

DONATO J. BATTISTA
HUDSON COUNTY COUNSEL
ADMINISTRATION BUILDING ANNEX
567 PAVONIA AVENUE
JERSEY CITY, NEW JERSEY 07306
(201) 795-6250

BY: DANIEL J. DESALVO (#010502006)
DEPUTY COUNTY COUNSEL
ATTORNEY FOR COUNTY OF HUDSON, E. JUNIOR MALDONADO, IN HIS
OFFICIAL CAPACITY AS HUDSON COUNTY CLERK

CHRISTINE CONFORTI, ARATI	:	UNITED STATES DISTRICT COURT
ARATI KREIBICH, MICO LUCIDE	:	DISTRICT OF NEW JERSEY
JOSEPH MARCHICA,	:	
KEVIN MCMILLAN, ZINOVIA	:	
SPEZAKIS, & NJ WORKING	:	
FAMILIES ALLIANCE,	:	
	:	
Plaintiffs,	:	CASE NO. 3:20-CV-08267-FLW-TJB
v.	:	
	:	
COUNTY OF HUDSON, E. JUNIOR	:	CROSS NOTICE OF MOTION
MALDONADO, in his official	:	TO DISMISS PURSUANT TO
Capacity as Hudson County	:	RULE 12(b)(6)
Clerk, et al	:	
Defendants.	:	

TO: BRETT M. PUGACH
BROMBERG LAW LLC
43 WEST 43RD STREET
SUITE 32
New York, NY 10036-7424

1. Moving Party: Defendant, E. Junior Maldonado,
in his official capacity.
2. Return Date of Motion: TO BE SET BY COURT
3. Place: Federal District Court Clerk
District of New Jersey
50 Walnut Street
Newark N.J. 07101

4. **Purpose:** Order for Cross Motion to Dismiss.
5. **Supporting Documents:** The County relies upon the Certification of Daniel J. DeSalvo and supporting Brief filed with this motion.
6. **Oral Argument:** Movant waives oral argument and submits its motion on the papers
7. **Pretrial Order/Conference:** There does not exist a pretrial order or a pretrial conference.

I certify that copies of this Cross Notice of Motion to Dismiss together with supporting Certification(s), proposed form of Order and supporting Brief were electronically filed with the Federal Court Clerk.

Donato J. Battista
Hudson County Counsel


s/Daniel J. DeSalvo

Daniel J. DeSalvo
Deputy County Counsel

Dated: March 25, 2021

DONATO J. BATTISTA
HUDSON COUNTY COUNSEL
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CHRISTINE CONFORTI, ARATI	:	UNITED STATES DISTRICT COURT
ARATI KREIBICH, MICO LUCIDE	:	DISTRICT OF NEW JERSEY
JOSEPH MARCHICA,	:	
KEVIN MCMILLAN, ZINOVIA	:	
SPEZAKIS, & NJ WORKING	:	
FAMILIES ALLIANCE,	:	
Plaintiffs,	:	CASE NO. 3:20-CV-08267-FLW-TJB
v.	:	
COUNTY OF HUDSON, E. JUNIOR	:	ORDER
MALDONADO, in his official	:	
Capacity as Hudson County	:	
Clerk, et al	:	
Defendants.	:	

This matter having been brought before the Court by the Hudson County Counsel's Office, Daniel J. DeSalvo, Deputy County Counsel, appearing and the Court having considered the moving papers, and good cause having been shown;

IT IS on this day of , 2021

ORDERED, that the motion of Defendants to Dismiss, be and the same is hereby granted; and it is further

ORDERED, that the motion of the Defendants, County of Hudson, E. Junior Maldonado, in his official capacity as

Hudson County Clerk to Dismiss is hereby is granted; and it is further

ORDERED, that Plaintiff's complaint be and the same is hereby is dismissed with prejudice; and it is further

ORDERED, that service of this Order shall be effectuated upon all parties upon its upload to e-court filing and to the extent a party is not served electronically, a copy of the Order will be served within seven (7) days of the date of this Order.

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(201) 795-6250

BY: DANIEL J. DESALVO (#010502006)
DEPUTY COUNTY COUNSEL
ATTORNEY FOR DEFENDANT, E. JUNIOR MALDONADO, IN
HIS OFFICIAL CAPACITY AS HUDSON COUNTY CLERK

CHRISTINE CONFORTI, ARATI	:	UNITED STATES DISTRICT COURT
ARATI KREIBICH, MICO LUCIDE	:	DISTRICT OF NEW JERSEY
JOSEPH MARCHICA,	:	
KEVIN MCMILLAN, ZINOVIA	:	
SPEZAKIS, & NJ WORKING	:	
FAMILIES ALLIANCE,	:	
Plaintiffs,	:	CASE NO.3:20-CV-08267-FLW-TJB
v.	:	
	:	
COUNTY OF HUDSON, E. JUNIOR	:	CERTIFICATION OF
MALDONADO, in his official	:	DANIEL J. DeSALVO
Capacity as Hudson County	:	
Clerk, et al	:	
Defendants.	:	

I, Daniel J. DeSalvo, hereby certify as follows:

1. I am an attorney at law in the State of New Jersey entrusted with the management of the within matter.

2. On or about January 25, 2021 Plaintiff filed an Amended Complaint (**Document 33/Federal Court**) which my co-counsel have sent in their motions. *[Attached hereto as Exhibit "A"]*

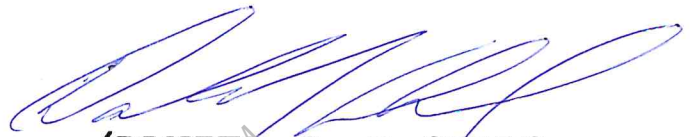
3. Attached is the Certification of E. Junior Maldonado, Hudson County Clerk. *[Attached hereto as Exhibit*

"B"]

4. I am making this Cross Motion and joining in the Motions to Dismiss by the co-Defendants.

I certify that the foregoing statements are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: March 25, 2021



s/DANIEL J. DeSALVO

Daniel J. DeSalvo
Deputy County Counsel

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EXHIBIT “A”

(DeSalvo)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CHRISTINE CONFORTI, ARATI KREIBICH,
MICO LUCIDE, JOSEPH MARCHICA,
KEVIN MCMILLAN, ZINOVIA SPEZAKIS,
and NEW JERSEY WORKING FAMILIES
ALLIANCE, INC.,

Plaintiffs,

v.

