

PARTIES

1. Plaintiff Monmouth County Republican Committee (the “MCRC”) is a county political party representing over 120,000 registered Republican voters in 53 municipalities which nominates candidates for public office.

2. Defendant Tahesha Way is the Secretary of State of New Jersey. Secretary Way is New Jersey’s chief elections officer and oversees all elections within New Jersey. Her duties include ensuring that all election laws and campaign disclosure requirements are enforced, certifying the official lists of candidates for elections, and certifying election results. She is sued in her official capacity.

3. Defendant Monmouth County Board of Elections, is, and at all times hereinafter mentioned was, a six-person entity comprised of three Republican and three Democratic representatives who serve as Commissioners and is responsible for, among other things, receiving, canvassing, counting and recounting mail-in ballots and provisional ballots and administering the drastic changes to New Jersey election law imposed by P.L. 2020, c.72 and EO 177, including without limitation the security of and retrieval of ballots from ballot drop boxes and the monitoring of poll workers at polling place.

HISTORY OF VOTE-BY-MAIL GAMESMANSHIP IN NEW JERSEY

4. In 2009, the New Jersey legislature significantly altered its vote-by-mail law to permit any registered voter to cast a vote in any election by mail for any reason simply by requesting a vote-by-mail ballot, where voting by mail (previously referred to voting “absentee”) was only permitted under certain specific circumstances.

5. In the 2017 General Election, Philip Murphy was elected to serve as the Governor of the State of New Jersey.

6. Since Governor Murphy took office in 2018, abrupt changes have been made to the vote-by-mail law by the Democratic-led legislature in the months immediately preceding every General Election.

7. Following the 2018 Republican Primary, the campaign for then-U.S. Senate candidate Bob Hugin rolled out a first of its kind, multimillion-dollar vote-by-mail operation to be implemented in his bid for the upcoming 2018 General Election.

8. In August 2018, shortly after news of the Hugin campaign's vote-by-mail operation became public, the Democratic-led Legislature fortuitously decided to amend the vote-by-mail law to require that any voter that chose to request a vote by mail ballot in 2016 – a Presidential election year with historically high turnout – would **automatically** receive a vote-by-mail ballot in the 2018 General Election, which included Congressional mid-term elections and a U.S. Senate race in New Jersey.

[\(https://www.app.com/story/news/politics/elections/2018/09/13/election-2018-nj-vote-mail-law-confuses-voters-election-staff/1279843002/\)](https://www.app.com/story/news/politics/elections/2018/09/13/election-2018-nj-vote-mail-law-confuses-voters-election-staff/1279843002/)

9. Following the abrupt change in law in 2018, the Asbury Park Press reported that “New Jersey Secretary of State's office, which did not return calls for comment, was hesitant to give guidance on questions that weren't spelled out in the law” to County Clerks, who were responsible for administering the law and issuing the vote-by-mail ballots to voters.

10. In 2019, the Democratic-led legislature again changed the vote-by-mail law in August 2019 to provide that all votes who received a VBM ballot in the 2017 or 2018 General Elections would be sent VBM ballot **for life** unless they opt-out through their County Clerk's office. As reported by NJ Advance Media, the significant influx of VBM ballots “could help...Democrats...keep their majority in the lower chamber of the Legislature, if not expand it”

in connection with the 2019 General Election. (<https://www.nj.com/politics/2019/08/murphy-signs-law-fixing-mail-in-ballot-glitch-in-time-for-the-november-election.html>).

11. On March 9, 2020, Governor Murphy issued Executive Order 103 (Murphy, 2020) which declared a State of Emergency due to COVID-19, which has been extended by subsequent Executive Orders and continues to this day.

