

No. 20-599

**In The
Supreme Court of the United States**

HIRSH SINGH, PRO SE.,

Petitioner,

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, ET AL.,

Respondents.

**On Petition For Writ Of Certiorari
To The Supreme Court Of New Jersey**

REPLY TO BRIEF IN OPPOSITION

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SUPREME COURT, U.S.**

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This case calls upon the Court to resolve two very important issues of national importance: Whether the Governor can unilaterally usurp the power of the legislature to set the time and manner of conducting elections for federal offices specified in Article 1, Section 4 of the United States Constitution without any law transferring such powers to the Governor, and whether the use of the United States Postal Service (USPS) by the state government to conduct an election process makes it incumbent on all participants in charge of the election process including the state government to ensure that proper safeguards are in place so that the Freedom of Information Act is not violated.

Instead of addressing these issues, the Respondents try to re-frame the question in a deceptive manner as though the law explicitly grants the power of the legislative branch to the governor, deceptively provide a wrong and later date for Petitioner approaching the judiciary (both for the Elections Clause claim as well as other claims) and that Petitioner approached the judiciary only after the election result when in fact the Petitioner first approached the judiciary to dispute the election long before the election result was certified, claim that New Jersey's laws related to the deadline that the Petitioner meticulously followed should be rendered moot, and that it is too late to declare the election null and void.

Respondents also make the fantastic claim that the US Supreme Court lacks jurisdiction to resolve the issues raised and that these issues do not have any national importance when in fact it is the Supreme Court and not the state court that should rule on Constitutional issues, and the issue raised in this case is of utmost importance to the country. This lawsuit is also an excellent vehicle to resolve the question of whether the legislative branch specified in the Election Clause includes the Executive branch even if the State Constitution explicitly describes them as separate entities that cannot usurp each other's powers.

ARGUMENT**I. RESPONDENTS RE-FRAME THE QUESTION WITH AN INTENTIONAL ERROR – NOTHING IN THE LAW PERTAINING TO THE EMERGENCY POWERS OF THE GOVERNOR TRANSFERS THE POWERS OF THE LEGISLATIVE BRANCH TO THE GOVERNOR**

Respondents assert but do not quote a single word from the text of New Jersey's laws that supports their assertion that the laws related to the emergency powers transfer the powers of the legislature to make laws related to the elections to the Governor. Respondents do not quote anything because there is nothing they can quote.

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. As already described in Petitioner's Writ for Certiorari, these laws contain an enumerated list of specific tasks within the Executive branch that the Governor is authorized to execute.

The Writ of Certiorari also listed down the relevant parts of the New Jersey Constitution describing the manner of lawmaking and forbidding one branch of the government from taking over the powers of another branch.

II. RESPONDENTS PROVIDE WRONG DATES FOR PETITIONER'S FILINGS WITH THE JUDICIARY AND FOR PETITIONER RAISING OBJECTIONS IN COURT DOCUMENTS BASED ON THE ELECTIONS CLAUSE

Respondents deceptively try to claim that the Petitioner waited for the results of the election before challenging the election, and also wrongly claim that the argument related to the Elections Clause was raised for the first time when the Complaint was amended on September 14, 2020.

First, Petitioner objected to the election to the Executive branch as early as July 17. In fact, the state of New Jersey continued to accept ballots until July 14, 2020. Thus, Petitioner acted within three days of the completion of the election in objecting to the election process. Petitioner filed the first challenge in the judiciary on July 24, 2020 as already described in the writ for certiorari. This filing with the Morris County court is reproduced in Appendix 10¹ where the date of filing can be verified. It is the cases filed on July 24 in 21 different counties that were consolidated by first the Superior Court of Morris County and then the New Jersey Supreme Court into one case and morphed into the instant case. See the orders consolidating the cases in App. 11. and App. 13. Respondents are clearly wrong about the date of origin of this case which goes back to July 24, 2020, long before the results of the elections had been announced.

The result of the election was known only on August 20, 2020, and in this very close race (using the official numbers), Petitioner could have emerged the winner. It is thus clear that the Petitioner's only interest in filing these objections long before the election results were known was fairness, following the rule of law, and ensuring integrity in the electoral process.

Additionally, contrary to the claims of Respondents, in the Complaint filed on September 1, 2020², the section containing the factual background clearly states:

This election should be set-aside because it was illegally created using State Executive Powers where the U.S. Constitution Article 1 Section 4 clearly states “the times the places and manners shall be prescribed in each state by the legislature” meaning the NJ Assembly and NJ Senate (Arizona State Legislature v Arizona Independent Redistricting Committee. [2015]) The guidelines to conduct a Federal Election is vested in the State’s Legislature. The US Senate primary election held on July 7th has been illegitimately certified with incomplete and fraudulent results.

See App. 12, p. 2.

Thus Respondents are wrong when they assert that the argument related to the Elections Clause was raised for the first time only when the Complaint was amended on September 14..

III. THE ARGUMENT ON LACHES AND ESTOPPEL ARE NOT MATTERS FOR THIS COURT AS THE LOWER COURTS DID NOT RULE ON THEM, BUT EVEN IF THEY WERE, THE RULING SHOULD HAVE BEEN IN FAVOR OF PETITIONER

The argument by Respondents on estoppel and laches are not matters for the Supreme Court in this case as the lower court ruled on the Elections Clause and the Freedom of Information Act and not their laches and estoppel claims. The damage caused by those wrong rulings will not be reversed if this Court does not address them.