CHRISTINE GIORDANO HANLON, in her
official capacity as Monmouth County Clerk,
SCOTT M. COLABELLA, in his official
capacity as Ocean County Clerk, PAULA
SOLLAMI COVELLO, in her official capacity
as Mercer County Clerk, JOHN S. HOGAN, in
his official capacity as Bergen County Clerk,
EDWARD P. MCGETTIGAN, in his official
capacity as Atlantic County Clerk, and E.
JUNIOR MALDONADO, in his official
capacity as Hudson County Clerk,

Defendants.

Civ. A. No. 3:20-CV-08267-FLW-TJB

FIRST AMENDED COMPLAINT

Plaintiffs Christine Conforti, Arati Kreibich, Mico Lucide, Joseph Marchica, Kevin McMillan, Zinovia Spezakakis, and New Jersey Working Families Alliance, Inc. (collectively, "Plaintiffs") file this First Amended Complaint for Declaratory and Injunctive Relief against Defendants Christine Giordano Hanlon, in her official capacity as Monmouth County Clerk, Scott M. Colabella, in his official capacity as Ocean County Clerk, Paula Sollami Covello, in her official capacity as Mercer County Clerk, John S. Hogan, in his official capacity as Bergen County Clerk,

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EXHIBIT “B”

(DeSalvo)

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ATTORNEY FOR COUNTY OF HUDSON, E. JUNIOR MALDONADO, IN HIS
OFFICIAL CAPACITY AS HUDSON COUNTY CLERK

CHRISTINE CONFORTI, ARATI	:	UNITED STATES DISTRICT COURT
ARATI KREIBICH, MICO LUCIDE	:	DISTRICT OF NEW JERSEY
JOSEPH MARCHICA,	:	
KEVIN MCMILLAN, ZINOVIA	:	
SPEZAKIS, & NJ WORKING	:	
FAMILIES ALLIANCE,	:	
	:	
Plaintiffs,	:	CASE NO.3:20-CV-08267-FLW-TJB
v.	:	
	:	
COUNTY OF HUDSON, E. JUNIOR	:	<i>CERTIFICATION OF</i>
MALDONADO, in his official	:	<i>E. JUNIOR MALDONADO</i>
Capacity as Hudson County	:	<i>IN SUPPORT OF MOTION</i>
Clerk, et al	:	
	:	
Defendants.	:	

I, E. JUNIOR MALDONADO, certify as follows:

1. I am the Hudson County Clerk, and in my capacity as Hudson County Clerk, and pursuant to statute, I am responsible for the preparation of all ballots pertaining to the elections in the County of Hudson.

2. The design and layout of the ballot in a political party primary election is governed by Title 19 of the New Jersey Statutes, which provides the rules for the filing of

petitions, bracketing of candidates, slogans, and the process for the ballot draw to determine the order of the candidates.

3. During the 2020 Primary election there were also in place a series of Executive Orders which provided rules for the dates and times of elections and, also how the elections would be conducted via absentee ballot.

4. In order to appear on the ballot potential candidates are required to submit the requisite petition pursuant to N.J.S.A. 19:23-14. Municipal candidates submit their petitions to the Municipal Clerk. County Candidates submit their petitions to the County Clerk. State and Federal candidates submit their petitions to the Secretary of State. In order to create the ballots the Municipal Clerks and the Secretary of State communicate to the County Clerks which candidates should appear on the ballot, and for which office.

5. Candidates are permitted to bracket with whomever candidates they choose (so long as the candidates consent to being bracketed together) and this bracketing request must be submitted within 48 hours of the petition filing deadline, N.J.S.A. 19:49-2.

6. Plaintiff Spezakakis submitted a bracketing request letter on April 7, 2020 in which Plaintiff requested, "I hereby request to be bracketed with and otherwise featured on the same line of the ballot, and with the same slogan, "Not Me. Us." along with the candidate for County Freeholder. The letter also requested that she be bracketed with Lawrence Hamm, candidate for United States Senate. [See Exhibit "A"]

7. The ballot drawing was conducted on April 9, 2020 at 3:00PM via Zoom, and streamed live online via Facebook and Instagram due to the COVID-19 in-person restrictions in place at that time.

8. The names of the two candidates for United States Senator were placed on small, white pieces of paper with adhesive backing. Each candidate's name was then placed in its own small, plastic container. The containers were placed in a wooden "hopper," which is closed and rotated. The first name drawn was that of Senate Candidate, Lawrence Hamm. As first draw his name was placed in Column A. Senator Booker's name was drawn next and placed in Column B. Because Plaintiff Spezakakis and Mr. Hamm had consented to being bracketed with each other as candidates, Plaintiff

Spezakakis's name was placed under that of Candidate Hamm and in the row designated for Congressional candidates. Freeholder candidate, Roger Quesada, was placed below her name in the row designated for Freeholder at her request. (See Exhibit "B")

9. Attached is a copy of the Official Results of the Primary Election held on July 7, 2020, last updated July 23, 2020. *[Attached hereto as Exhibit "C"]*

10. Attached is a copy of the letter solicitation from Plaintiff Spezakakis to my office soliciting my support for her "Fair Ballot Project." *[Attached hereto as Exhibit "D"]*

11. I received no communication from any candidate contesting or otherwise challenging the ballot drawing for this ballot.