12. Using the cover of the State of Emergency declared by EO 103 and its progeny, the vote-by-mail laws were changed yet again on the event of the Spring 2020 elections, which is consistent with the above-described pattern of changing the vote-by-mail laws in the months immediately prior to an election. On March 19, Governor Murphy issued Executive Order 105 (March 19, 2020) which provided that “there will be no polling places in the May 12, 2020 elections,” and that the election “shall be conducted solely via vote-by-mail ballots, which will automatically be sent to all registered voters without the need for an application to receive a vote-by-mail ballot.” (<https://nj.gov/infobank/eo/056murphy/pdf/EO-105.pdf>)

DIRECT EVIDENCE OF THE REJECTION OF LEGAL VOTES AND RECEIPT OF ILLEGAL VOTES IN EVERY ELECTION THAT HAS OCCURRED IN 2020

13. Each election that has occurred since Governor Murphy declared said State of Emergency 190 days ago has resulted in lawful votes being rejected (or not counted at all) or illegal votes being received.

14. Following the May 12, 2020 election in the City of Paterson, New Jersey, the Attorney General indicted four individuals on charges of voter fraud, including a City Councilman and Councilman-elect. The charges filed stem from what is alleged to be a ballot harvesting scheme where the defendants collected more than three VBM ballots from registered voters in violation of the “bearer law” and returned those ballots to the Board of Elections for canvassing.

<https://www.nj.gov/oag/newsreleases20/pr20200625a.html#:~:text=However%2C%20New%20Jersey%20also%20allows%20a%20voter%20to,return%20the%20ballot%20on%20behalf%20of%20the%20vote>)

15. Following the filing of an election contest by an aggrieved party in the May 12, 2020 election, a Judge of the Superior Court of New Jersey invalidated the election entirely, ruling that it was so rife with fraud that it was “not a was not the fair, free and full expression of the intent of the voters.” (<https://www.nytimes.com/2020/08/19/nyregion/nj-election-mail-voting-fraud.html>)

16. Undeterred by the fraud that was discovered in the May 12th election in Paterson, Governor Murphy issued Executive Order 144 (May 15, 2020), which required that the July 2020 Primary Election (which was moved from June 2020 by a prior Executive Order) to be conducted primarily by mail.

17. Not surprisingly, the July primary was plagued with voting problems. More than 40,000 ballots were rejected throughout New Jersey - eight times as many rejected ballots as the 2016 Primary Election.

18. The unprecedented tidal wave of vote-by-mail ballots received by County Board of Elections resulted in significant delays in canvassing and certification of the election results. The National Guard was dispatched to assist Board of Elections in canvassing the election results due to the high volume of ballots received and, seven (7) counties, including Monmouth County, were required to petition the Superior Court for extensions of the certification deadline imposed by EO 144. As a result, the Secretary of State was unable to certify the results of the July 2020 Primary Election for *more than one month* after the election actually occurred.

19. Equally unsurprising is the fact that enormous numbers of registered voters were disenfranchised in the July 2020 Primary Election as a result of the mandate that everyone except the disabled vote-by-mail or provisional ballot. On September 15, 2020, the Associated Press reported that the Sussex County Board of Elections discovered 1,666 unopened vote-by-mail ballots in a “mislabeled bin” found in a “secure area” at the county election office. Those 1,666 votes were not officially counted, though the Sussex County Board of Elections claims that these votes “did not change the outcome of any races.”

(<https://apnews.com/3654a728d86011366b57bfe6c66fe9be>).

EXECUTIVE ORDER 177 AND SUBSEQUENT REMEDIAL LEGISLATION

20. During an August 13, 2020 interview, Dr. Anthony Fauci, director of the National Institute of Allergy and Infectious Diseases, said, “there is no reason why we can’t vote in person” so long as polling places follow appropriate social distancing and sanitary measures.

