emailed the Union County, Secretary of State's Representative, and Attorney General's office on July 17th when I first became concerned of counting issues with July 8th stamped ballots at Boards of Elections. I requested the protocols provided to the county Boards of Elections by the secretary of state but was never responded to. **Exhibit C** containing a true and correct copy of the email sent to the Secretary of State Representative and Attorney General's Office.

9. On July 18th having not heard back from Secretary of States office and utilizing my powers as a challenger I attempted to stop the counting of ballots stamped July 8th by emailing all Boards of Elections of all 21 counties including the Attorney General's Office, and the Secretary of States office. I was not responded to. **Exhibit D** containing a true and correct copy of the email sent to all Boards of Elections, Secretary of States office and Attorney General's office.

10. Upon personal knowledge, I know that the vote of Susan Ney was not counted. **EXHIBIT E** is the true and correct copy of the message this voter sent me.

11. Upon personal knowledge, I know that the vote of Adam Scott Mitchell was not counted. **EXHIBIT F** is the true and correct copy of the messages this voter and his wife sent me.

12. Upon personal knowledge, I know that the vote of Tom Taylor was not counted. **EXHIBIT G** is the true and correct copy of the message this voter sent me.

13. Upon personal knowledge, I know that the vote of Lori was not counted. **EXHIBIT H** is the true and correct copy of the message this voter sent me.

14. Upon personal knowledge, I know that the votes of David, Susan, and Faith Campbell were not counted. **EXHIBIT I** is the true and correct copy of the message this voter and his family sent me.

15. Upon personal knowledge, I know that the vote of Karen Nunamacher Mencaroni was not counted. **EXHIBIT J** is the true and correct copy of the message this voter sent me.

16. Upon personal knowledge, I know that the votes of John Snook and Cynthia Snook, were not counted. **EXHIBIT K** is the true and correct copy of the message this voter sent me.

17. Upon personal knowledge, I know that the votes of Jeffrey K. Scudder and Lucy A. Taweel were not counted. **EXHIBIT L** is the true and correct copy of the message this voter sent me.

18. Upon personal knowledge, I know that the vote of June Levy Lukas was not counted. **EXHIBIT M** is the true and correct copy of the message this

voter sent me.

19. Upon personal knowledge, I know that the vote of Lisa Carole was not counted. **EXHIBIT N** is the true and correct copy of the message this voter sent me.

20. Upon personal knowledge, I know that the vote of Marta I. Horvath was not able to vote at a machine because she was not disabled. **EXHIBIT O** is the true and correct copy of the message this voter sent me.

21. Upon information and belief, I hold that the same unequal standards for counting and rejecting ballots known to have been employed in Middlesex County were employed across the state. Consequently, Defendant should be commanded to turn over corresponding information for me analyze and for the Court to consider as part of this matter

I declare under penalty of perjury that the foregoing and attached Exhibits are true and correct. Executed on September 21, 2020.

By: s/ Hirsh Singh
Hirsh Singh

EXHIBIT A

New Jersey Courts Judiciary Electronic Document Submission

Home EF-229893 X EF-230100 X My Submissions X

My Submissions

Case Name	Case Type	Case Description	Case Status	Case Date	Case Action	Case ID	Documents
MORRIS	Civil	Suing for over \$15,000 (law division cases)	Amended Complaint	9/18/20 1:02 PM	Resolved-Completed	MRS-L-001757-20	Documents
MERCER	Civil	Suing for over \$15,000 (law division cases)	Other	9/1/20 4:28 PM	Resolved-Completed	L-1556-20	Documents

Filer name: Hirsh Singh User / Bar Id: hirshsingh Transaction id: EF-203206

Other filing type description: Petition Election Contest Per NJSA 19:29-2

Address: 9 Wexford Lane, Linwood, NJ 08221 Phone number: 6093355289 Email address: hirshvs4@gmail.com

Submission fee: \$0.00 Transaction fee: \$0.00 Total fee: \$0.00

Payment type: Not applicable

EXHIBIT B

MAYS LANDING — The Atlantic County Board of Elections voted Friday night to accept 37 vote-by-mail ballots the U.S. Postal Service said it received by primary day July 7 but mistakenly postmarked July 8.

The board handled the issue at its meeting to review signature problems on a last batch of vote-by-mail ballots, and to begin counting about 6,000 provisional paper ballots filled out by those who went to the polls on Election Day.

As of Thursday in Atlantic County 41,241 vote-by-mail ballots had been counted of about 45,000 cast, said board Chair Lynn Caterson. The board had not begun counting provisionals by 7 p.m.

In the contested Atlantic City Democratic primary for mayor, incumbent Marty Small Sr. has about 64% of the vote, while challenger Pamela Thomas-Fields has about 31% and Jimmy Whitehead about 5%.

Under state rules, ballots needed to be postmarked on or before July 7 to count, so the board had to get an opinion from the state Attorney General's Office to consider accepting the 37 ballots they voted Friday.



The Attorney General's Office said the board could use its discretion, Caterson said. If it believed the ballots had been delivered to the Postal Service on time, it could accept them.

"I feel those ballots should be counted for the election," said Democratic Board Secretary John Mooney. "I don't believe it's the fault of the voter. The Postal Service has had a lot of rocky roads in this election."

"What's mind-boggling is they were all interspersed with ballots postmarked July 7," said Republican Commissioner Mary Jo Coutts.

On July 8, the board had picked up several trays from the Mays Landing post office containing hundreds of ballots, Caterson said. All but 37 were postmarked July 7.

Those postmarked July 8 were put aside as ineligible for acceptance, she said.

"We didn't know at that time" that there was a problem, Caterson said.

EXHIBIT B Continued

Holmes could not be reached Friday night.

There were also problems in June with vote-by-mail ballots filled out by voters being returned to them, rather than delivered to the Board of Elections. Coutts was one of the voters who got her ballot back.

That mix-up was due to Postal Service staff feeding them into scanners improperly and reading the voters' address rather than the board's, according to Assistant County Clerk Mike Sommers.

The board on Friday night expected to count Atlantic City provisional ballots first, since there is a contested mayoral primary there.

It did not expect to count the provisional ballots from Hamilton Township, where there is a tightly contested Republican primary for Township Committee. The processing of Hamilton Township ballots was held up by problems with the Statewide Voter Registration System, Caterson said.

Superintendent of Elections Maureen Bugdon collects all provisional ballots, and her staff



It wasn't until a letter arrived Monday from Mays Landing Postmaster Dwayne Holmes that the board realized those ballots probably were incorrectly postmarked.

"On the morning of July 8, 2020, the Postal Service's Eastern and Northeast Areas became aware of a number of ballots located at Postal Service delivery units for the July 7th New Jersey primary election that did not have postmarks," Holmes wrote. "These ballots were postmarked at the delivery units with a July 8, 2020, date and were subsequently delivered to election officials on July 8.

"Based on the Postal Service's operational processes, we believe ballots located at a delivery unit on the morning of July 8, and delivered later that same day, would have been received by the Postal Service on or before July 7, 2020."

Caterson said she has written a letter to Holmes asking for more information on how widespread the problem was, where the unmarked ballots came from and other details, but has received no response.

Holmes could not be reached Friday night.

EXHIBIT B Continued

10:26

Gmail

pressofatlanticcity.com

SHARE THIS →

f

from Hamilton Township, where there is a tightly contested Republican primary for Township Committee. The processing of Hamilton Township ballots was held up by problems with the Statewide Voter Registration System, Caterson said.

Superintendent of Elections Maureen Bugdon collects all provisional ballots, and her staff checks to be sure they have been cast by properly registered voters, and that the voter hasn't also cast a vote-by-mail ballot. But her office relies on the SVRS, which has crashed and had various problems throughout the primary process, election officials have said.

In Cape May County, Clerk Rita Fulginiti said all 20,360 vote-by-mail ballots have been counted and added to the tally on the county website. Turnout in the county for the election was 28%, high for a primary.

The Board of Elections in Cape May County has scheduled the counting of about 2,500 provisional ballots for July 22, Fulginiti said.

{child_tagline}

{/child_tagline}

EXHIBIT C

 me Jul 17
to robert.giles@sos.nj.gov, robert.giles...

← ...

Urgent Question Regarding Mail-In Ballots Marked July 8th ☆

Mr.Giles,

Please see the email below.

We have grave concerns about the conduct of the election including the preservation and counting of ballots. Specifically what directives have been provided to the county clerks? What are the protocols that have been provided and who is responsible for ensuring that those protocols are complied with?