12. The Primary election occurred on July 7, 2020.

I certify that the foregoing statements are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: March 25, 2021

s/E. JUNIOR MALDONADO
E. Junior Maldonado

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EXHIBIT “A”

(Maldonado)

Zina Spezakis
Candidate for United States Congress
House of Representatives, CD-9
400 Tenaflly Road, #695
Tenaflly, New Jersey 07670
zina@zinaforcongress.com

April 7, 2020

Honorable E. Junior Maldonado
Hudson County Clerk
257 Cornelison Avenue, 4th Floor
Jersey City, New Jersey 07302
countyclerk@hcnj.us

Re: Zinovia Spezakis Bracketing Request for 2020 Democratic Primary Election

Honorable County Clerk:

I am a candidate for the United States Congress House of Representatives in New Jersey's 9th Congressional District in connection with the June 2, 2020 Democratic Primary Election. A valid petition with signatures in excess of the required number of signatures has been filed by my campaign with the Secretary of State's Office. Please accept this letter pursuant to N.J.S.A. 19:49-2 and any related laws and other authorities with regard to bracketing and slogan/designation in connection with all machine ballots, vote-by-mail ballots, sample ballots, provisional ballots, emergency ballots, and any other ballots of any kind.


As the County Clerk is aware, pursuant to N.J.S.A. 19:49-2, a candidate who files nominating petitions with Secretary of State's Office may request to be featured on the same line of the ballot with the same slogan as candidates who file a joint petition with the County Clerk. When only one county freeholder position is on the ballot, the petition of a single candidate who filed a petition with the County Clerk satisfies the requirements of a joint petition for purposes of allowing for bracketing. See Gillen v. Sheil, 174 N.J. Super. 386 (Law Div. 1980). I hereby request to be bracketed with and otherwise featured on the same line of the ballot, and with the same slogan, "Not Me. Us." as the following candidates for County Freeholder in their respective districts, who submitted a petition to your office:

1. County Freeholder, District 1: Ninofhka Torres
2. County Freeholder, District 2: Gabriella Ambroise
3. County Freeholder, District 3: Rachael O'Brien
4. County Freeholder, District 4: Eleana Little
5. County Freeholder, District 5: Ronald Bautista
6. County Freeholder, District 6: Kevin Hernandez
7. County Freeholder, District 7: Casey Timorason
8. County Freeholder, District 8: Roger Quesada
9. County Freeholder, District 9: Arthur Rehak

I hereby also request to be bracketed with and otherwise featured on the same line of the ballot, and with the same slogan "Not Me. Us." As the following candidate:
Lawrence Hamm: Candidate for the United States Senate.

me. Should any issue arise, or any clarification be needed, please do not hesitate to contact

Very truly yours,


Zinovia Spezakis

c. Honorable Tahesha Way, Secretary of State

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EXHIBIT “B”

(Maldonado)

**Town of Secaucus – County of Hudson
Primary Election Sample Ballot
July 7, 2020**

The polls will be open from 6:00 AM to 8:00 PM

THIS IS A SAMPLE OF THE PROVISIONAL BALLOT THAT IS TO
BE VOTED UPON AT THE PRIMARY ELECTION ON JULY 7, 2020

E. Junior Maldonado
E. JUNIOR MALDONADO
Clerk of Hudson County/Secretario del Condado de Hudson
June 23, 2020
Date / Attest
Hudson County Clerk's Office

DEMOCRATIC - DEMÓCRATA

OFFICE TITLE TÍTULO DE CARGO	COLUMN A COLUMNA A Democratic/Demócrata	COLUMN B COLUMNA B Democratic/Demócrata	COLUMN C COLUMNA C Democratic/Demócrata	COLUMN D COLUMNA D Democratic/Demócrata	COLUMN E COLUMNA E Democratic/Demócrata	COLUMN F COLUMNA F Democratic/Demócrata	PERSONAL CHOICE SELECCIÓN PERSONAL
Choice for President Elección para Presidente VOTE FOR MAIL		JOSEPH R. BIDEN	BERNIE SANDERS				Write-in Vote Votar por Escrito
A VOTE HERE IS A VOTE FOR ALL DELEGATES AND ATTORNEYS AT LAW. UN VOTO AQUÍ ES UN VOTO PARA TODOS LOS DELEGADOS Y ABOGADOS SUPLENTE.							
For 17th District Delegates to the Democratic National Convention Para Delegados del Distrito 17 a la Convención Nacional Demócrata		MURRAY DAVIS DAVID GORDON ANGELICA JIMENEZ FELIX CASANO ANNE MARY PRINCIPAL	KEVIN AND MIT ME PUP DELGADO MARCO GRAMILLI AL GRANELI NORMA KURTENBERG NORMA GUESSADA				NO PERSONAL CHOICE FOR DELEGATES NO HAY SELECCIÓN PERSONAL PARA DELEGADOS
For 17th At-Large District Delegate to the Democratic National Convention Para Delegado Suplente del Distrito 17 a la Convención Nacional Demócrata		PIERRE CHALLEN JR.	ALISSA NANN JAMES HESTERLUND				
For United States Senator Para Senador de los Estados Unidos VOTE FOR ONE	LAWRENCE HAMM	CORY BOOKER					Write-in Vote Votar por Escrito
For Member of the House of Representatives Para Miembro de la Cámara de Representantes VOTE FOR ONE	ZINOVIA SPEZAKIS	BILL PASCRELL Jr.		ALPASKAN ALP BASARAN			Write-in Vote Votar por Escrito
For Freeholder Para Representante al Nivel del Condado VOTE FOR ONE	ROGER QUESADA	ANTHONY P. VAINIERI Jr.					Write-in Vote Votar por Escrito

