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<p>BETHANY MURRANKO, MARK MURRANKO, MICHAEL MCKITISH, JOANNE MCKITISH, JEREMY WHALEY, DAVID MATTICOLI, JOHN MUKA, LISA WERDEL, PATRICIA JOHNSON, and GRACE ASAGRA STANLEY</p> <p style="text-align: right;">Plaintiffs,</p> <p>vs.</p> <p>MERCER COUNTY BOARD OF ELECTIONS, MARY CORRIGAN, MARTIN J. JENNINGS, JILL MOYER, CHARLES FARINA, NATHANIEL WALKER, SUPERINTENDENT OF ELECTIONS WALKER WORTHY, and PAULA SOLLAMI COVELLO,</p> <p style="text-align: right;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY</p> <p>LAW DIVISION: MERCER COUNTY CIVIL PART</p> <p>DOCKET NO. MER-L-____-24</p> <p style="text-align: center;">CIVIL ACTION</p> <p style="text-align: center;"><u>JURY TRIAL DEMANDED</u></p>
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COMPLAINT

Plaintiffs Bethany Murranko, Mark Murranko, Michael McKitish, Joanne McKitish, Jeremy Whaley, David Matticoli, John Muka, Lisa Werdel, Grace Asagra Stanley, and Patricia Johnson (collectively “Plaintiffs”), by and through their counsel, complain against Defendants Mercer County Board of Elections (“the BOE”), Commissioner Mary Corrigan, Commissioner Martin J. Jennings,

Commissioner Jill Moyer, Commissioner Charles Farina, former Superintendent of Elections Nathaniel Walker, current Superintendent of Elections Walker Worthy, and County Clerk Paula Sollami Covello (collectively “Defendants” or “the County”) as follows:

PARTIES

1. Defendant Mercer County Board of Elections is responsible for administering the elections, canvassing the votes, adjudicating and certifying provisional ballots, and the appointment and training of District Board members (poll workers).
2. Defendant Nathaniel Walker was the Superintendent of Elections in Mercer County and occupied said position during the 2022 general election.
3. Defendant Walker Worthy is the current Superintendent of Elections and was the Superintendent of Elections in Mercer County for the 2023 General Election.
4. Defendant Mary Corrigan is a Commissioner on the Mercer County Board of Elections and Board of Canvassers and occupied said positions during the 2022 and 2023 general elections. Mary Corrigan is sued in her official and personal capacity.

5. Defendant Martin J. Jennings is a Commissioner on the Mercer County Board of Elections and Board of Canvassers and occupied said positions during the 2022 and 2023 general elections. Martin J. Jennings is sued in his official and personal capacity.
6. Defendant Jill Moyer is a Commissioner on the Mercer County Board of Elections and Board of Canvassers and occupied said positions during the 2022 and 2023 general elections. Jill Moyer is sued in her official and personal capacity.
7. Defendant Charles Farina is a Commissioner on the Mercer County Board of Elections and Board of Canvassers and occupied said positions during the 2022 and 2023 general elections. Charles Farina is sued in his official and personal capacity.
8. Defendant Paula Sallami Covello is the Mercer County Clerk and occupied said position during the 2022 and 2023 general elections. The County Clerk is the clerk of the Board of Canvassers and responsible for receiving statements from the District Boards concerning election results and transmitting them to the Board of Canvassers. The clerk is responsible for the printing of ballots and issuance of vote-by-mail ballots.
9. Plaintiff Bethany Murranko is a Mercer County resident and voter. She was indisputably qualified to vote in the November 2022 election. When

she reported to vote, she was told that she had already voted even though she had not. She was told that she must vote provisionally, which she did. Mercer County sent Ms. Murranko a letter in December 2022 stating that her vote was not counted because “missing ballot.”

10. Plaintiff Mark Murranko is a Mercer County resident and voter. Mr. Murranko was indisputably qualified to vote in the November 2022 election. When he went to check into the polls, he was told that he had already voted. He had not, but was required to vote provisionally anyway. Mr. Murranko is not reflected as having checked into the electronic poll book to vote in the November 2022 election, however the NJ voter information portal states that he voted in the November 2022 election by provisional ballot. He does not know if his vote was counted, but he did not receive a letter stating that it was rejected.
11. Plaintiff Michael McKitish is a Mercer County resident and voter. He was checked in to vote in the November 2022 election without issue and was indisputably qualified to vote. The District Board required him to fill out a provisional ballot. In December 2022, Mr. McKitish received a letter from the County stating that his vote was not counted because he “voted by machine.”