Very Respectfully,

Hirsh V. Singh

Republican Candidate for Nomination for the United States Senate

Personal Mobile: (609)335-5289

Managers Mobile: 973.951.5910

 me Jul 17
to ucboe@ucnj.org, George.Cohen@la...

← ...

Chairman DeSimone,

Commissioner Harris,
Commissioner Oakie,
Administrator DiRado,
Deputy Administrator Wise,

CC: Mr.Robert F. Giles, and Mr.George Cohen.

It has come to our attention that 641 mail-in ballots that were post marked July 8th are expected to be counted. Can you please provide us the number of Republican and Democrat ballots that make up the 641.

Please separately mark these ballots as we will be looking into this matter with the Attorney General's and Secretary of States Office.

Of the 1851 Republican Provisional ballots that were received and counted. Please provide the candidate breakdown for the provisional ballots.

Thank you very much,

Hirsh Singh
(609)335-5289

EXHIBIT D

To: Secretary of State, Attorney General
Cc it to all counties
Subject: URGENT: Please stop ongoing election fraud.

I would like to call attention to the fact that an unknown number of counties are receiving letters to accept ballots that have been wrongly postmarked by the US Postal Service. Union County officials have claimed that they have obtained 641 ballots postmarked July 8 and will be counting them. Likewise, Atlantic County officials are claiming to have 37 ballots postmarked July 8 that they allegedly received on July 7. These ballots are being manufactured after the fact and were produced nearly 10 days after the July 7 deadline. Every county should be instructed to immediately impound these ballots and they should not be counted.

I would like both your offices to act swiftly and stop these ballots from being counted as including them violates state laws. The ballots were supposed to be postmarked by 8 pm on July 7 and voters were given a sufficiently long time to vote and ensure that this would be possible. You must ensure every single county does not count these ballots.

It is now unfair to shift the goalposts and count the ballots with the county officials making up rules as they go along. This constitutes election fraud. I urge the Secretary of State's office to order every county to not include ballots postmarked after the July 7 by 8 pm and the Attorney General to immediately launch an investigation.

Very Respectfully,
Hirsh Singh
(609)335-5289 _____

EXHIBIT E

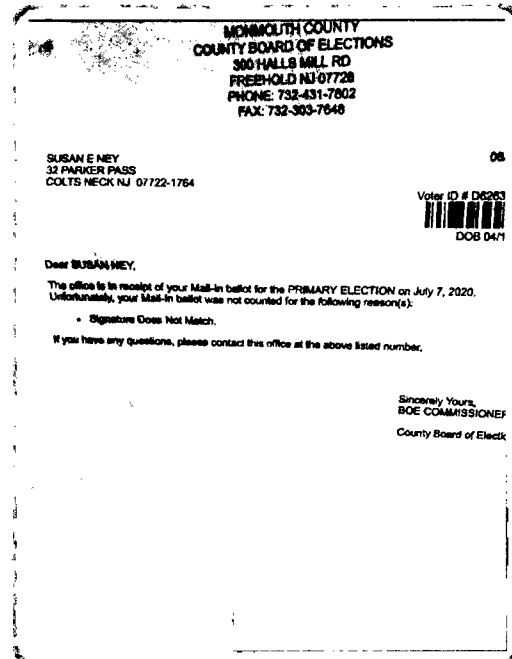
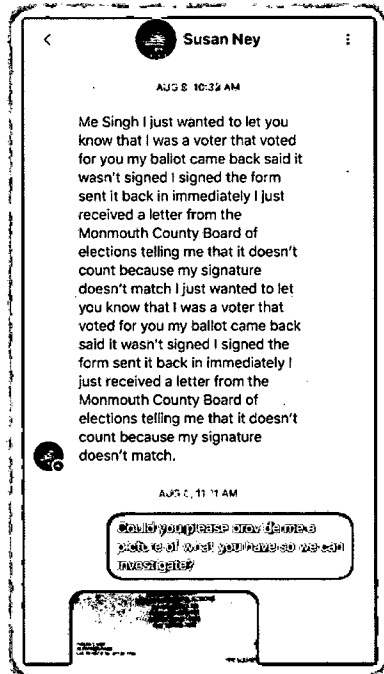


EXHIBIT F



Sarah Mitchell

JUL 30, 4:18 PM

My husbands provisional was returned today!!! They said his signature didn't match. They also falsified the delivery of it!! They said it was returned and delivered Monday the 27th. We received it in the mailbox today, past the 2pm deadline!!! We called the board of elections and they told us too bad!!!! We are LIVID. Please fix this. His vote was not counted.

We both voted for you.

Howell township municipality
Monmouth County

JUL 30, 7:29 PM

Ms.Mitchell, Will follow up and investigate this. Thank you for reaching out!

Ok his name is Adam Scott Mitchell and he is very upset. I think he sent you a message as well on here. He filed a formal complaint with the postal service also.



Sarah Mitchell

We got an update from the USPS inspector assigned to our formal complaint today. This is truly outrageous! He confirmed that the letter from the board of elections asking my husband to verify his vote was not delivered on time. Reason being was because the mail carrier delivered the express mail letter to the wrong address and marked it as delivered. They delivered it to the IRS in error. By the time the mix up was realized, it was too late to deliver the letter to my husband on time. My husband received the letter after the deadline had passed. The USPS inspector called the Monmouth County board of elections personally and explained the situation he stressed that the delay in returning the letter was 100 percent no fault of the vote, my husband. The board of elections told him they don't care and the vote doesn't count. It's not their problem. Please share this experience we have had far and wide just anonymously. Please don't mention our names. He also said this is rampant and happening all over the place. So please look



Michael Mitchell

JUL 12, 12:51 PM

Just want you to know that I voted for you. If all the votes are counted, I am confident you will win. I need to share this with you, I commented on a post on facebook today;

I went to the polls (South Brunswick, Brunswick Acres school) and was TOLD I HAD to use a paper provisional ballot. There was a voting machine but I was told its only for handicapped. (how, one needs to ask, is it any easier for a handicapped person to use a voting booth than a piece of paper?!) I was told I had to fill out section 1 of a personal information sheet attached to the ballot envelope. That section had 4 'reasons' for me using the provisional ballot, none of which were the reason. The reason was that I was told by the Election 'officials' that I 'had to'. I asked where that reason and corresponding checkbox were. The same official said, 'oh, I asked the same question, you can leave it blank'. Incredulous.



Sarah Mitchell

inspector called the Monmouth County board of elections personally and explained the situation he stressed that the delay in returning the letter was 100 percent no fault of the vote, my husband. The board of elections told him they don't care and the vote doesn't count. It's not their problem. Please share this experience we have had far and wide just anonymously. Please don't mention our names. He also said this is rampant and happening all over the place. So please look into Monmouth County board of elections.



Michael Mitchell

where that reason and corresponding checkbox were. The same official said, 'oh, I asked the same question, you can leave it blank'. Incredulous.

I crossed off all the pre-printed 'reasons' and wrote the real reason - GOVERNMENT MANDATED.

Thats for starters.

I voted for Singh.

I demand my vote be included in this election, or this election is a fraud.

Candidate Singh - I hope you are seeing this.

I have photos.