REPUBLICAN - REPUBLICANO

OFFICE TITLE TÍTULO DE CARGO	COLUMN G COLUMNA G Republican/Republicano	COLUMN H COLUMNA H Republican/Republicano	COLUMN I COLUMNA I Republican/Republicano	COLUMN J COLUMNA J Republican/Republicano	COLUMN K COLUMNA K Republican/Republicano	PERSONAL CHOICE SELECCIÓN PERSONAL
Choice for President Elección para Presidente VOTE FOR MAIL			DONALD J. TRUMP			Write-in Vote Votar por Escrito
A VOTE HERE IS A VOTE FOR ALL DELEGATES AND ATTORNEYS AT LAW. UN VOTO AQUÍ ES UN VOTO PARA TODOS LOS DELEGADOS Y ABOGADOS SUPLENTE.						
For Delegates-At-Large to the Republican National Convention Para Delegados en General a la Convención Nacional Republicana			ALPASKAN ALP BASARAN CHARLES J. CHETTER MICHAEL L. TESTA JAMES P. MARICANO ANDREW CONNOR EDWARD J. CASANO			NO PERSONAL CHOICE FOR DELEGATES NO HAY SELECCIÓN PERSONAL PARA DELEGADOS
For At-Large Delegates-At-Large to the Republican National Convention Para Delegados Generales Suplentes a la Convención Nacional Republicana			JOHN V. AZZAMBI DAVID C. CASANO JAMES L. FIELDS MICHAEL L. TESTA JAMES P. MARICANO ANDREW CONNOR EDWARD J. CASANO			
For 8th Congressional District Delegates to the Republican National Convention Para Delegados del Distrito 8º del Congreso a la Convención Nacional Republicana			EDWARD J. CASANO EDWARD J. CASANO EDWARD J. CASANO			
For 8th Congressional District Delegates to the Republican National Convention Para Delegados Suplentes del Distrito 8º del Congreso a la Convención Nacional Republicana			EDWARD J. CASANO EDWARD J. CASANO EDWARD J. CASANO			
For United States Senator Para Senador de los Estados Unidos VOTE FOR ONE	HIRSH SINGH	PATRICIA FLANAGAN	RIKIN RIK MEHTA	EUGENE I. ANAGNOS	NATALIE LYNN RIVERA	Write-in Vote Votar por Escrito
For Member of the House of Representatives Para Miembro de la Cámara de Representantes VOTE FOR ONE	TIMOTHY C. WALSH		BILLY PREMEP			Write-in Vote Votar por Escrito
For Freeholder Para Representante al Nivel del Condado VOTE FOR ONE			FRANCIS BRUNO			Write-in Vote Votar por Escrito

Secaucus - Form 20

**Ciudad de Secaucus – Condado de Hudson
Boleta de Muestra de la Elección Primaria
7 de Julio de 2020**

Los centros de votación estarán abiertos desde las 6:00 AM hasta las 8:00 PM

ESTA ES UNA MUESTRA DE LA BOLETA PROVISIONAL QUE SE USARÁ
EN LA VOTACIÓN DE LA ELECCIÓN PRIMARIA, EL 7 DE JULIO DE 2020

The Primary Election on July 7, 2020 is being conducted primarily by mail as per Executive Order #144 signed by Governor Murphy on May 15, 2020.

This is your Sample Ballot. This is NOT your Vote-by-Mail Ballot used to cast your vote. If you need to request a duplicate Vote-by-Mail Ballot, please call (201) 369-3470, option 6.

Voters who received a Vote-by-Mail ballot are encouraged to mail their ballot to the Hudson County Board of Elections in the postage paid envelope as soon as possible. Ballots returned by mail must be postmarked no later than 8:00 p.m. on July 7, 2020. Ballots may also be placed in one of many secure Election Ballot Drop Boxes located throughout the County. The locations of Hudson County's Election Ballot Drop Boxes can be found at www.hudsoncountyclerk.org. The deadline for placing it in one of the secure drop boxes or for delivering your ballot in-person to the Hudson County Board of Elections is 8:00 p.m. on July 7, 2020.

A limited number of polling places are available to voters on Election Day where **only provisional paper ballots will be available to cast your vote.** The location of your polling place is on the reverse side of this sample ballot. If a voter has a disability and needs an accessible ballot he/she may call the County Clerk's Office or may go to his/her assigned polling place which will provide access to an in-person accessible voting device on Primary Election Day.

This Primary Election Sample Ballot can also be found at www.hudsoncountyclerk.org. A sample ballot will be posted at each polling place.

If you have questions call the County Clerk's Office at (201)369-3470, option 6 or the County Board of Elections at (201)369-3435.

La elección Primaria del 7 de Julio de 2020 se está llevando a cabo principalmente por correo según la Orden ejecutiva #144 firmada por el gobernador Murphy el 15 de Mayo de 2020.

Esta es su boleta de muestra. Esta NO es su boleta de Voto Por Correo utilizada para emitir su voto. Si usted necesita solicitar un duplicado de la boleta de voto por correo, por favor llame al (201) 369-3470, opción 6.

