

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
APPLICATION FOR PERMISSION TO FILE EMERGENT MOTION**

TO: Jane Grall, J.A.D.

DATE: 06/07/2013

FROM: Marguerite M. Schaffer, Esq.

TELEPHONE: (908) 953-9300 ext. 12

The following questions are to be answered by the attorney or pro se litigant requesting permission to file an emergent motion. This questionnaire is designed to assist the court's determination respecting its further instructions. **COMPLETION OF THIS APPLICATION DOES NOT IN ANY SENSE CONSTITUTE THE FILING OF AN APPEAL OR MOTION.** There is no right to be heard orally on an emergency application. Further instructions will come from the court.

Except by permission of the court, the only documents you may submit with this application are: a copy of the decision being appealed, any opinion or statement of reasons given by the trial judge or agency, and any order or decision denying or granting a stay. A copy of this application must be served simultaneously on both your adversary and the trial judge or agency. No answer shall be filed without permission of the court.

If the court grants you permission to file an emergent motion and you have not previously filed a motion for leave to appeal or notice of appeal (whichever is applicable), you must simultaneously file one. You must also pay the applicable filing fee (\$30 for a motion for leave to appeal; \$200 for a notice of appeal), direct the charging of an account with the Superior Court, or file a motion to proceed as an indigent and supporting certification.

CASE NAME: Zenon Christodoulou, et al. v. Governor Christopher J. Christie

1. What is the vicinage of the matter? (i.e., what judge, in what county or what agency entered the decision?)

Governor of New Jersey in Mercer County

2. a) What is your name, address, including any e-mail address, phone number and fax number?

Marguerite M. Schaffer, Esq., Shain, Schaffer & Rafanello, P.C.
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- b) Whom do you represent?

Zenon Christodoulou, Joseph Daniels, Marie Corfield and Giuseppe "Joe" Grillo

3. List the names of all other parties and name, address, including any known e-mail address, phone number and fax number of attorney for each.

Governor Christopher J. Christie, Office of the Governor, P.O. Box 001, Trenton, NJ 08625 (609) 292-6000/(609) 292-3454 (fax)

Attorney General of the State of New Jersey, P.O. Box 080, Trenton, NJ 08625 (609) 292-4925/(609) 292-3508 (fax)

4. Do you have a written order or judgment entered by the judge or a written agency decision? **You must attach a copy of the order, judgment or decision.**

See attached.

5. Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees? **If so, the decision is not final, but rather interlocutory, and leave to appeal must be sought.**

No.

6. Have you filed for a stay before the trial court or agency?

No.

If so, do you have a court order or agency decision denying or granting same? **Attach a copy of any such order or decision. Before you seek a stay from the Appellate Division, you must first apply to the trial court or agency for a stay and obtain a signed order or decision ruling on your stay application. (Court Rules 2:9-5 and 2:9-7)**

7. If the order or agency decision is interlocutory, are you filing a motion for leave to appeal?

N/A

8. If interlocutory, are you filing a motion to stay the trial court or agency proceeding?

N/A

9. If the order, judgment or agency decision is final, have you filed a notice of appeal?

No.

10. What is the essence of the order, judgment or agency decision?

Writ of Election ordered Special Election to fill vacant U.S. Senate seat, to be held 20 days prior to General Election.

11. a) Has any aspect of this matter been presented to or considered by another judge or part of the Appellate Division by emergent application or prior appeal proceedings? If so, which judge or part?

No.

- b) Have the merits briefs been filed in this matter? If so, has the matter been calendared to a part?
No.

12. What is the nature of the emergency?

See attached.

13. What is the irreparable harm, and when do you expect this harm to occur?

Fundamental rights of both candidates and voters will be negatively impacted. Potential candidates will be foreclosed from appearing on the ballot; this harm will occur on 6/10/13, 64 days before the date set for the primary. As of 4 P.M. on that day, costs which are estimated to exceed 12 million dollars will begin to accrue in preparation for the Special Election. In addition, the Writ's facial invalidity in failing to set a date for the voter registry will result in newly registered voters being disenfranchised.

14. What relief do you seek?

An injunction setting aside the 6/4/13 Writ of Election, and a declaration that (a) the Writ is stricken and (b) the vacant Senate seat shall be filled, pursuant to N.J.S.A. 19:3-26, at the General Election in November 2013, not by a Special Election.

15. What citation is most important for the proposition that you are likely to prevail on appeal?

N.J.S.A. 19:3-26; N.J.S.A. 19:23-14; N.J.S.A. 19:23-8; and N.J.S.A. 19:27-6.

16. Have you served simultaneously a copy of this application on both your adversary and the trial judge or agency?

Yes.

17. Have any transcripts been ordered (particularly of the trial judge's challenged ruling)?

No.

If so, when will the transcript be available?

18. Please give a brief summary of the facts of your case.

See attached.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DISPOSITION ON APPLICATION FOR PERMISSION TO FILE EMERGENT MOTION**

Case Name: Zenon Christodoulou, et al. v. Governor Christopher J. Christie

Trial Court or Agency Below: _____

DO NOT FILL IN THIS SECTION – FOR COURT USE ONLY

I. The application for leave to file an emergent motion on short notice is **Denied** for the following reasons:

☐ The application does not concern a genuine emergency or otherwise does not warrant adjudication on short notice. Counsel may file a motion with the Clerk's Office in the ordinary course.