EXHIBIT G

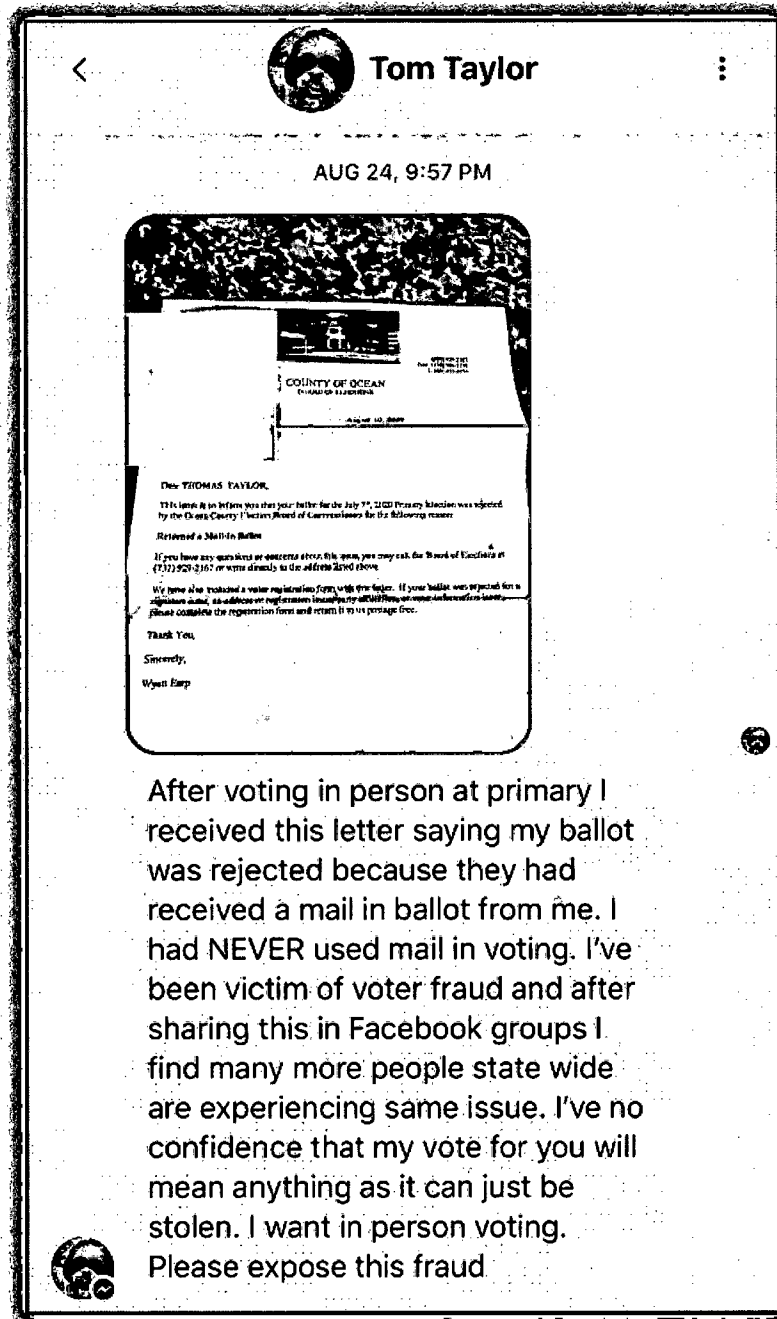


EXHIBIT H

From: <icon68@aol.com>
Date: Thu, Jul 23, 2020 at 1:58 PM
Subject: Essex county vote
To: <info@hirshsingh.com>

I live in Essex County. I voted for Hirsh. I called Newark today because on my ballot tracker it says they received my mail but it was was not listed in my election history. They said it wasn't counted yet and it will be listed on the election history once it's counted. They said they may finish today. I just wanted to make you aware of this since they received my ballot on July 3.

Thank you.

Lori

Sent from my iPhone

EXHIBIT I

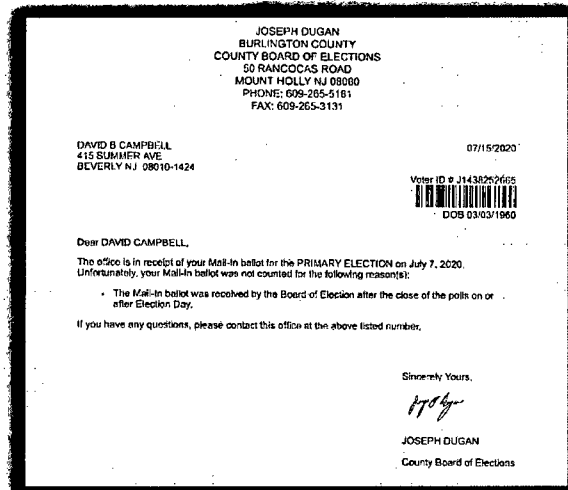
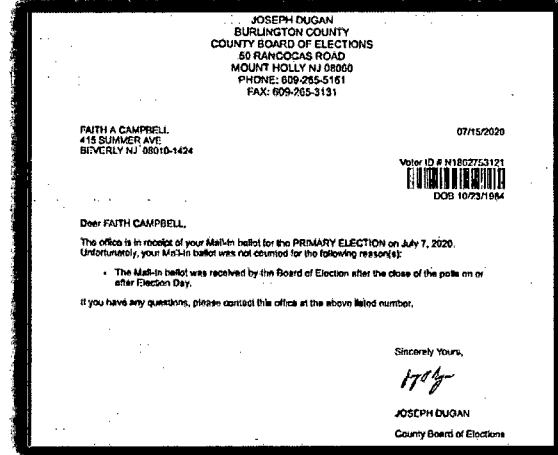
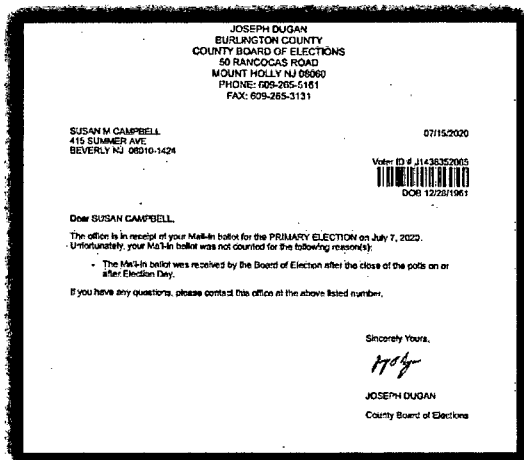
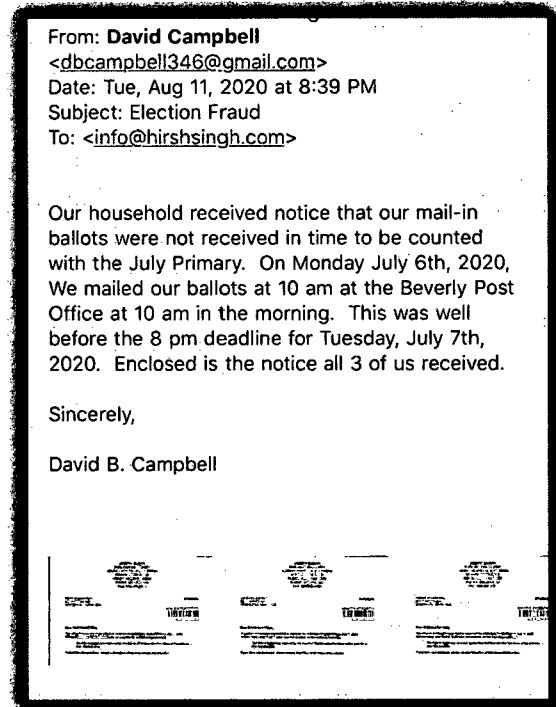
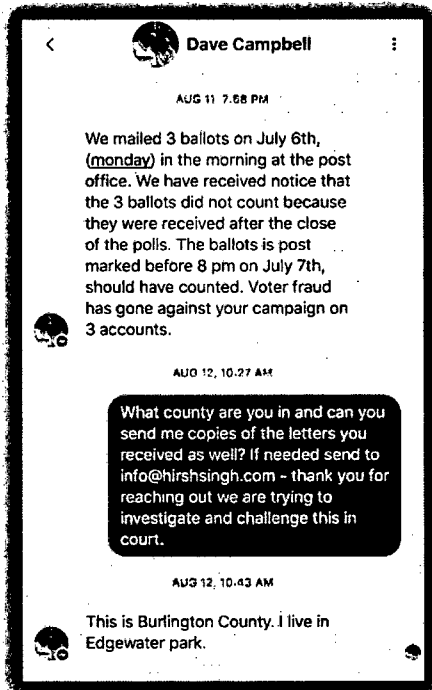


EXHIBIT J

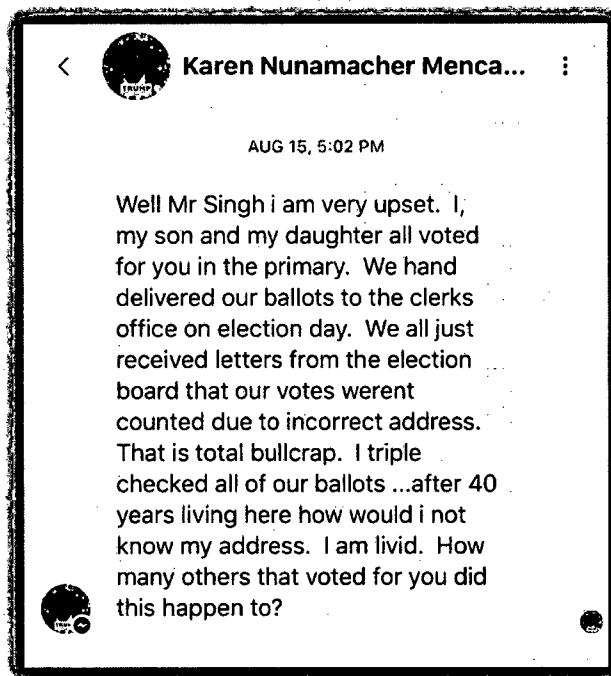







EXHIBIT K


Fwd: Vote not counted  Inbox 

 **Singh for Senate** 12:23 PM
to me  

----- Forwarded message -----
From: John Snook <jsbowhunt3@verizon.net>
Date: Mon, Aug 10, 2020 at 12:21 PM
Subject: Vote not counted
To: <info@hirshsingh.com>