A los votantes que recibieron una boleta de voto por correo se les solicita enviar su boleta por correo a la Junta Electoral del Condado de Hudson en el sobre que ya tiene el franqueo pagado (no necesita estampilla) lo antes posible. Las boletas devueltas por correo deben ser estampadas a más tardar el 7 de Julio de 2020 a las 8:00 p.m. Las boletas también se pueden colocar en una de las muchas casillas de seguridad de votación electoral ubicadas en todo el condado. Las ubicaciones de los casilleros electorales de votación del condado de Hudson se pueden encontrar en www.hudsoncountyclerk.org. La fecha límite para colocarlo en uno de los buzones de seguridad o para entregar su boleta en persona a la Junta Electoral del Condado de Hudson es el 7 de Julio de 2020 a las 8:00 p.m.

Hay un número limitado de lugares de votación disponibles para los votantes en el día de las elecciones, **donde solo boletas provisionales de papel estarán disponibles para emitir su voto.** La ubicación de su lugar de votación está al otro lado de esta boleta de muestra. Si un votante tiene una discapacidad y necesita una boleta electoral accesible, puede llamar a la Oficina del Secretario del Condado o puede ir a su lugar de votación asignado, el cual le proporcionará acceso a un dispositivo de votación accesible en persona el Día de la Elección Primaria.

Esta boleta de muestra de la elección primaria también se puede encontrar en www.hudsoncountyclerk.org. Se publicará una boleta de muestra en cada lugar de votación.

Si usted tiene preguntas, por favor llamar a la oficina del Secretario del Condado al (201) 369-3470, opción 6 o la Junta de Elecciones del Condado al (201) 369-3435.

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EXHIBIT “C”

(Maldonado)

Primary Election July 7, 2020

RESULTS

★ DEM - HOUSE OF REPRESENTATIVES 9TH DISTRICT

(VOTE FOR: 1)
Last updated Thursday, July 23, 2020, 4:49:07 PM (8 months ago)

Results

Party / Candidate

☒ DEM Zinovia Spezakis

☒ DEM Bill Pascrell Jr.

☒ DEM Alpaslan 'Alp' Basaran

☐ Personal Choice

MY FAVORITE RACE ★ (0)

★ (0)

673
19.80%
2,607
76.70%
116
3.41%
3
0.09%

Votes Cast

3,399

← Previous Contest

DEM - House of Representatives 8th District

Next Contest →

DEM - House of Representatives 10th District

TOTAL

VOTER TURNOUT

Ballots Cast:

21.22%

Registered Voters:

81,517
384,075

REPORTS

Summary CSV

Comma separated file showing total votes received.



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EXHIBIT “D”

(Maldonado)

FAIR BALLOT PROJECT

County Clerk E. Junior Maldonado
257 Cornelison Avenue,
Jersey City, NJ 07302
countyclerk@hcnj.us

January 27, 2021

Dear County Clerk E. Junior Maldonado,

Thank you for your service to the citizens of New Jersey.

The Fair Ballot Project is working on behalf of New Jersey voters asking our elected officials to support fair ballot design. New Jerseyans deserve to have fairly elected leaders working for us. That's why we asked you to pledge to support fair ballots, such as ballots without lines, columns or slogans, by signing our attached Fair Ballot Pledge.

Studies have proven that the current design of our Primary Ballot has a huge effect on the outcome of elections. In fact, according to a legal challenge, "the state's failure to treat candidates for the same office equally places a significant burden on voting rights that would not survive a constitutional challenge." (RUBIN, 2020)

The United States is a democracy. Fair ballots are an integral part of that. As County Clerk, you are directly responsible for our Primary Ballot. As such, we ask that you work on behalf of our voters in support of fair ballot design by completing the Fair Ballot Pledge. For more information, analysis and data, please go to fairballotproject.org/research.

If you have any questions, please contact us at info@fairballotproject.org.

Sincerely,



Zina Spezakis
Executive Director
Fair Ballot Project

CC: Press

Source: RUBIN, J. S. (2020, June 26). *Can Progressives Change New Jersey?* Retrieved from The American Prospect: <https://prospect.org/politics/can-progressives-change-new-jersey/>

FAIR BALLOT PROJECT

Pledge

I, _____, pledge to the voters of Legislative District _____ of the State of New Jersey that I will support any and all efforts, legislative and otherwise, to reform New Jersey's primary election ballot system so as to

- a) promote equality and fairness between candidates running for the same office, and
- b) prevent undue influence on voters based on the design of the ballot itself, by getting rid of outdated and undemocratic practices such as bracketing, the County Line, preferential ballot draws for ballot position among candidates running for the same office, columns and rows.

Signature

Date

Witness

Date

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

CHRISTINE CONFORTI, ARATI KREIBICH, :
MICO LUCIDE, JOSEPH MARCHICA, : CASE NO: 3:20-CV-08267-FLW-TJB
KEVIN MCMILLAN, ZINOVIA SPEZAKIS, :
and NEW JERSEY WORKING FAMILIES :
ALLIANCE, INC., :
Plaintiffs, :
v. :
CHRISTINE GIORDANO HANLON, in her :
official capacity as Monmouth County Clerk, :
SCOTT M. COLABELLA, in his official :
capacity as Ocean County Clerk, PAULA :
SOLLAMI COVELLO, in her official capacity :
as Mercer County Clerk, JOHN S. HOGAN, in :
his official capacity as Bergen County Clerk, :
EDWARD P. MCGETTIGAN, in his official :
capacity as Atlantic County Clerk, and E. :
JUNIOR MALDONADO, in his official :
capacity as Hudson County Clerk, :
Defendants. :