Respondents’ argument on laches is also a bizarre one as it amounts to asking that the courts nullify the law related to the deadline for filing cases related to elections. September 1 was the deadline according to state law N.J.S.A. 19:29-3 for filing such an

1 Appendix numbers in this Reply continue after the last number used in the Writ of Certiorari.

2 Although stamped September 2 by the court, it was submitted by the Petitioner to the court in a timely manner on September 1 which was the deadline created by NJ law

election contest petition, and Petitioner met that deadline. It was also the State that is responsible for endless delays as it was neither responsive nor showed a sense of urgency to resolve matters in a timely manner in the judiciary.

The facts that the Petitioner started objecting to the Secretary of State as early as July 17 and had sought information through an Open Records request from them as early as July 12 even before the period when the State was accepting ballots had ended, and opposed the elections as early as July 24 even though the final results were certified only on August 20, belie the claim that the Petitioner took advantage of the election and complained only because he "lost." Thus the claim of estoppel is also blown out of the water. *See App. 12, p. 4*

Additionally, 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).

It should be noted that not only the Petitioner, but even the New Jersey legislature had been misled by the Governor through the wording used in Executive Orders 120, 144, and 177, into believing that existing laws permitted the Governor to take over the functions of the legislature and rule by issuing Executive Orders. Curiously, Respondents themselves admit to this point when they bring up the issue of Executive Order 177 (EO 177) which is unrelated to this case and describe how the legislature woke up to reality and passed a law on August 26, 2020, rendering EO 177 moot. Clearly, the traditional principles of estoppel favor the Petitioner. Additionally, within six days of this action, Petitioner raised it in the court.³

³ This is remarkably swift action by the Petitioner who is a Pro Se litigant. This court is already aware of the fact that Respondents have taken months to file a response, that too an error-filled one, but somehow expect Petitioner who is not a professional attorney to have known, long before the election took place, points of law that even professional lawyers and lawmakers did not know until late August 2020 when they corrected course. The fact that the Petitioner was misled is also the fault of the Respondent whose Executive Order misled everyone including the Petitioner.

**IV. IT IS NEVER TOO LATE TO VOID AN ILLEGAL ELECTION;
THERE ARE PRECEDENTS OF ELECTIONS BEING VOIDED AFTER
THE RESULTS**

It is also not too late to set aside the election. In *Marks v. Stinson*, the Third Circuit Court of Appeals set aside an election long after the results had been announced and the “winner” had taken office. See *Marks v. Stinson*, 19 F.3d 873 (3d Cir. 1994).

New Jersey’s judiciary too has a history of ruling and setting aside elections after they had been conducted, and also making changes to elections very close to the election date. In a previous lawsuit, New Jersey’s 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, very close to the election date (even closer to the election date in comparison to the date of Petitioner’s Complaint to the judiciary) 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.

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The same opinion also states that the printing of ballots was stayed by the court very close to the election date, and closer to the election date in comparison to the Petitioner's filing date in this case. 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, and 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.*

V. THE POST OFFICE DOES NOT HAVE TO BE A DEFENDANT TO RULE ON THE BEHAVIOR OF THE STATE OF NEW JERSEY

Petitioner does not seek any ruling against USPS or any remedy to be executed by them. Clearly, USPS does not have to be named a Defendant in this case.

Petitioner seeks a judgment against the State officials of New Jersey which used USPS without first ensuring that such use would be in compliance with federal laws. Unlike the case of the previously existing system of absentee ballots, which is protected by both federal and state laws, and is based on the federal and state governments working in tandem to ensure compliance with federal laws, EO 144 and actions based on it are in blatant violation of the Freedom of Information Act, a violation for which Respondents bear some responsibility.

VI. THIS CASE IS OF NATIONAL IMPORTANCE AND IS AN EXCELLENT VEHICLE TO RESOLVE THE ISSUES RAISED

Respondents provide a curious argument that the importance of this case stems from whether or not a case is published by the lower court instead of assessing the importance of a potential Supreme Court ruling on the case! Their argument amounts to the claim that no case that is unpublished is appealable in the Supreme Court. The most ironical part of their argument is that they use the unpublished decision of the lower court that is being appealed in this case as an established precedent that must be accepted by this Court!

That is, not only do they claim that an unpublished case is unappealable and then go on to shoot themselves in the foot by treating the unpublished opinion as the established precedent, they also indulge in circular reasoning by asking that this Court treat the very decision that is being appealed as an opinion set in stone and use that assumption to conclude that the decision being appealed was a correct one!

In reality, this case is of great national importance not only because it could resolve conflicts arising from multiple interpretations of the Elections Clause and provide clarity to the use of federal entities such as the Postal Service by state government, but it could also determine the composition of the Senate which now has fifty Republicans and fifty Democrats. Given the fine balance, it is even more important that the Senators be legitimately elected representatives.

CONCLUSION

Therefore Petitioner requests that this Court grants certiorari.

Respectfully submitted,

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