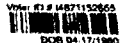
They claim our votes were received after the close of polls, they were mailed on June 30th, 2020. Here are two votes for Hirsh that weren't counted. Something fishy going on here

Sent from AOL Mobile Mail
 Get the new AOL app: mail.mobile.aol.com



JOSEPH DUGAN
 BURLINGTON COUNTY
 COUNTY BOARD OF ELECTIONS
 50 RANCOOAS ROAD
 MOUNT HOLLY NJ 08060
 PHONE: 609-265-5151
 FAX: 609-265-5151

CYNTHIA C SNOOK
 7 HOMESTEAD AVE
 TRENTON NJ 08620-6666


07/15/2020
 Voter ID # 1487152865

 DOB 04/17/1960

Dear CYNTHIA SNOOK,

The office is in receipt of your Mail-In ballot for the PRIMARY ELECTION on July 7, 2020. Unfortunately, your Mail-In ballot was not counted for the following reason(s):


- The Mail-In ballot was received by the Board of Election after the close of the polls on or after Election Day.

If you have any questions, please contact the office at the above listed number.

Sincerely Yours,

 JOSEPH DUGAN
 County Board of Elections

JOSEPH DUGAN
 BURLINGTON COUNTY
 COUNTY BOARD OF ELECTIONS
 50 RANCOOAS ROAD
 MOUNT HOLLY NJ 08060
 PHONE: 609-265-5151
 FAX: 609-265-5151

JOHN G SNOOK
 7 HOMESTEAD AVE
 TRENTON NJ 08620-6666

07/15/2020
 Voter ID # 1487152865

 DOB 10/15/1962

Dear JOHN SNOOK,

The office is in receipt of your Mail-In ballot for the PRIMARY ELECTION on July 7, 2020. Unfortunately, your Mail-In ballot was not counted for the following reason(s):

- The Mail-In ballot was received by the Board of Election after the close of the polls on or after Election Day.

If you have any questions, please contact this office at the above listed number.


Sincerely Yours,

 JOSEPH DUGAN
 County Board of Elections

EXHIBIT L

From: <jkscudder55@aol.com>
 Date: Tue, Aug 11, 2020 at 2:25 PM
 Subject: Jeff Scudder & Lucy Taweel- Letters from Burlington County Elections and PO Pics
 To: <Info@hirshsingh.com>
 Cc: <kittycatlucy827@gmail.com>

Mr. Hirsh Singh.

Please find the attached pictures of the mail pick-up from the Jobstown NJ Post Office, on July 3, 2020.
 I took these pictures when I placed our mail-in ballots into the USPS Mailbox located there, at 5:40 PM.
 I saw the truck pull up as I was getting ready to drop the ballots in the box, and decided to take a couple pics to document the fact I was there.
 I called the post office today at 1:35 PM ((609) 723-2586), and spoke to Kelly.
 She informed me that the P.O. was closed on Saturday July 4th, but the mail I dropped off would have been picked up Monday July 6th, at or before 6:00 PM, taken to and processed in Bellmar NJ. She said my ballot would have certainly been post marked in Bellmar with a date of July 6th. At that rate there is no reason our votes should not have been counted.
 I honestly feel violated. We know of others who had their votes not counted because the signatures didn't match?
 We should assume that there is some well know hand writing experts closely examining these signatures with a magnifying glass, or just some amateur's discretion?
 The first scenario is not realistic, and the second is not acceptable.
 Mail-in voting for anything other than absentee ballots has the stench of fraud.

Thank you for you help looking into this matter.

Best Regards,

Jeffrey K. Scudder & Lucy Ann Taweel



JOSEPH DUGAN
 BURLINGTON COUNTY
 COUNTY BOARD OF ELECTIONS
 50 RANOCAS ROAD
 MOUNT HOLLY NJ 08060
 PHONE: 609-265-5161
 FAX: 609-265-3131

LUCY A TAWHEEL
 1819 JACKSONVILLE JOBSTOWN RD
 BORDENTOWN NJ 08505-4117

07/21/2020

Voter ID # E0519151445

 DOB 03/23/1956

Dear LUCY TAWHEEL,

The office is in receipt of your Mail-in ballot for the PRIMARY ELECTION on July 7, 2020. Unfortunately, your Mail-in ballot was not counted for the following reason(s):

- The Mail-in ballot was received by the Board of Election after the close of the polls on or after Election Day.

If you have any questions, please contact this office at the above listed number.

Sincerely Yours,

JOSEPH DUGAN
 County Board of Elections

JOSEPH DUGAN
 BURLINGTON COUNTY
 COUNTY BOARD OF ELECTIONS
 50 RANOCAS ROAD
 MOUNT HOLLY NJ 08060
 PHONE: 609-265-5161
 FAX: 609-265-3131

JEFFREY K SCUDDER
 1819 JACKSONVILLE JOBSTOWN RD
 BORDENTOWN NJ 08505-4117

07/21/2020

Voter ID # L4915553722

 DOB 03/07/1955

Dear JEFFREY SCUDDER,

The office is in receipt of your Mail-in ballot for the PRIMARY ELECTION on July 7, 2020. Unfortunately, your Mail-in ballot was not counted for the following reason(s):

- The Mail-in ballot was received by the Board of Election after the close of the polls on or after Election Day.

If you have any questions, please contact this office at the above listed number.