DEFENDANT, E. JUNIOR MALDONADO'S BRIEF IN SUPPORT OF HIS MOTION TO DISMISS
PLAINTIFF'S COMPLAINT, PURSUANT TO F.R.C.P. 12(b)(6), AND JOINING IN CO-
DEFENDANTS' MOTIONS TO DISMISS

Daniel J. DeSalvo
Deputy County Counsel
Attorney ID# 010502006
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TABLE OF CONTENTS

PRELIMINARY STATEMENT.....	4
PROCEDURAL HISTORY	4
STATEMENT OF MATERIAL FACTS	4
LEGAL ARGUMENT	9

POINT I	9
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PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED AGAINST E. JUNIOR MALDONADO IN HIS OFFICIAL CAPACITY AS THE HUDSON COUNTY CLERK BECAUSE THE SECRETARY OF STATE IS THE PROPER PARTY FOR THE RELIEF SOUGHT, NOT THE COUNTY CLERK

POINT II	9
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PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED AGAINST E. JUNIOR MALDONADO IN HIS OFFICIAL CAPACITY AS THE HUDSON COUNTY CLERK BECAUSE THE MATTER IS MOOT AS TO THE JULY 2020 PRIMARY ELECTION, AND NOT RIPE FOR ADJUDICATION AS TO A FUTURE PRIMARY ELECTION.

POINT III	11
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PLAINTIFF'S COMPLAINT AGAINST E. JUNIOR MALDONADO IN HIS OFFICIAL CAPACITY AS THE HUDSON COUNTY CLERK SHOULD BE DISMISSED BECAUSE PLAINTIFF HAS FAILED TO ASSERT FACTS TO SUPPORT HER CLAIM

TABLE OF AUTHORITIES

<u>Bell Atlantic Corp. v. Twombly</u> , 550 U.S. 544, 1t 555 (2007)	11
<u>Donovan ex re. Donovan v. Punxsutawney Area Sch. Bd.</u> , 336 F.3d 211, 216 (3d Cir.2003)	9
<u>Liner v. Jafco, Inc.</u> , 375 U.S. 301, 306 n. 3, 84 S.Ct., 11 L.Ed.2d 347 (1964)	9
<u>Pittsburgh Mack Sales & Serv. Inc. v. Int's Union of Operating Eng'rs, Local Union No. 66</u> , 580 F.3d 185, 190 (3d Cir. 2009)	10
<u>Schundler v. Donovan</u> , 377 N.J. Super. 339, (App. Div. 2005)	8
<u>State Farm Mut. Auto. In. Co. v. Ormston</u> , 550 F. Supp. 103, 105 (E.D. Pa. 1982)	9

PRELIMINARY STATEMENT

Defendant Maldonado joins in the Motions to Dismiss of the co-defendants in this matter in all relevant respects and adds the following points: the Secretary of State and not the County Clerks is the proper party to defend the State from the Constitutional Claims; the issues presented by the Plaintiffs are both moot as to the 2020 ballot drawing, and not yet ripe as to the 2022 ballot drawing, and the Plaintiff's Complaint to for present plausible facts to substantiate their claims. For those reasons it is respectfully submitted that the Plaintiffs' Complaints be dismissed.

PROCEDURAL HISTORY

On January 25, 2021 the First Amended Complaint was filed against Defendant E. Junior Maldonado. Acknowledgement of Service for Defendant Maldonado was entered on February 10, 2021. A scheduling Order was entered by the County on March 10, 2021 permitting all defendants to file Motions to Dismiss by March 29, 2021. Previously, three defendants had already filed Motions to Dismiss the Complaint pursuant to F.R.C.P. 12(b)(6).

STATEMENT OF MATERIAL FACTS

1. Defendant E. Junior Maldonado is the Hudson County Clerk, and in that capacity, and pursuant to statute, he is responsible for the preparation of all ballots pertaining to the elections in the County of Hudson.
2. The design and layout of the ballot in a political party primary election is governed by Title 19 of the New Jersey Statutes, which provides the rules for the filing of petitions, bracketing of candidates, slogans, and the process for the ballot draw to determine the order of the candidates.
3. During the 2020 Primary election there were also in place a series of Executive Orders which provided rules for the dates and times of elections and, also how the elections would be conducted via absentee ballot.
4. In order to appear on the ballot potential candidates are required to submit the requisite petition pursuant to N.J.S.A. 19:23-14. Municipal candidates submit their petitions to the Municipal Clerk. County Candidates submit their petitions to the County Clerk. State and Federal candidates submit their petitions to the Secretary of State. The Municipal Clerks and the Secretary of State transmit to the County Clerks which candidates should appear on the ballot, and for which office, so that the County Clerks may

prepare the ballots.