12. Plaintiff Joanne McKitish is a Mercer County resident and voter. She was indisputably qualified to vote in the November 2022 election. Ms. McKitish checked into the electronic poll book without issue for the November 2022 election, but the County made her vote provisionally, despite being eligible to vote. Her ballot was rejected by the county with the given reason being “voted by machine.”
13. Plaintiff Jeremy Whaley is a Mercer County resident and voter. He was checked in to vote in the November 2022 election without issue and was indisputably qualified to vote. The District Board required him to vote by provisional ballot anyway. In December 2022, Mr. Whaley received a letter from the County stating that his vote was not counted because he “voted by machine.”
14. Plaintiff David Matticoli is a Mercer County resident and voter. He was checked in to vote in the November 2022 election without issue and was indisputably qualified to vote. The District Board required him to fill out a provisional ballot anyway. In December 2022, Mr. Matticoli received a letter from the County stating that his vote was rejected because he had “voted by machine”.
15. Plaintiff John Muka is a Mercer County resident and voter. During the 2022 election he was an official challenger with authority to be in the

polling place to observe the election and the tallying of votes. He was hindered in his ability to observe the election.

16. Plaintiff Grace-Assagra Stanley is a Mercer County resident and voter.

17. Plaintiff Pat Johnson is a Mercer County resident and voter who tried to observe the counting of the votes during the 2022 election, but whose ability to observe was thwarted by the County and its agents.

18. Plaintiff Lisa Werdel is a Mercer County resident and voter who was told to vote provisionally in the 2023 General Election because the electronic poll book had her incorrectly marked as having voted by mail even though she had not requested or received a mail in ballot.

INTRODUCTION

19. In 2022, Mercer County voters were supposed to vote by paper ballot and the ballots were supposed to be scanned into tabulating machines at the polling location. However, the tabulating machines throughout the entire county failed to work on Election Day, November 8, 2022.

20. The tabulating machines are manufactured by Dominion Voting Machines (“Dominion”). Upon information and belief, the reason the tabulating machines did not work is because Dominion failed to update the numbering of ballots after a change was requested by the Mercer County Clerk, so the tabulators did not recognize the ballots as legitimate.

21. The failure of the tabulating machines only affected the manner in which the paper ballots would be collected and tabulated. It should not have affected any qualified voters' ability to cast a regular ballot.
22. The District Boards are responsible for tallying, certifying, and reporting election results to the public unless the County has designated a counting center for votes to be tabulated. *See N.J.S.A. 19:16-10, N.J.S.A. 19:17-1, N.J.S.A. 19:17-2.*
23. The BOE and Superintendent of Elections apparently did not have protocols in place in the event a polling place tabulator did not work, had failed to train District Board members on what to do in the event of machine malfunction, and had failed to train county workers and District Board members on how to handle paper ballots in a manner consistent with maintaining chain of custody, performing their statutory duties, and ensuring a secure election.
24. From the time the polls opened at 6am to approximately 8am, voters throughout Mercer County were instructed by the District Board workers, to vote provisionally when they should have been voting by regular ballot.
25. Upon information and belief, the instruction to have qualified voters cast votes by provisional ballot was relayed to District Board workers by Nathaniel Walker, the Superintendent of Elections at the time and other

Mercer County election authorities.

26. As a result, voters in this time period had their ballots wrongly subjected to the additional scrutiny of adjudication by the County Board of Elections and at least 759 voters were disenfranchised and their votes were not counted due to “voting by machine” when the Defendant BOE and each of its Defendant Commissioners knew that it was impossible for these voters to have voted by machine.
27. Because there were no protocols for the proper handling of the paper ballots and because District Board workers were not trained on how to handle paper ballots, chain of custody was not preserved on many, perhaps most, ballots in Mercer County for the 2022 election cycle.
28. Entire bags of votes were misplaced, bags and machines containing ballots were not properly sealed, and at least 1500 ballots were found left behind in tabulators six days after the election.
29. The final numbers for the election are unknown and unknowable. The numbers Mercer County certified differ from those it reported to the state voter history files by thousands of votes and this discrepancy remains unresolved.