(<https://www.reuters.com/article/uk-factcheck-fauci-in-person-voting-idUSKBN25U2BB>)

21. **The next day**, Governor Murphy issued Executive Order 177 (August 14, 2020) which, perplexingly, prohibits machine voting (unless a voter is “disabled”). EO 177 provides that the 2020 General Election would be conducted primarily through vote-by-mail in essentially the same manner as the July 2020 Primary Election. EO 177 further provides that “any voter who appears at a polling place on November 3, 2020 and does not return a voted mail-in Ballot... shall vote via a provisional ballot, except that accommodations will be made for voters with disabilities.” (<https://nj.gov/infobank/eo/056murphy/pdf/EO-177.pdf>)

22. EO 177 further requires each county Board of Elections to establish at least 10 “secure” ballot drop box locations for voters to deposit completed vote-by-mail ballots throughout each county and that “[t]he Secretary of State shall establish guidelines for the

placement of the ballot drop boxes, the security of the ballot drop boxes, and the schedule for ballot pickup from the ballot boxes.” Id.

23. EO 177 further provides that

[t]he county Boards of Elections shall designate each polling place as a location to receive voted mail-in ballots. A voter may return only the mail in ballot that they personally voted **to their designated polling place. The Secretary of State shall establish appropriate standards** for the acceptance of mail-in ballots, including, but not limited to, the poll worker verification that the voter returning the voted mail-in ballot at the polling place is the individual who voted the mail-in ballot, the securing of the returned mail-in ballots, and the return of the mail-in ballots to the county Boards of Elections after the close of polls.

Id. (emphasis added).

24. Perhaps most egregiously, EO 177 further provides that

every ballot **without a postmark**, and ballots mis-marked and confirmed by the post office that those ballots were received by the post office on or before November 3, 2020, that is received by the county Boards of Elections from the United States Postal Service within forty-eight (48) hours of the closing of polls on November 3, 2020, shall be considered valid and shall be canvassed, assuming the ballot meets all other statutory requirements.

Id. (emphasis added).

25. Four days later on August 18, 2020, the Governor and Secretary of State were sued in the matter of Donald J. Trump for President, Inc. v. Murphy, Case No. 20-cv-10753 for various violations of federal election law and the United States Constitution resulting from EO 177.

26. In an apparent effort to cure the obvious Constitutional violations cited in the Trump case, the Democratic-led legislature quickly codified portions of EO 177 on August 28, 2020 through amendments to the vote-by-mail law contained in Title 19. See P.L. 2020, c. 72.

27. Like EO 177, the Legislature’s amendments to N.J.S.A. 19:63-31(g) prohibit in-person machine voting in the November 2020 General Election and requires that “[a]ny voter

who appears at a polling place on the day of the November 2020 General Election and does not return a voted mail-in ballot... shall vote via a provisional ballot, except that accommodations will be made for voters with disabilities.”

28. As amended, N.J.S.A. 19:63-31(u) provides that “[t]he Secretary of State shall establish other appropriate standards for ensuring that all voters with disabilities are able to exercise their right to vote in the November 2020 General Election.”

29. As amended, N.J.S.A. 19:63-16.1 requires the Secretary of State to “in consultation with county boards of elections...establish rules and regulations necessary to ensure the secure and successful implementation of the mail-in ballot drop boxes required by this section.”

30. As amended, N.J.S.A. 19:63-31(h) requires the following:

the county boards of elections shall designate each polling place as a location to receive voted mail-in ballots. A voter may return only the mail-in-ballot that they personally voted **to their designated polling place. The Secretary of State shall establish appropriate standards for the acceptance of mail-in ballots**, including, but not limited to, the poll worker verification that the voter returning the voted mail-in ballot at the polling place is the individual who voted the mail-in ballot, the securing of the returned mail-in ballots, and the return of the mail-in ballots to the county boards of elections after the close of polls.

(emphasis added).

31. Vote-by-mail ballots are required to be received by voters no later than October 5, 2020 and are being mailed by the Monmouth County Clerk in the immediate future. N.J.S.A. 19:63-31(j) (requiring ballots to be received by voters no later than the 29th day before the election).