5. Candidates are permitted to bracket with whomever candidates they choose (so long as the candidates consent to being bracketed together) and this bracketing request must be submitted within 48 hours of the petition filing deadline, N.J.S.A. 19:49-2.
6. Plaintiff Spezakis submitted a bracketing request letter on April 7, 2020 in which Plaintiff requested, "I hereby request to be bracketed with and otherwise featured on the same line of the ballot, and with the same slogan, "Not Me. Us." along with the candidate for County Freeholder. The letter also requested that she be bracketed with Lawrence Hamm, candidate for United States Senate. (See Maldonado Exhibit A).
7. The ballot drawing was conducted on April 9, 2020 at 3:00PM via Zoom, and streamed live online via Facebook and Instagram due to the COVID-19 in-person restrictions in place at that time.
8. The names of the two candidates for United States Senator were placed on small, white pieces of paper with adhesive backing. Each candidate's name was then placed in its own small, plastic container. The containers were placed in a wooden "hopper," which is closed and rotated. The first name drawn was that of Senate Candidate, Lawrence Hamm. As first draw his name was placed in Column A. Senator Booker's name

was drawn next and placed in Column B. Because Plaintiff Spezakis and Mr. Hamm had consented to being bracketed with each other as candidates, Plaintiff Spezakis's name was placed under that of Candidate Hamm and in the row designated for Congressional candidates. Freeholder candidate, Roger Quesada, was placed below her name in the row designated for Freeholder at her request. (See Maldonado Exhibit B)

9. I received no communication from any candidate contesting or otherwise challenging the ballot drawing for this ballot. The only written communication received from Plaintiff Spezakis subsequent to the Primary Election was a letter soliciting my signature on a petition for ballot reform. (See Maldonado Exhibit D).

10. The Primary election occurred on July 7, 2020.

11. Plaintiff Spezakis lost her bid for Congressional district garnering only 673 (19.8%) votes to Congressman Pascrell's 2,607 (76.7%). I certified these results and they are attached hereto. (See Maldonado Exhibit C)

12. Plaintiff Spezakis filed her Amended Complaint on January 25, 2021. (See DeSalvo Exhibit A)

LEGAL ARGUMENT

POINT I

PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED AGAINST E. JUNIOR MALDONADO IN HIS OFFICIAL CAPACITY AS THE HUDSON COUNTY CLERK BECAUSE THE SECRETARY OF STATE IS THE PROPER PARTY FOR THE RELIEF SOUGHT, NOT THE COUNTY CLERK

The enforcement of the election laws in the State of New Jersey is the duty of the Secretary of State, and she is the proper defendant in this case. N.J.S.A. 19:31-6a and N.J.S.A. 52:16A-98. Alternatively, the duties of the County Clerks are largely ministerial. "The clerk has the responsibility to deal with petitions for the elections and to set up the ballot arrangements and array. Unless specifically directed by statute as to a procedure, the clerk has discretion in carrying out this responsibility. Schundler v. Donovan, 377 N.J. Super. 339, 343, 872 A.2d 1092, 1095 (App. Div.), aff'd, 183 N.J. 383, 874 A.2d 506 (2005) (internal citations omitted). If discretion is exercised, a court will look only to whether that discretion was rooted in reason. Ibid. The statute in question specifically directs the Clerks how to act with regard to ballot draws and bracketing. The discretion of the Defendant Maldonado is not being challenged or questioned. Plaintiff's Complaint claims not that Defendant Maldonado acted incorrectly, but that the statute as to the ballot draw and bracketing is unconstitutional. The defense of that law is not within the authority granted to the Clerk and therefore the complaint against Defendant Maldonado should be dismissed.

POINT II

PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED AGAINST E. JUNIOR MALDONADO IN HIS OFFICIAL CAPACITY AS THE HUDSON COUNTY CLERK BECAUSE THE MATTER IS MOOT AS TO THE JULY 2020 PRIMARY ELECTION, AND NOT RIPE FOR ADJUDICATION AS TO A FUTURE PRIMARY ELECTION

The relief sought by Plaintiff is a declaration that the New Jersey Statutes in question are unconstitutional. But the harm alleged by the Plaintiff is that her placement on the ballot negatively impacted her candidacy. The live controversy then is the placement on the ballot at the moment the ballot draw is performed, not the ultimate result of the election. When there is no live controversy then the case is clearly moot. "A case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." Donovan ex rel. Donovan v. Punxsutawney Area Sch. Bd., 336 F.3d 211, 216 (3d Cir.2003). Federal courts are without power to hear moot cases. State Farm Mut. Auto. Ins. Co. v. Ormston, 550 F.Supp. 103, 105 (E.D.Pa.1982) (citing Liner v. Jafco, Inc., 375 U.S. 301, 306 n. 3, 84 S.Ct. 391, 11 L.Ed.2d 347 (1964)). The Declaratory Judgment Act requires that there be a "case of actual controversy" between the parties. 28 U.S.C. § 2201(a). Here, the harm to plaintiff (if any) arose at the time of the ballot draw itself. The Plaintiffs never challenged the ballot placement during a time frame in which a court may have affected her position on the ballot. Plaintiff did not contest her position on the Hudson County ballot, ran for office knowing her placement on the ballot, and lost. No declaratory judgment sought today by the Plaintiff will address the July 2020 Primary election ballot or the election results.

Without that live action in controversy this issue is moot and should not be heard by this Court.

In an effort to cover all bases, Plaintiff simultaneously claims that the issue is ripe for adjudication because she intends to run for election again in 2022. The Declaratory Judgment Act provides that "in a case of actual controversy within its jurisdiction ... any court of the United States ... may declare the rights and other legal relations of any interested party seeking such a declaration...." 28 U.S.C. § 2201(a). The Third Circuit uses a three part test to evaluate whether an action for declaratory judgment is ripe, examining: 1) the adversity of the parties' interest, 2) the conclusiveness of the judicial judgment, and 3) the practical help, or utility of that judgment. However, "a potential harm that is contingent on a future event occurring will likely not satisfy the adversity of interest prong of the ripeness test" and warrant dismissal. Pittsburgh Mack Sales & Serv. Inc. v. Int'l Union of Operating Eng'rs, Local Union No. 66, 580 F.3d 185, 190 (3d Cir.2009)). The matter presented by Plaintiff is not ripe for adjudication because it is dependent upon far too many future events: the Plaintiff choosing to run again; the Plaintiff having the financial resources to run again; the Plaintiff's ability to properly submit a valid petition, on time, for the next primary election. The Plaintiff could obtain the backing of a political Party, or Plaintiff could begin her own political party. None of these factors are reasonably foreseeable. Far too many contingencies exist for this matter to be truly ripe for adjudication. In no way does the tenuous nature of the future candidacy of the

plaintiff pass the test for ripeness, and the complaint should be dismissed.