THE FAILURE OF THE TABULATORS ON ELECTION DAY

30. New Jersey ballots are labeled with a precinct-number so the County can

record and report precinct-by-precinct totals. Every vote-by-mail ballot, provisional ballot, early voting ballot, and regular Election Day ballot is labeled with a number distinct to its precinct.

31. In Mercer County in 2022, all of these ballots were printed in advance of the election except early-voting ballots, which were produced on-demand by ballot-marking devices.

32. Mercer County contracts with Royal Printing Services for ballot printing.

33. Mercer County contracts with Dominion Voting Systems for ballot marking devices and tabulators.

34. For each election a “ballot definition file” is prepared by Dominion that tells the vote-counting program what candidates are on the ballot in each ballot style (Early, Election Day, Mail in, Provisional and Federal).

35. In September 2022, the County Clerk sent Royal Printing Services the list of candidates on the ballot in each town for the November election. Royal created all the ballot layouts and then sent the ballot styles for approval by the County Clerk, as follows:

- a. Ballot styles 1-243: vote-by-mail ballot definitions for each precinct
- b. Ballot styles 244-245: federal ballot definitions
- c. Ballot styles 246-488: provisional ballot definitions for each

precinct

d. Ballot styles 489-731: election day ballot definitions for each

precinct

e. Ballot styles 732-974: early voting ballot definitions for each

precinct.

36. Upon information and belief, Royal Printing sent this file to Dominion, the County Clerk, and the Superintendent of Elections on or around October 4, 2022. On each ballot, the “ballot ID” (a number between 1 and 974) is printed at the bottom of the page, in plain text and as a barcode that the voting machines can read.

37. The County Clerk had not yet approved this set of ballot styles but asked to have a phone call with Royal and Dominion on October 5, 2022. In the call, someone pointed out that it was not necessary to print 243 different forms of provisional ballot; it would suffice to have one style of provisional ballot for each of the 18 different layouts (4 Trenton wards + 11 towns + Spanish-language ballots in 3 of those towns). Doing it this way would save money for the county. Exhibit D at pg. 12.

38. Upon information and belief, in an e-mail on the afternoon of October 5th, 2022, Dominion was formally notified of this change, yet Dominion failed to re-code the Election Day and Early Voting ballot IDs.

39. Royal Printing did account for the change and created a new ballots accordingly. Royal Printing's new file of ballot styles looked like this:

- a. Ballot styles 1-243: vote-by-mail ballot definitions for each precinct;
- b. Ballot styles 244-245: federal ballot definitions;
- c. Ballot styles 246-263: provisional ballot definitions for each town;
- d. Ballot styles 264-506: Election Day ballot definitions for each precinct; and
- e. Ballot styles 507-749: early voting polling-place ballot definitions for each precinct.

40. Upon information and belief, the Dominion employee who was tasked with updating the Ballot Definition Files recoded the provisional ballots, but failed to re-code the election-day and early voting ballots.

41. Before and after each election, the County is required by statute to perform accuracy testing to ensure the tabulators are correctly counting the votes. Upon information and belief, Mercer County or its agents performed testing on October 13th, by feeding a "deck" of about 5,000 optical-scan paper ballots through the Image Cast Central tabulators numbered 1009, 1018, 1019, 1020 and 1021. This test deck was created by Dominion based on their own list of ballot styles, which had not been

updated. Thus, Dominion's test ballots matched what the tabulators expected, and the test "passed."

42. Upon information and belief, the Mercer County Board of Elections did not test every tabulator that was expected to be used on Election Day, but instead only five tabulators located in Trenton that were not expected to be used to tabulate Election Day ballots because it was expected that the results would be tabulated at the District Level by the tabulators located at each polling location.