☐ The applicant did not apply to the trial court or agency for a stay, and obtain a signed order, before seeking a stay from the Appellate Division.

☐ The application concerns an order entered during trial as to which there is no prima facie showing that immediate interlocutory intervention is warranted.

☐ Other reasons: _____

II. The application for leave to file an emergent motion on short notice is **Granted** on the following terms:

A. The applicant must file an original and two copies of the motion for emergent relief and a notice of appeal or motion for leave to appeal (plus all required fees or an indigency motion) with Judge _____ by no later than _____. On that same date, copies must be delivered to all counsel/pro se parties and to Judge _____. A copy must also be sent to the trial judge or agency whose decision is being appealed.

B. Opposition must be served and filed by no later than _____.

C. Other terms: _____

J.A.D.

Date

WRIT OF ELECTION

WHEREAS, as of June 3, 2013, a vacancy exists in the representation of this State in the United States Senate due to the passing of the Honorable Frank R. Lautenberg; and

WHEREAS, New Jersey law requires that a Writ of Election be issued by the Governor of the State of New Jersey prescribing the dates for a Primary and General Election for the purpose of filling such vacancy;

NOW, THEREFORE, I, CHRIS CHRISTIE, Governor of the State of New Jersey, pursuant to the provisions of N.J.S.A. 19:27-4, N.J.S.A. 19:27-6, and N.J.S.A. 19:3-26, hereby issue this Writ of Election directing that a special General Election be held to fill the unexpired term for the office of United States Senator on October 16, 2013. The nomination of political party candidates to fill such vacancy shall be made in the manner provided by law on August 13, 2013, 70 days after the issuance of this Writ and 64 days before the October 16, 2013 special General Election. Direct nominations by petition shall be filed no later than the day of the August 13, 2013 special Primary Election.

GIVEN, under my hand and seal this
4th day of June,
Two Thousand and Thirteen,
and of the Independence of
the United States, the Two
Hundred and Thirty-Seventh.

[seal]

/s/ Chris Christie
Governor

Attest:

/s/ Charles B. McKenna
Chief Counsel to the Governor

Application for Permission to File Emergent Motion Attachment

TO: Jane Grall, J.A.D.

DATE: 6/7/2013

FROM: Marguerite M. Schaffer, Esq.

TELEPHONE: (908) 953-9300 (x-12)

12. What is the nature of the emergency?

Governor Christie has issued a Writ of Election directing that a Special Election take place less than three weeks before the General Election, in order to fill the vacancy in the United States Senate caused by the death of Senator Lautenberg. Unless this action is enjoined, petitioners who wish to appear on the primary ballot will have only six days to collect the required 1000 signatures, and taxpayers throughout the State will be forced to finance a Special Election for no discernible reason. In addition, the Writ is invalid on its face due to its failure to comply with N.J.S.A. 19:27-6, which requires it to set the day(s) for the district boards to meet to establish the registers of voters to be used at the Special Election.

18. Please give a brief summary of the facts of your case.

On June 4, 2013, Governor Christie issued a Writ of Election (the "Writ") directing that a Special Election be held on October 16, 2013 to fill the United States Senate seat held by the deceased Senator Frank Lautenberg. This date is less than three weeks before the next General Election, which will take place on November 5, 2013. The Writ also set August 13, 2013 as the date for a special Primary Election.

N.J.S.A. 19:3-26 provides that a vacancy in a United States Senate seat should be filled at the next General Election if it occurs more than 70 days before such election is scheduled. The Special Election ordered by the Writ is inconsistent with this statutory provision. Further, if the Special Election proceeds on October 16th, potential candidates who wish to file petitions to appear on the primary ballot will have only until Monday, June 10th, to collect the 1000 signatures required to do so, under the guidelines set forth in N.J.S.A. 19:23-14 and N.J.S.A. 19:23-8 – six days from the date the Writ was issued.

Once the 4 P.M. deadline is reached on June 10th, the costs to taxpayers of gearing up for the Special Election ordered by the Writ will begin to accrue. Estimates of the cost of the Special Election exceed 12 million dollars, a cost which would not be incurred if the election to fill the vacancy coincided with the scheduled General Election on November 5th.

N.J.S.A. 19:27-6 sets forth the requirements for a Writ of Election. Such a writ is required to specify "the day or days when the district boards shall meet for the purpose of making, revising or correcting the registers of voters to be used at such special election." The Writ issued by Governor Christie does not set forth any such dates. The failure to set a date for the voter registry could well result in newly registered voters being disenfranchised. Likewise, the eligibility of petition signers cannot be ascertained without such a register.

The Special Election is scheduled for Wednesday, October 16th, less than three weeks before the General Election. The two elections will each entail separate deadlines for absentee voting, absentee ballot requests by mail, and absentee ballot requests in person. The potential for confusion is significant. To cite only one example, between September 21st and October 16th absentee voters may be in possession of two different ballots for two different elections. Holding the Special Election on a Wednesday so close in time to the General Election also increases the risk of reduced turnout due to voter inability to get to the polls twice in such a short period.