POINT III

PLAINTIFF'S COMPLAINT AGAINST E. JUNIOR MALDONADO IN HIS OFFICIAL CAPACITY AS THE HUDSON COUNTY CLERK SHOULD BE DISMISSED BECAUSE PLAINTIFF HAS FAILED TO ASSERT FACTS TO SUPPORT HER CLAIM

Defendant Maldonado cross-moves and joins in the co-defendants' motions to dismiss and incorporates their arguments to dismiss Plaintiffs' complaints for failure to state a claim upon which relief can be granted. Defendant Maldonado adds the following discussion to assert that the complaint of Plaintiff Spezakis fails on its face the scrutiny for sufficient pleading. A complaint must state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While the court must take all of the factual allegations in the complaint as true those "factual allegations must be enough to raise a right to relief above a speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, at 555 (2007). Here, Plaintiff Spezakis' broad assertions in the Amended Complaint are internally inconsistent and unsubstantiated. On page 50 of the Amended Complaint Plaintiff claims that she was "required to bracket or otherwise associate with candidates for US Senate and Freeholder to protect her ballot position" and that the result of this "requirement" "forc[ed] candidates to choose between favorable ballot position and associational rights [which] violate[d] their First Amendment Rights." Plaintiff's Complaint, p 51. There is no evidence provided within the Amended Complaint to substantiate this claim that Plaintiff Spezakis was required to associate with any other candidate and did so only to

secure what Plaintiff perceives as a better ballot position. In fact, it would appear from a review of the letter Plaintiff Spezakis submitted to the Hudson County Clerk on April 7, 2020 that this choice was made willingly and with the knowledge and consent of all the other candidates and with the knowledge of her legal counsel. (Attachment C). In aforesaid letter the Plaintiff not only requests to be bracketed with Candidate Hamm, as well as a list of County Freeholders running in various districts, she also requests that all of these candidates share the same slogan. The sharing of a slogan certainly speaks to an agreement amongst these candidates on policy, vision, and shared sense of purpose. This letter alone undermines the credibility of the statement that Plaintiff Spezakis was "required" to do anything to preserve a ballot position, as well as the argument that her associational rights were infringed.

Plaintiff's Amended Complaint relies primarily on accepting as true the concept of a "preferential ballot draw" and the notion that any candidate who brackets with another candidate who has the opportunity to be drawn during a ballot drawing received a better place on the ballot, and therefore receives a better chance at being successful in an election. (Plaintiff's Amended Complaint, p 2,10,15,19) and that this (perceived) preference is unconstitutional. Here, Plaintiff Spezakis bracketed with a senatorial candidate, which entitled their bracket to a preferential bracket draw. The draw was conducted and Candidate Hamm was drawn first, putting him in the first column of the ballot. This draw was not contested or challenged at the time of the ballot drawing. The election went forward and, despite

this alleged "preferential" position on the ballot, Hamm and Plaintiff Spezakis still lost by a considerable margin. This set of facts does not support the claims set forth in the complaint that the lack of a preferential ballot draw harmed the Plaintiffs.

Throughout the Amended Complaint, Plaintiff Spezakis predicts that she will run, unbracketed, in 2022 for the 9th Congressional District in New Jersey. (Plaintiff's Amended Complaint, p 54). For the reasons set forth in Point II of this brief this contention is not yet ripe for adjudication. However, it also purely speculation at this point in time, and that speculative pleading of facts in a complaint does not meet the somewhat more exacting pleading standards adopted in *Iqbal* and *Twombly*.

CONCLUSION

For the foregoing reasons Defendant, E. Junior Maldonado, respectfully requests that the Plaintiffs' Complaint be dismissed.



Daniel J. DeSalvo

Dated: March 29, 2021

Deputy County Counsel

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HIS OFFICIAL CAPACITY AS HUDSON COUNTY CLERK

CHRISTINE CONFORTI, ARATI	:	UNITED STATES DISTRICT COURT
ARATI KREIBICH, MICO LUCIDE	:	DISTRICT OF NEW JERSEY
JOSEPH MARCHICA,	:	
KEVIN MCMILLAN, ZINOVIA	:	
SPEZAKIS, & NJ WORKING	:	
FAMILIES ALLIANCE,	:	
Plaintiffs,	:	CASE NO.3:20-CV-08267-FLW-TJB
v.	:	
	:	
COUNTY OF HUDSON, E. JUNIOR	:	CERTIFICATION OF SERVICE
MALDONADO, in his official	:	
Capacity as Hudson County	:	
Clerk, et al	:	
Defendants.	:	

I certify that on this day, the accompanying Cross Notice of Motion to Dismiss Pursuant to Rule 12(b)(6), Certification of Daniel J. DeSalvo along with supporting Brief and Exhibits submitted on behalf of E. Junior Maldonado, in his official capacity as as Hudson County Clerk, was electronically filed with the Clerk of the United States District Court, Newark Vicinage. Copies of the papers will be served upon all counsel of record by electronic notice and by electronic notice.

Donato J. Battista
Hudson County Counsel


Daniel J. DeSalvo
Deputy County Counsel

Dated: March 29, 2021