43. Royal Printing Services delivered to Mercer County, 243 styles of preprinted vote-by-mail ballots (ballot IDs 1-243), as well as 18 styles of pre-printed provisional ballots (ballot IDs 246-263), and 243 styles of pre-printed election-day ballots (ballot IDs 264-506). These ballots were updated pursuant to the October 5th phone call. These ballots were then delivered in November 2022 to the polling places along with the Image Cast Precinct tabulating voting machines.

44. On Election Day, in every precinct, the preprinted ballots had a different ballot ID number than the precinct tabulators expected so the tabulators rejected the ballots.

45. The vote tabulating machines rejected the Election Day ballots everywhere in Mercer County immediately upon the polls opening.

**THE COUNTY REQUIRED VOTERS TO VOTE
PROVISIONALLY AND VOTERS WERE TREATED
DIFFERENTLY BASED ON WHEN AND WHERE THEY
REPORTED TO VOTE**

46. When District Board workers called the Mercer Board of Elections and Superintendent for instructions on what to do given the failure of the tabulating machines, they were instructed to provide voters with provisional ballots.
47. Consequently, Mercer County voters who arrived in the first few hours of Election Day were required to vote provisionally rather than with emergency or regular paper ballots.
48. Provisional ballots are used when a voter's eligibility is in question. The NJ District Board Members Training Manual explains: "A provisional ballot is a paper ballot that is given to a person in the polling place if there is any question regarding his or her right to vote which the district board cannot resolve." Exhibit A at pg. 29.
49. Provisional ballots are not automatically counted and instead are sent for adjudication by the Board of Elections. During the adjudication process the Board decides whether to count the provisional ballot.
50. The purpose of the tabulators is simply to count the paper ballots.
51. The failure of the tabulating machines should not have affected anyone's ability to vote if they were qualified.

52. Ballots can be manually inserted into the tabulator through an emergency box and/or by removing the top part of the machine, which allows voters to directly deposit their paper ballots into the machine. Therefore, the failure of the tabulators to scan did not change where cast ballots were deposited.
53. Around 8am, the County changed course and instructed District Board workers to use the regular pre-printed Election Day paper ballots and have voters put the completed ballots into the open slot in the ballot box of the tabulator.
54. *N.J.S.A.* 19:48-7 provides a statutory procedure that is to be followed if a voting machine malfunctions. Specifically, it provides that “[d]uring any period when a voting machine is inoperative, emergency ballots made as nearly as possible in the form of the official ballot shall be used.” The statute provides that votes cast by emergency ballot “shall be counted with the votes registered on the voting machines. The result shall be declared the same as though there had been no accident to the voting machine.”
55. The District Board training manual, prepared by the State, says the same: Exhibit A at pg. 31 (“emergency ballots are paper ballots which are used if a voting machine becomes inoperable”); *Id.* at pg. 33 (“Emergency ballot

voters are processed in the same manner as any voter entitled to vote on the voting machine”).

56. The training manual further explains that for emergency ballots “[t]he requirements for counting a paper ballot apply.” *Id.* at pg. 36. The manual sets forth an orderly and transparent process in which a judge and inspector, who are two members of the District Board, publicly tally the votes:

First, a board member is to remove the white seal from the emergency ballot box and opens the ballot box in full view of the public. Second, the judge will remove the ballots one at a time and read the votes cast. The judge will do this in front of the inspector who will look at the ballot to make sure that it was read correctly and record the vote(s) on the Emergency Ballot Tally Sheet...the district board clerk will tally the results of the emergency ballots as they are read by the judge...Before removing the next ballot from the ballot box, the judge shall replace the ballot previously read back into its plain white envelope and hand it to the inspector. Each envelope shall be numbered consecutively (i.e., 1, 2, 3, etc.) and strung together in numerical order.”

57. Here, Mercer County should have used either an emergency ballot procedure or simply allowed voters to use the regular paper ballots to be tabulated later, which is what it eventually did.