32. To date, neither the Secretary of State nor the Board of Elections have provided any of the written procedures, rules and regulations or guidance required by P.L. 2020, c.72.

Despite the fact that voters will have the ability to deposit ballots at drop-boxes in a matter of days, the Secretary of State and Board of Elections have failed to issue and rules or guides addressing the following glaring issue: i) the general security of ballot drop boxes, including how long video surveillance footage will be maintained and who will pay for it; ii) the collection and storage of ballots from drop boxes; iii) the canvassing of ballots collected from drop boxes; iv) how the Board of Elections intends to enforce the “bearer law” with regard to drop boxes; v) how the Board of Elections intends to verify that ballots deposited in a drop box were not deposited by a voter that already machine voted; vi) how the Board of Elections intends to collect and store vote-by-mail ballots received at polling locations versus the storage of provision ballots, which is governed by statute; and vii) what the “appropriate standards” are for determining whether a person claiming to be disabled has the right to machine vote.

33. MCRC placed written demand on the Board of Elections to disclose the written rules and regulations concerning the safety and security of the drop boxes in Monmouth County but received no formal response.

34. To date, the Secretary of State has failed to comply with the rulemaking mandate imposed by P.L. 2020, c.72, leaving the Board of Elections, political parties and voters blowing in the wind as the 2020 General Election quickly approaches.

COUNT ONE

Action in Lieu of Prerogative Writs to Compel Fulfillment of Official Duties

35. Plaintiff incorporates all of the foregoing allegations as if set forth at length.

36. Defendants have failed to fulfil their official duties to promulgate rules, regulations and official guidance in connection with the 2020 General Election as required first by EO 177 and then by P.L. 2020, c.72.

37. This is not inconsistent with the scenario thrust upon the counties in connection with the 2018 and 2019 elections where the Secretary of State ignored requests for guidance concerning the abrupt changes to the vote-by-mail law.

38. The absence of any rules governing the above-described voting procedures creates a scenario where chaos will abound, inconsistent procedures may be employed at different polling locations and where no person or entity will be held responsible if lawful votes are rejected or illegal votes are received.

WHEREFORE, MCRC asks the Court to enter judgment in its favor and provide the following relief:

- a. A judgment compelling the Secretary of State and Board of Elections to fulfill their official duties and issue all rules and regulations, guidance and written procedures required by P.L. 2020, c.72 and any Order of this Court;
- b. A temporary injunction restraining the collection of ballots from drop boxes during the pendency of this action;
- c. All other preliminary and permanent relief that Plaintiffs are entitled to, and that the Court deems just and proper.

COUNT TWO

Violation of 3 U.S.C. §1, 2 U.S.C. §7, 2 U.S.C. §1

39. Plaintiff incorporates all of the foregoing allegations as if set forth at length.

40. Congress has established that “[t]he electors of President and Vice President shall be appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President.” 3 U.S.C. §1.

41. 2 U.S.C. §7 provides that “[t]he Tuesday next after the 1st Monday in November, in every even numbered year, is established as the day for the election, in each of the States and

Territories of the United States, of Representatives and Delegates to the Congress commencing on the 3d day of January next thereafter.”

42. 2 U.S.C. §1 provides that, “[a]t the regular election held in any State next preceding the expiration of the term for which any Senator was elected to represent such State in Congress, at which election a Representative to Congress is regularly by law to be chosen, a United States Senator from said State shall be elected by the people thereof for the term commencing on the 3d day of January next thereafter.”

43. This trio of statutes “mandates holding all elections for Congress and the Presidency on a single day throughout the Union.” Foster v. Love, 522 U.S. 67, 70 (1997).

44. The word “election” in 3 U.S.C. §1 means the “combined actions of voters and officials meant to make a final selection of an officeholder.” Foster, 522 U.S. at 71. It is the consummation of the process of electing an official. 103. By its terms then, 3 U.S.C. §1 requires that the 2020 general election be consummated on Election Day (November 3, 2020).