Sincerely Yours,

JOSEPH DUGAN
 County Board of Elections

EXHIBIT M

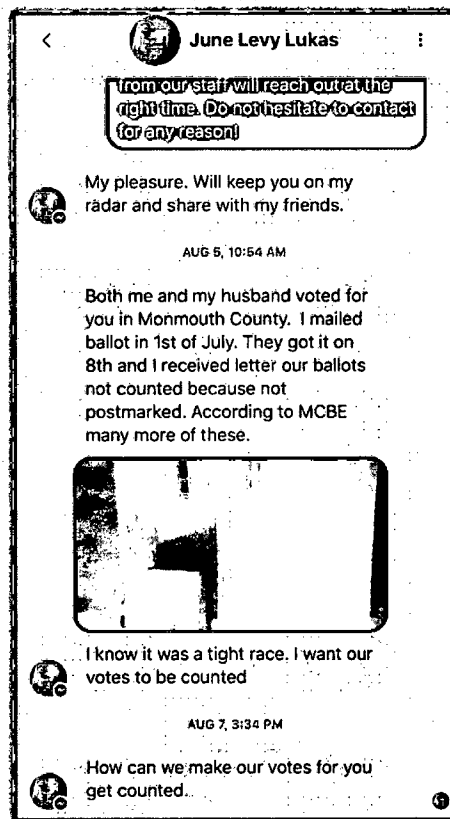


EXHIBIT N

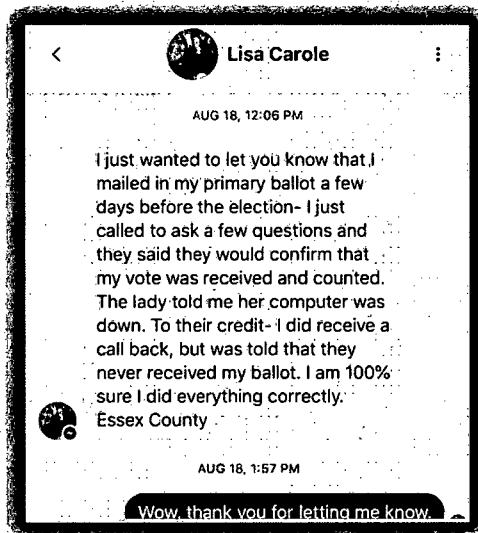
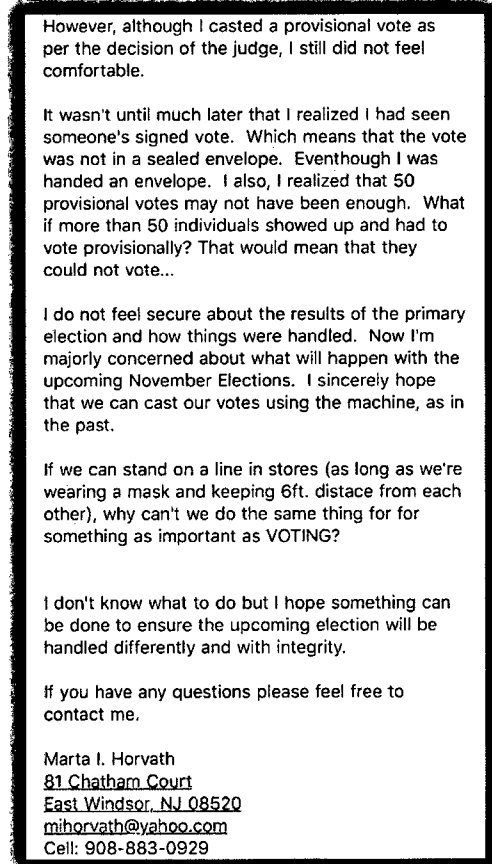
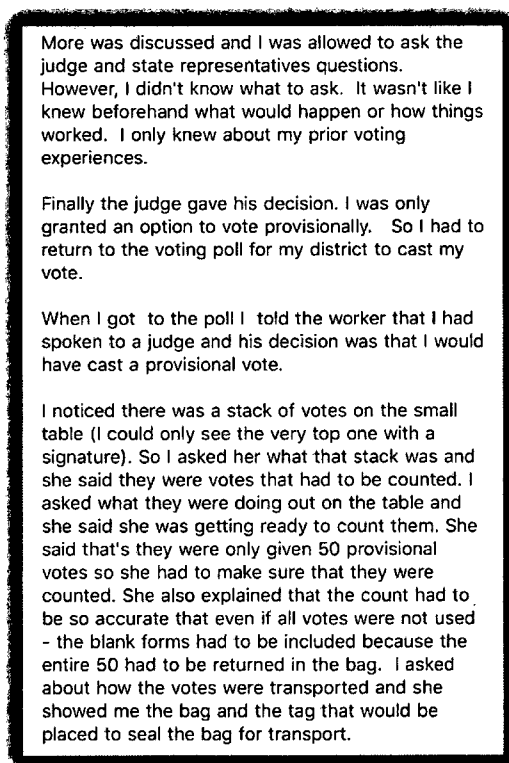
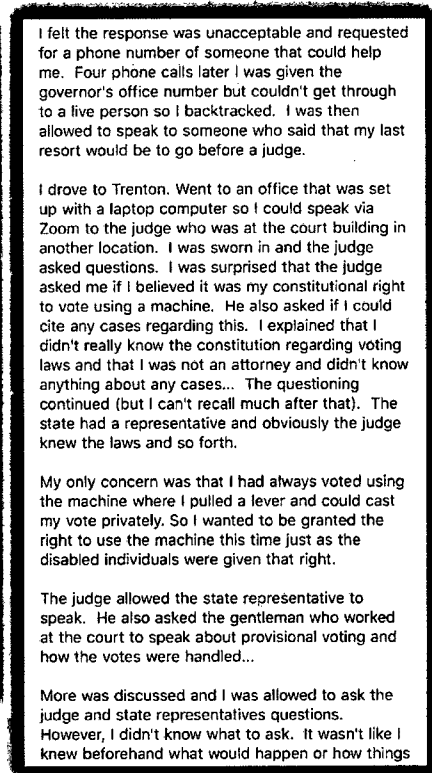
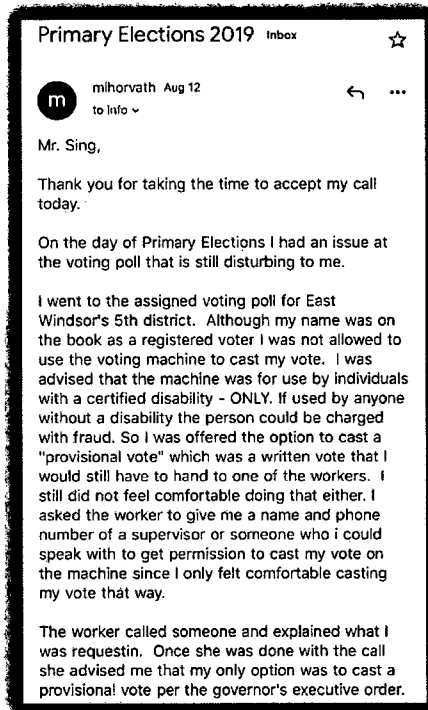
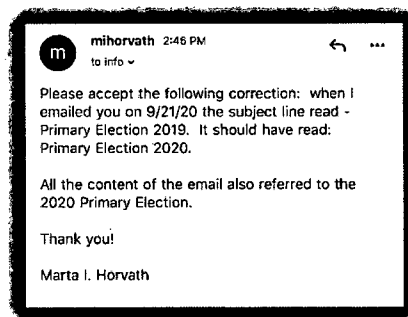


EXHIBIT O



APPENDIX 7

**Second Singh Declaration (Filed in Superior Court,
Appellate Division October 13, 2020)**

Hirsh Singh
Filing as Pro Se
P.O. Box 407 Linwood, NJ 08221
9 Wexford Lane Linwood, NJ 08221
(609)335-5289
info@hirshsingh.com

HIRSH SINGH,
Petitioner,

V.

HONORABLE PHILIP D. MURPHY,
in his official capacity as Governor of
New Jersey, **HONORABLE TAHESHA**
WAY, in her official capacity as New
Jersey Secretary of State; John Doe

Respondents.

SUPERIOR COURT OF NEW JERSEY
MORRIS COUNTY

LAW DIVISION

DOCKET NO. MRS-L-01757-20

CIVIL ACTION

DECLARATION BY HIRSH SINGH

I, Hirsh Singh, declare as follows:

1. I am over 18 years of age, am the Plaintiff in this case, and am fully competent to make this declaration. I make this declaration of my personal knowledge.
2. I was a candidate in the Republican Party primary election held on July 7, 2020 to determine the Republican Party's official candidate for the general election for the race for the United States Senate seat.

3. I began my campaign in December 2019 and expended considerable resources including my time and energies towards planning, formulating strategies, and campaigning for the primary election that was supposed to be held in accordance with New Jersey's laws.

4. Defendant Phil Murphy's Executive Order 144 issued on May 05, 2020 significantly affected me and my campaign as I had to reformulate my strategies and plans to fit in with the new time frame and the new manner of primary election as stipulated by the Executive Order.

5. Executive Order 144 forced me to spend additional resources including in the form of expending my energies formulating new strategies as well as coming up with new methods of campaigning to accommodate the new manner of election and executing such strategies and methods.

6. On June 25, 2020, the office of the Attorney General sent a cease and desist letter to me asking me to cease and desist from disseminating a mailer I had been sending to voters. **Exhibit B** of this declaration is a true and correct copy of the cease and desist letter I received from the Attorney General's office.

7. **Exhibit A** of this declaration is a true and correct copy of the mailer I had been sending out to voters and which was also attached to the cease and desist letter sent by the Attorney General's office described above.

8. Upon receiving the cease and desist letter, I ceased working on

campaign related activities such as drafting policy, crafting messages for voters, and sending out mailers, and instead spent time researching the law and creating a press release to deal with the media fallout of the threatening cease and desist letter.

9. Upon receiving the cease and desist letter, I personally accessed the official website of the Camden County Clerk at <https://www.camdencounty.com/service/voting-and-elections/request-replacement-vote-by-mail-ballot/> and found that it had a webpage containing information for requesting a replacement ballot. Among the information stated as a reason for requesting a duplicate ballot was "Your ballot was not voted correctly." **Exhibit C** contains a true and correct copy of the screen shot of the relevant section of the webpage.

10. **Exhibit D** contains a true and correct copy of the relevant portions of the official ballot I received for voting in the primary election in Atlantic County containing instructions for requesting a replacement ballot and includes the condition that the voter can request a new ballot if he or she incorrectly marked the ballot.