58. In 2022, the ballots should have been tallied manually by the District Board in the manner described in the Training Manual and Title 19 because

the county did not have a designated counting center with tabulators that had undergone the statutorily required logic and accuracy testing for the Election Day ballots. *See N.J.S.A. 19:16-7, N.J.S.A. 19:17-1.*

59. There is no circumstance under which voters should have been instructed to vote provisionally because a machine was not working.
60. Because voters who arrived in the early morning were told to vote provisionally, their ballots were adjudicated by the Board of Elections when they should have simply been counted.
61. As detailed herein, the improper move to provisional ballots and recording errors concerning these ballots resulted in at least 759 voters, including Plaintiffs Bethany Murranko, Michael McKitish, Joanne McKitish, Jeremy Whaley, and David Matticoli, having their votes rejected when they should have been accepted and should not have been subject to adjudication at all. These voters were disenfranchised.
62. Other voters, like Plaintiff Mark Murranko do not know if their vote was counted as the electronic poll books do not show them as having checked in.
63. The New Jersey District Board Training manual states that the “County Board of Election should have an emergency voting plan.” Exhibit A at pg. 13.

64. However, it is apparent that the Mercer County Board of Elections had no plan in place in the event Election Day machines did not work. Indeed, in response to an Open Public Records Act (“OPRA”) request seeking, “All documents setting forth election-day procedures in the event of machine breakdowns or outages,” the County responded, that it “has no records responsive to this request.” Exhibit B, OPRA request R005871-080823.
65. Moreover, the County apparently had no protocol for counting paper ballots at the district or municipal level, failed to train District Board workers on how to handle paper ballots so as to maintain proper chain of custody and a secure election, and failed to provide District Board workers with necessary resources to carry out their statutory duties.
66. Without the benefit of a plan and proper training, there was confusion at the precincts throughout the day on the part of both poll workers and voters.
67. Voters were variously told to come back later, vote provisionally, vote by emergency ballot, or vote by regular ballot depending on their polling location and the time of day they arrived.
68. Christine Ruhl, who served as a challenger in Hopewell Township on Election Day 2022 relayed her observations:

I also witnessed the poll workers using different processes for issuing the paper tickets [authority to

vote slips] that accompany the ballots. One of the poll workers handed out tickets to every voter and I witnessed another poll worker handing out tickets only to people who were issued paper ballots, not to those voters who were issued a provisional ballot. This worried me because there was no way to track how many ballots were supposed to be in the bins on election day.

(Ruhl Declaration Exhibit C).

69. At a public meeting concerning this election, Mark Cubberly relayed what he witnessed when he went to vote:

At 6:01 I was told I have to come back because the machines were down. The poll workers did not realize that voters shouldn't leave the polls. That there was an alternative method with emergency ballots and/or provisional ballots...I watched four of them walk right out the door. I knew immediately there was a problem. I had to vote provisionally myself...What I observed [at St. Bartholomew's School] was an utter disaster. People had ballots outside of the building because they were given ballots and they were told they could come back and vote.

Exhibit D (Transcript from November 22, 2022 public meeting of the Mercer County Board of Commissioners at pages, 92-94).

70. Poll Worker Jennifer Strano relays that "many voters refused to vote provisionally and left without voting. Several people returned multiple

times throughout the day to see if the tabulator was working. Some voted provisionally. Some decided to leave.” Strano Declaration Exhibit E.

71. Upon information and belief, hundreds of ballots were spoiled because the poll workers failed and/or refused to accept the properly completed ballots simply because the tabulator was not working. *See id.* at ¶¶ 8-9.
72. Upon information and belief, the improper use of provisional ballots caused a shortage of provisional ballots in some polling locations causing voters to become disenfranchised because they were told they must vote by provisional ballot (which was improper) and there were no provisional ballots. Exhibit D at Pg. 82:13-20 (public statement by Barbara Holstein).
73. Unfortunately, the confusion and chaos only grew worse after the polls closed at which point Mercer County suffered a complete breakdown in ballot chain of custody and security.

**THE COUNTY FAILED TO PRESERVE CHAIN OF CUSTODY
FOR BALLOTS THROUGHOUT THE COUNTY AFTER THE
POLLS CLOSED**

74. Preserving chain of custody of ballots is fundamental to election integrity. Indeed, the NJ State Training Manual states “It is of the **UTMOST** importance that a secure chain of custody is maintained- all items pertaining to election results should be inventoried and signed for at each exchange.” Exhibit A at pg. 37-38 (emphasis in original).