45. A mail ballot is not a legal vote unless it is marked and cast on or before Election Day. States cannot create a process where ballots marked or mailed after Election Day can be considered timely.

46. Consistent with 3 U.S.C. §1, “the Voting Rights Act Amendments of 1970 require that citizens be allowed to vote by absentee ballot in Presidential elections on or before the day of the election.” Voting Integrity Project, Inc. v. Bomer, 199 F.3d 777 (5th Cir. 2000); 52 U.S.C. §10502(d).

47. Those “uniform rules for federal elections” are both “binding on the States” and superior to conflicting state law: “[T]he regulations made by Congress are paramount to those made by the State legislature; and if they conflict therewith, the latter, so far as the conflict

extends, ceases to be operative.” Foster, 522 U.S. at 69. In other words, if a state law governing elections for federal offices “conflicts with federal law,” that state law is “void.” Id. at 74.

48. P.L. 2020, Ch.72 conflicts with the three statutes setting a uniform Election Day by effectively extending Election Day beyond November 3. It allows ballots that are **not postmarked** to be counted if they are received within 48 hours of the polls closing. Because mail sent locally can arrive within one day of being sent, see U.S. Postal Serv., FAQs: What are the Types of First-Class Mail?, Article No. 000003138 (Jan. 26, 2020), <https://bit.ly/2EyfERB>, this change in law allows individuals to cast a vote after election day and to have that vote counted, which is illegal.

WHEREFORE, MCRC asks this Court to enter judgment in its favor and provide the following relief:

- a. A declaratory judgment that the provisions of EO 177 and P.L. 2020, Ch. 72 allowing for counting of un-postmarked ballots received within 48-hours of election day violates the 3 U.S.C. §1, 2 U.S.C. §7 and 2 U.S.C. §1.
- b. A permanent injunction prohibiting Defendant from implementing and enforcing the offending provisions of EO 177 and P.L. 2020, Ch. 72;
- c. A temporary restraining order and preliminary injunction granting the relief specified above during the pendency of this action; and
- d. All other preliminary and permanent relief that Plaintiffs are entitled to, and that the Court deems just and proper.

CUTOLO BARROS LLC
Attorneys for Plaintiff
/s/ Jason N. Sena

Jason N. Sena, Esq.

Dated: September 24, 2020

CERTIFICATION PER RULE 4:5-1

Pursuant to Rule 4:5-1, it is hereby stated that the instant matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding to the best of our knowledge or belief, except that the issue described in Count II is also before the Court in the matter of Donald J. Trump for President, Inc. v. Murphy, Case No. 20-cv-10753 (MJS), which is pending final disposition. Also, to the best of Plaintiff's belief, no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this pleading, as subject to the Notice to other Candidates as required by the proposed form of Order to Show Cause, there are no other known parties that should be joined in the within action. In addition, Plaintiff recognizes the continuing obligation of each party to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

CUTOLO BARROS LLC
Attorneys for Plaintiff
/s/ Jason N. Sena

Jason N. Sena, Esq.

Dated: September 24, 2020

**VERIFYING CERTIFICATION OF MONMOUTH COUNTY
REPUBLICAN COMMITTEE**

DANIELLE BANYACSKI, of full age, hereby certifies and says:

(1) I am the Executive Director of the Monmouth County Republican Committee, Plaintiff in the within action, and as such I am familiar with the facts of this Verified Complaint.

(2) I have read and reviewed the foregoing Verified Complaint and hereby certify that same is true to the best of my information, knowledge and belief. The instant Verified Complaint is filed and the instant Application for entry of an Order to Show Cause seeking summary injunctive relief are made in truth and in good faith for the causes set forth therein.

I certify that the foregoing statement made by me is true to the best of my information, knowledge and belief; I am aware that if this statement is willfully false, I am subject to punishment



Danielle Banyacski, Executive Director
Monmouth County Republican Committee

Date: September 24, 2020