11. I visited the Post Offices of the United States Postal Service located at Toms River and spoke to the Post Master Thomas Wagner and sought information related to the ballots of the primary election of July 7, 2020. I also visited the

municipal post offices of the Atlantic County and Ocean County and spoke to the postmaster at each location in order to obtain information about the ballots.

12. Neither were the Postmasters able to provide the information, nor was there a well defined procedure to seek information related to election ballots under the Freedom of Information Act to which all federal agencies including USPS are subject to.

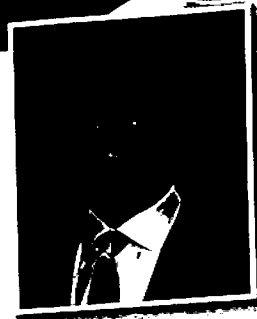
13. Mr. Thomas Wagner provided me, by scribbling on the back of his business card, the name one Mr. John DAlessio as the individual who was responsible for all mail-in ballots at USPS in New Jersey, but the Petitioner was not able to get in touch with Mr. DAlessio after several attempts at calling, emailing, and going to his USPS Belmar place of business, as Mr. DAlessio did not respond to the Petitioner's attempts to make contact.

14. Attached hereto, as **Exhibit E** and **Exhibit F**, are the front and back sides of the business card that Mr. Thomas Wagner provided to me with the name of John DAlessio.

15. All my interactions and communication with the postmasters mentioned above, as well as my communications to Mr. DAlessio occurred on July 22, 2020 or prior to that date, and there has been no response from them so far.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on September 14, 2020.

EXHIBIT A



Dear Fellow Patriot,

The socialist Democrats have infiltrated New Jersey's Republican US Senate Primary, escorted by never-Trump Republicans dedicated to stopping our President's re-election.

That's why I, Hirsh Singh, humbly ask for both your vote and financial support to help me fight along side President Trump to drain the swamp.

As a patriot, if you have been hoodwinked into voting for Rik Mehta, it is your patriotic duty to contact your county clerk and request a duplicate ballot to vote for the only Conservative Hirsh Singh. Your duplicate ballot will replace your earlier ballot. We must counter the evil that is trying to destroy this country and our President.

This is the time to remove Cory Booker from politics and I am dedicated to you and New Jersey.

As a lifelong Conservative Republican who has fought to drain the Jersey swamp, I once again humbly ask for your vote and financial support.

For GOD and country.

Hirsh Singh

P.S.: As you will discover when you read my Values and Vision at www.hirshsingh.com, I have been a consistent Conservative. I believe in the sanctity of life, the right to bear arms and upholding our Constitution. Prosperity through liberty.

Contact Us Here: 609-608-0113 • info@hirshsingh.com

PAID FOR BY SINGH FOR SENATE

EXHIBIT B



PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO Box 112
TRENTON, NJ 08625-0112

GURBIR S. GREWAL
Attorney General

MICHELLE L. MILLER
Director

June 25, 2020

VIA EMAIL

Hirsh Singh
Singh - US Senate
info@hirshsingh.com

Re: Letter to Voters Requesting Duplicate
Ballot for July 7, 2020 Primary Election

Dear Mr. Singh:

Please accept this letter on behalf of the Secretary of State as the Chief Elections Official in the State of New Jersey regarding the attached undated letter from you asking voters who have cast mail-in ballots in the July 7, 2020 Republican Primary Election to request a "duplicate ballot" to change their vote.

Your letter states that by casting a "duplicate" mail-in ballot and sending it to the county board of elections, "**Your duplicate ballot will replace your earlier ballot.**" This statement is false. After receiving a mail-in ballot, any "duplicate" ballot received by the county board of elections will be rejected.

As you are aware, it is a violation of federal law for a voter to vote more than once in a federal election, with a penalty of a fine of not more than \$10,000 or imprisonment not more than five years, or both. 52 U.S.C. 10307(e). In addition, New Jersey statutes N.J.S.A. 19:34-11 and 19:34-12 make it a crime of the third degree for any person who votes more than once at any election.

Your actions encouraging voters to vote more than once is in direct violation of 52 U.S.C. 10302, N.J.S.A. 19:34-11 and 19:34-12. Further, pursuant to N.J.S.A. 19:34-20, it is a crime of the



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June 25, 2020

Page 2

third degree for whoever "at any election counsels, procures, aids, advises, assists or abets any person to vote or to attempt to vote upon any name other than his own, or knowingly cast or attempt to cast more than one ballot at one time of voting;. . .or at any election shall in any way counsel, procure, aid, advise, assist or abet any official or person in any act which is contrary to the provisions of this title. . . ."

You are to immediately cease and desist from any further mailing, emailing or any other dissemination of the attached letter. You are further directed to immediately provide this office, the State Division of Elections, all county clerks and county boards of elections with a list of the names and addresses of all persons who were sent a copy of your letter.

Sincerely,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: s/George N. Cohen
George N. Cohen
Deputy Attorney General
Attorney ID #002941985
George.Cohen@law.njoag.gov

c: Tahesha Way, Secretary of State
State Division of Elections
County Clerks
County Boards of Elections
County Superintendents of Elections

EXHIBIT C

Request Replacement Vote by Mail Ballot | Camden County, NJ - Mozilla Firefox

File Edit View History Bookmarks Tools Help

Request Replacement Vo X

https://www.camdencounty.com/service/voting-and-electic

Search

Most Visited Linux Mint Blog Forums Community News

- Early Voting Center
- Election Results
- Information for Candidates
- Military and Overseas Vote by Mail
- Polling Places
- Register to Vote
- Request Replacement Vote by Mail Ballot
- Sample Ballots
- Vote by Mail
- Vote by Mail Drop Boxes
- Vote by Mail List
- Voter Update

If you are unable to appear in person to receive a replacement ballot, a messenger can be used to pick up your ballot for you. You must designate the person the Authorized Messenger on the form. this messenger shall be a family member or a registered voter of Camden County. The messenger cannot be a Candidate in this election or serve as a messenger for more than THREE voters in this election.

The request form can be found here:
Request Replacement Vote By Mail Ballot Form for Authorized Messenger

Common reasons to request a replacement ballot are:

- You never received your ballot
- Your ballot is ripped, torn or damaged
- Your ballot was not voted correctly
- Your ballot was misplaced


During the period beginning 6 days prior to an election until 3pm the day prior to an election, the County Clerk's Office will be unable to accept requests for replacement ballots by mail, email or fax. The ballots will not be able to reach you in time since they would have been sent via the US Postal Service.

EXHIBIT D

NEW JERSEY MAIL-IN BALLOT / OFFICIAL PRIMARY ELECTION


Linwood Ward 1
ATLANTIC COUNTY, NEW JERSEY
2nd Congressional District - July 7, 2020

EDWARD P. McGETTIGAN
Atlantic County Clerk



To Protect Your Vote:
IT IS AGAINST THE LAW FOR ANYONE EXCEPT YOU
THE VOTER TO MARK OR INSPECT THIS BALLOT.
However, a family member may assist you in doing so.

IMPORTANT INSTRUCTIONS TO VOTERS
Please read the following before marking your ballot:

1. To vote for any person whose name is printed on this ballot use only a pencil or ink pen (black or blue) and fill in the oval  to the right of the candidate's name, not in excess of the number to be elected to the office.
2. To vote for any person whose name is not printed on this ballot, write the name in the **PERSONAL CHOICE COLUMN**, and fill in that oval to the right of name. Do not vote for more candidates than are to be elected.
3. If you tear, deface or incorrectly mark this ballot, return it to the Atlantic County Clerk's Election Office and obtain a new ballot.