75. Title 19 sets for specific procedures to maintain election integrity and ensure proper chain of custody of ballots. Specifically, *N.J.S.A. 19:18-2* provides that after the polls close:

The ballot box, after being locked and bound with tape and sealed, shall in all municipalities be immediately taken in charge by 2 members of the district board. It shall then be delivered to the office of the clerk of the municipality in which the election may be held, by said members or by said members with the assistance of an officer or officers to be designated by the governing body thereof, by the most direct route and without delay, and such members or officers shall not stop at any place between the polls and the municipal clerk's office.

(emphasis added).

76. *N.J.S.A. 19:18-3* requires the municipal clerk's office to remain open until all ballot boxes are accounted for and sets forth the manner in which the clerk must maintain chain of custody, stating that the clerk:

shall enter in a book to be kept for that purpose the exact time when each ballot box may be delivered at such office, the district whence it was brought, names of the members of the district board delivering it, and the name of the police officer or other witness who may accompany them, and any other particulars he may deem important; such book shall be filed in the office of the municipal clerk and be preserved by him for two years.

77. *N.J.S.A. 19:53A-7(g)* ("Conduct of Election") provides:

The district board election officers shall prepare a report of the number of voters who have voted, as indicated by the poll list, the number of write-in

votes and any other votes counted by the district board and the number of spoiled ballots, and shall place the original copy of this report in the ballot card container for delivery to the counting center, which thereupon shall be sealed so that no additional ballot cards may be deposited or removed...Two district election board officers who are not members of the same political party shall forthwith deliver the ballot card container to the counting center or other place designated by the county board. The county board may, in its discretion, direct that ballots be delivered to one or more collection points from which points the ballots shall be transported collectively to the counting center by two duly appointed deputies who are not members of the same political party. The district board shall receive a receipt before releasing the ballots to said deputies.

78. Here, Mercer County disregarded several of these statutory requirements.

79. At the November 22, 2022 public meeting of the Mercer County Board of Commissioners, several members of the public spoke to relay to the county the chain-of-custody problems they witnessed on Election Day.

80. The ballots were not removed from the machines in a manner that preserved chain of custody. Indeed, news outlets ran articles with photos showing ballots scattered in disorganized piles on the floor. (Exhibit F, New Jersey Globe, “Mercer finds mi[s]sing ballots, but questions regarding Election Day disaster continue”).

81. Darius Mayfield stated “we witnessed people working the elections taking ballots out of machines and putting them back in.” Exhibit D at pg. 57.

82. Mark Byrne, a challenger in the 2022 General Election, witnessed and took video of an election worker removing ballots from the tabulator many at a time and putting them on the floor. Exhibit G (Declaration of Mark and Stacy Byrne).
83. Several members of the public relayed that they saw ballot bags being brought to the County, unsealed and by one person only.
84. Andrew Curcio stated: “I have two people here they will confess under oath that the bags were open. They actually took the bags themselves to the Commissioner at the drop offs.” *Id.* at pg. 78.
85. Stephanie Reichardt stated “I just want you guys to hear from yet another person who was there the night when the bags were brought in. And, again, we observed no tags, no seals on all the bags, which obviously was already said tonight. I personally made a list of all those bags...While I was keeping that list of bags, I was told at one point that seals don’t matter. That the poll workers weren’t told that they needed to seal the bags.” *Id.* at pg. 95.
86. Upon information and belief, ballot bags throughout the county were not secured properly, the departure and arrival of ballots from the polling locations to the County was not logged or recorded, and the removal of the

ballots from the tabulators to the ballot bags was done haphazardly without any regard for maintaining chain of custody.

87. Multiple witnesses saw that the ballots were not transported to the counting center by two district board members in many cases. *See* Exhibit G Declaration of Mark and Stacy Byrne (stating “We were told they were being transported to Mercer County Board of Elections office in Trenton NJ by one individual and we were not allowed to follow”); Exhibit H Declaration of John Muka (stating “[o]ne person, alone, transported the red bags of ballots to the Mercer Central Counting Location”); Exhibit D at pg. 45 (Plaintiff Patricia Johnson stating “I was at the site when they brought bags in and there were 17 bags in total that were untagged. Some of them were brought in by one person”).