Dear Voter,

In light of the ongoing novel coronavirus (COVID-19) pandemic, Governor Murphy signed Executive Order No. 144 on May 15, 2020 which requires the Office of the Atlantic County Clerk to send all Democratic and

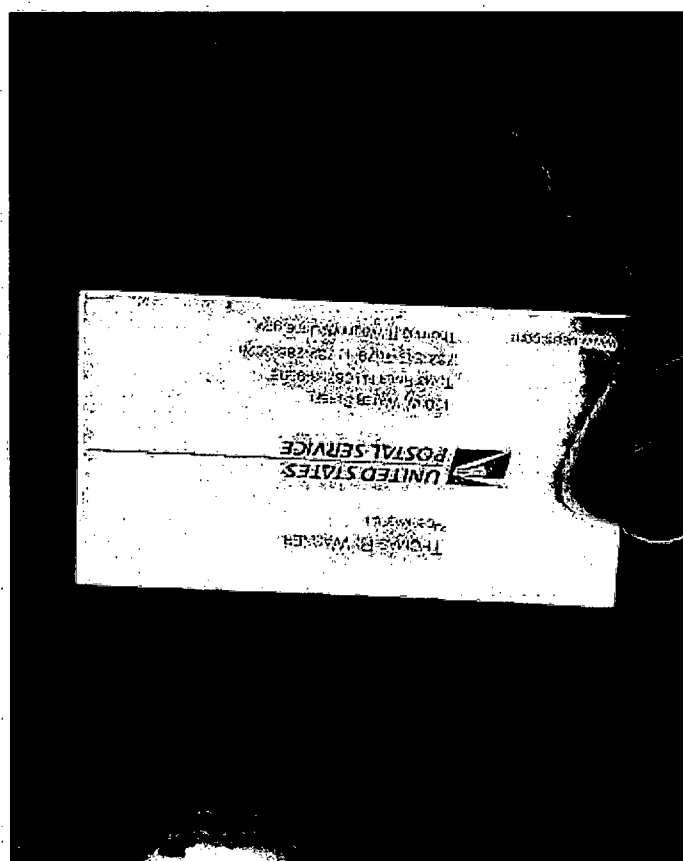


EXHIBIT E

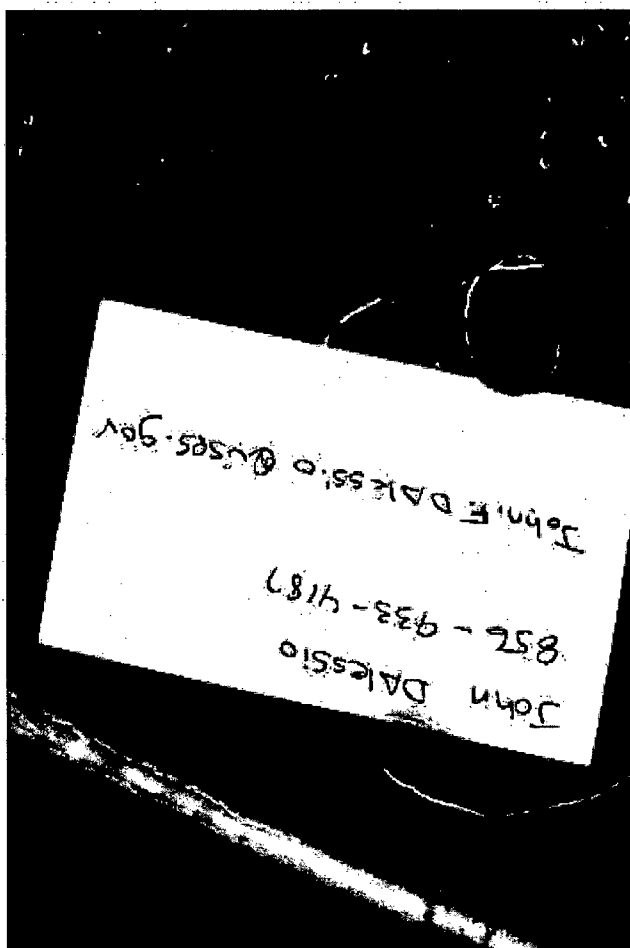


EXHIBIT F

APPENDIX 8

**Third Singh Declaration (Filed in Superior Court,
Appellate Division October 13, 2020)**

Hirsh Singh
Filing as Pro Se
P.O. Box 407 Linwood, NJ 08221
9 Wexford Lane Linwood, NJ 08221
(609)335-5289
info@hirshsingh.com

HIRSH SINGH,
Petitioner,

v.

HONORABLE PHILIP D. MURPHY, in
his official capacity as Governor of New
Jersey, HONORABLE TAHESHA WAY,
in her official capacity as New Jersey
Secretary of State; HONORABLE Joanne
Schwartz, in her official capacity as
Burlington County Clerk, BURLINGTON
COUNTY BOARD OF ELECTIONS and
COUNTY BOARD OF CANVASSERS;
HONORABLE Joseph Ripa, in his official
capacity as Camden County Clerk,
CAMDEN COUNTY BOARD OF
ELECTIONS and COUNTY BOARD OF
CANVASSERS; HONORABLE Stever
Peter, in his official capacity as Somerset
County Clerk, SOMERSET COUNTY
BOARD OF ELECTIONS and COUNTY
BOARD OF CANVASSERS;
HONORABLE Rita Marie Fulginiti, in her
official capacity as Cape May County
Clerk, CAPE MAY COUNTY BOARD
OF ELECTIONS and COUNTY BOARD
OF CANVASSERS; HONORABLE
Celeste M. Riley, in her official capacity as
Cumberland County Clerk,
CUMBERLAND COUNTY BOARD OF
ELECTIONS and COUNTY BOARD OF
CANVASSERS; HONORABLE Mary H.
Melfi, in her official capacity as Hunterdon

: SUPERIOR COURT OF NEW JERSEY
: MORRIS COUNTY

:
: LAW DIVISION

: DOCKET NO. MRS-L-01757-20

: CIVIL ACTION

: THIRD DECLARATION BY HIRSH
: SINGH

County Clerk, HUNTERDON COUNTY BOARD OF ELECTIONS and COUNTY BOARD OF CANVASSERS; HONORABLE Paula Sollami-Covello, in her official capacity as Mercer County Clerk, MERCER COUNTY BOARD OF ELECTIONS and COUNTY BOARD OF CANVASSERS; HONORABLE Elaine Flynn, in her official capacity as Middlesex County Clerk, MIDDLESEX COUNTY BOARD OF ELECTIONS and COUNTY BOARD OF CANVASSERS; HONORABLE Christine Giordano Hanlon, in her official capacity as Monmouth County Clerk, MONMOUTH COUNTY BOARD OF ELECTIONS and COUNTY BOARD OF CANVASSERS; HONORABLE Ann F. Grossi, in her official capacity as Morris County Clerk, MORRIS COUNTY BOARD OF ELECTIONS and COUNTY BOARD OF CANVASSERS; HONORABLE Danielle Ireland-Imhof, in her official capacity as Passaic County Clerk, PASSAIC COUNTY BOARD OF ELECTIONS and COUNTY BOARD OF CANVASSERS; HONORABLE Joanne Rajoppi, in her official capacity as Union County Clerk, UNION COUNTY BOARD OF ELECTIONS and COUNTY BOARD OF CANVASSERS; HONORABLE Holly Mackey, in her official capacity as Warren County Clerk, WARREN COUNTY BOARD OF ELECTIONS and COUNTY BOARD OF CANVASSERS; HONORABLE Jeff Parrott, in his official capacity as Sussex County Clerk, SUSSEX COUNTY BOARD OF ELECTIONS and COUNTY BOARD OF CANVASSERS; HONORABLE Dale A. Cross, in his official capacity as Salem County Clerk, SALEM COUNTY BOARD OF ELECTIONS and COUNTY BOARD OF

CANVASSERS; HONORABLE Scott M. Colabella, in his official capacity as Ocean County Clerk, OCEAN COUNTY BOARD OF ELECTIONS and COUNTY BOARD OF CANVASSERS; HONORABLE E. Junior Maldonado, in his official capacity as Hudson County Clerk, HUDSON COUNTY BOARD OF ELECTIONS and COUNTY BOARD OF CANVASSERS; HONORABLE James N. Hogan, in his official capacity as Gloucester County Clerk, GLOUCESTER COUNTY BOARD OF ELECTIONS and COUNTY BOARD OF CANVASSERS; HONORABLE Christopher J. Durkin, in his official capacity as Essex County Clerk, ESSEX COUNTY BOARD OF ELECTIONS and COUNTY BOARD OF CANVASSERS; HONORABLE John S. Hogan, in his official capacity as Bergen County Clerk, BERGEN COUNTY BOARD OF ELECTIONS and COUNTY BOARD OF CANVASSERS; HONORABLE Edward P. McGettigan, in his official capacity as Atlantic County Clerk, ATLANTIC COUNTY BOARD OF ELECTIONS and COUNTY BOARD OF CANVASSERS.

Respondents.

I, Hirsh Singh, declare as follows:

1. I am over 18 years of age, am the Plaintiff in this case, and am fully competent to make this declaration. I make this declaration of my personal knowledge.

2. I was a candidate in the Republican Party primary election held on July 7, 2020 to determine the Republican Party's official candidate for the general

election for United States Senate.

3. I personally accessed the official websites of the county clerks of Atlantic, Cape May, Cumberland, Salem, Gloucester, Camden, Burlington, Ocean, Monmouth, Mercer, Middlesex, Somerset, Hunterdon, Warren, Morris, Union, Hudson, Essex, Sussex, Passaic and Bergen counties in the State of New Jersey and gathered the information about the total number of provisional votes (votes based on in-person voting) excluding the mail-in votes, as well as the total number of votes including the mail-in votes credited to each Republican candidate in the primary election to choose the nominee for United States Senate conducted on July 7, 2020. **Exhibit A** of this declaration contains a table I prepared based on this information and has the number of votes received through provisional ballots for each candidate in the 13 counties that provided the breakdown.

4. No breakdown of provisional ballots and mail-in ballots was posted on the websites of the clerks of Cape May, Salem, Gloucester, Middlesex, Somerset, Warren and Hudson counties.

5. The official website URLs of the county clerks are listed in **Exhibit B**.

6. The Singh Declaration and Second Singh Declaration which were previously submitted to the court are reincorporated in full herein for the purpose of the statements in those declarations being sworn under oath.

I solemnly swear under oath and declare under penalty of perjury that the foregoing is true and correct and contains the truth, the whole truth and nothing but the truth. Executed on September 26, 2020.

By: s/ Hirsh Singh
HIRSH SINGH PRO SE.

Date: September 28th, 2020

EXHIBIT A

CONSTITUTIONAL PROVISIONAL BALLOTS

TOTALS:

Candidate:	Hirsh Singh	Rikin Mehta	Tricia Flanagan	Natalie Rivera	Eugene Anaganos	
County						
Atlantic	1921	136	219	111	36	2423
Cape May	NOT PUBLIC/DENIED INFORMATION REQUEST					?
Cumberland	857	130	181	53	20	1241
Salem	NOT PUBLIC/DENIED INFORMATION REQUEST					?
Gloucester	NOT PUBLIC/DENIED INFORMATION REQUEST					?
Camden	1191	1599	401	214	85	3490
Burlington	NOT PUBLIC/DENIED INFORMATION REQUEST					4427
Ocean	5951	1137	647	451	93	8,279
Monmouth	2627	3239	1080	350	163	7459
Mercer	497	659	184	75	73	- 1496
Middlesex	NOT PUBLIC/DENIED INFORMATION REQUEST					?
Somerset	NOT PUBLIC/DENIED INFORMATION REQUEST					?
Hunterdon	306	191	204	46	26	773
Warren	NOT PUBLIC/DENIED INFORMATION REQUEST					?
Morris	2604	1161	1056	212	334	5367
Union	553	914	212	146	26	1851
Hudson	NOT PUBLIC/DENIED INFORMATION REQUEST					?
Essex	489	443	143	57	29	1161
Sussex	471	521	296	62	48	1398
Passaic	866	358	748	125	34	2131
Bergen	1268	2243	897	317	150	4875
TOTALS:	19601	12731	6268	2219	1117	46371

Singh wins by: 6870 Votes

EXHIBIT B

County	Official Website:
Atlantic	https://www.atlanticcountyclerk.org/wp-content/uploads/2020/08/2020-Primary-Election-Results-Official.pdf
Cape May	https://results.enr.clarityelections.com/NJ/Cape_May/104470/web.255599/#/detail/212
Cumberland	https://ccclerknj.com/wp-content/uploads/2020/09/2020-Primary-Election-Republican-Senator-House.pdf
Salem	https://salemcountyclerk.org/wp-content/uploads/2020/07/Summary-Report-min.pdf
Gloucester	Not Available
Camden	https://www.camdencounty.com/wp-content/elections/Primary2020/2020_Primary_Canvasser.pdf
Burlington	https://www.co.burlington.nj.us/DocumentCenter/View/3554/Primary-Election-Summary
Ocean	https://results.enr.clarityelections.com/NJ/Ocean/104461/web.255599/#/detail/5
Monmouth	https://results.enr.clarityelections.com/NJ/Monmouth/104472/web.255599/#/summary
Mercer	Results provided by Board of Elections
Middlesex	https://results.enr.clarityelections.com/NJ/Middlesex/104468/Web02.255596/#/
Somerset	https://results.enr.clarityelections.com/NJ/Somerset/104459/web.255599/#/summary and https://www.insidernj.com/press-release/results-somerset-county-july-7-primary-election-completed/
Hunterdon	https://www.co.hunterdon.nj.us/election/2020/PRIMARY/OFFICIAL%20SOV%20P2020.pdf
Warren	https://www.warrencountyvotes.com/sites/default/files/inline-files/Official%20Summary%207-24-2020_0.pdf
Morris	https://results.enr.clarityelections.com/NJ/Morris/104457/web.255599/#/summary
Union	https://results.enr.clarityelections.com/NJ/Union/104460/web.255599/#/summary
Hudson	https://results.enr.clarityelections.com/NJ/Hudson/104453/web.255599/#/summary
Essex	https://www.essexclerk.com/_Content/pdf/ElectionSummaryReportRPT-July2020.pdf
Sussex	https://sussexcountyclerk.org/docs/elections/2020/Primary/Official/COUNTYSUMMARYOFFICIAL.html
Passaic	https://www.passaiccountynj.org/Print%20SOV%20Report%200724_2.pdf
Bergen	https://www.bergencountyclerk.org/_Content/pdf/ElectionResult/Precinct%20Summary%202020%20Bergen%20Primary%20Election.pdf

APPENDIX 9

Minute Order RICHARDSON et al v. TRUMP et al,
in the District of Columbia Federal District Court
(October 27, 2020)

Full docket text:

MINUTE ORDER granting [66] emergency motion to enforce and monitor compliance with preliminary injunction. It is hereby ORDERED that by no later than 9:00 AM on October 28, 2020, Defendants shall issue a one-page notice to Area Vice Presidents, Managers of Operations Support, and any other United States Postal Service ("USPS") personnel who were previously informed about the guidelines issued on July 14, 2020, by USPS Vice President of Logistics, Robert Cintron, regarding the use of late and extra trips: (1) "The guidelines issued on July 14, 2020, by USPS Vice President of Logistics, Robert Cintron, regarding the use of late and extra trips are rescinded;" and (2) "USPS personnel are instructed to perform late and extra trips to the maximum extent necessary to increase on-time mail deliveries, particularly for Election Mail. To be clear, late and extra trips should be performed to the same or greater degree than they were performed prior to July 2020 when doing so would increase on-time mail deliveries. Any prior communication that is inconsistent with this instruction should be disregarded." It is FURTHER ORDERED that by no later than 9:00 AM on October 29, 2020, Defendants shall issue a one-page notice to, or deliver a Stand-Up Talk to, all USPS personnel who may have job responsibilities related in any way to late and extra trips, stating that: "Late and extra trips will be approved to the maximum extent necessary to increase on-time mail deliveries, particularly for Election Mail. Any prior communication that is inconsistent with this should be disregarded. To be clear, late and extra trips will be approved to the same or greater degree than they were performed prior to July 2020 when doing so would increase on-time mail deliveries." It is FURTHER ORDERED that by no later than 9:00 AM on October 29, 2020, Defendants shall distribute, in the same form and to the same individuals who were previously advised about the need to "ensure that completed ballots reach the appropriate election official by the state's designated deadline," a list of state-specific statutory ballot receipt deadlines, so that USPS managers and employees can implement the Election Mail guidance that Defendants have recently issued. The parties shall confer and agree on the form and substance of the list. It is FURTHER ORDERED that beginning October 28, 2020 and until further order of the Court, Defendants shall file with the Court by 10:00 AM each day: (1) updated data on the number of extra and late trips performed the preceding day, at the Nation, Area, and District level, including any available data that is specific to Election Mail, to the maximum extent feasible; (2) updated data on the percentage of on-time deliveries at the Nation, Area, and District level, including any available data that is specific to Election Mail to the maximum extent feasible; and (3) any other reports generated after the date of this Order and produced to Congress, other courts, or other litigants. It is FURTHER ORDERED that beginning October 28, 2020 and until further order of the Court, the Court schedules a daily status conference at 3:00 PM via VIDEO TELECONFERENCE. The parties shall contact Mr. Mark Coates, the Courtroom Deputy Clerk, for the dial-in information. Signed by Judge Emmet G. Sullivan on 10/27/2020. (lcegs3)