88. Mike Cipriano, the Robbinsville council president, made a statement on behalf of the Robbinsville mayor and entire council. He stated: “The reports we’ve received from poll workers have not been encouraging, and serious questions about the chain of custody of ballots have been raised by those in the field that evening.” Mr. Cipriano stated that the Mercer County Clerk called the Robbinsville clerk around 4:30 pm on November 9th (the day after the election) to inform her that “our District 5 ballots had gone missing.” *Id.* at pg. 64.

89. Election observer and Plaintiff Patricia Johnson relayed that at the Spruce Street location in Trenton at least one bag from Princeton was missing on Election night. *Id.* at pg. 45.
90. Indeed, many ballots were missing, and not just from Princeton. At least 1,500 ballots were still sitting in voting machines and would not be found until a court ordered that the machines be searched. Exhibit I, Elizabeth A. Meyers, Tapinto, “*After Bungled Ballots, Machines Malfunctioning, Officials Calling for Overhaul of Mercer County Elections System*”).
91. Pursuant to the Court Order, the county inspected all the voting machines for uncounted ballots.
92. This inspection took place over two days. The County’s own records show that many of the machines were unsealed, contrary to law, including machines in which ballots were found. Exhibit J (Mercer County log of ballots found in machines).
93. The machines, including unsealed machines in which ballots were found, were transported to the warehouse by a private moving company.
94. The chain of custody was broken on all these ballots. It cannot be known whether ballots were added to or taken out of these machines in the six days between the election and when they were inspected.

95. To maintain election integrity and preserve chain of custody, the District Board workers are required to create and keep multiple tallies including how many voters have voted and how many provisional and emergency ballots were cast throughout the day. *See e.g.*, Exhibit A at pg. 11.

96. These tallies are supposed to be publicly posted every two hours pursuant to *N.J.S.A.* 19:52-3.1, which provides that

The district boards of election at each polling place shall create and publicly display a notice containing an official count of the cumulative number of voters who have voted at each precinct, indicating the number of voters who have voted using a voting machine and the number of voters who have voted using a provisional ballot. The first notice shall be produced two hours from the opening of the polls and updated every two hours thereafter until the time the polls close.

97. The purpose of this law “is to promote greater transparency in the electoral process by requiring that district boards report how many voters have voted and by allowing challengers to have access to current turnout information during Election Day.” (Committee statement in support of bill).

98. However, upon information and belief many, perhaps most, Mercer County polling locations did not post public tallies throughout the day.

99. District Boards are also responsible for creating tally sheets that reflect the “votes given for each person for any office to be filled.” *N.J.S.A.* 19:16-9 and *N.J.S.A.* 19:16-9.
100. However, according to Mercer County there are no tally sheets for the November 2022 election. Upon information and belief, the District Boards did not create tally sheets. The County responded to an Open Public Records Act request for “copies of tally sheets for each election in Mercer County 2022” with the response “The County has no record responsive to this request.” Exhibit K.
101. District Boards are responsible for counting the ballots and certifying the results. *N.J.S.A.* 19:17-1, 19:17-2.
102. Upon information and belief, no District Boards counted ballots or certified elections results in 2022.
103. In fact, the District Boards did not even count how many ballots were in the ballot box at the end of the night. Exhibit E Declaration of Jennifer Strano (stating that “[a]t the end of the night there were no tally numbers or print outs to show the number of ballots cast into the machine...The ballots from the tabulator were not counted”).
104. Thus, there is no record of how many ballots were taken out of the tabulators versus what was delivered to Trenton before being counted.

105. *N.J.S.A.* 19:52-2.1 requires that when voting machines are used, voters shall sign a two part perforated voting authority slip. The voter is given one part to give the District Board members who is in charge of operating the voting machines. The slip is then supposed to be strung.
106. The number of ballots should match the voting authority slips, but those also were not handled in the manner required by Title 19. Upon information and belief, they were not strung in 2022 or 2023, anywhere in the County.
107. The County did not create or maintain the necessary chain of custody documentation for Election Day.
108. On August 11, 2023, Mercer County received an OPRA request seeking “evidence of the chain of custody records for all ballots from Districts #32 and #58.” Mercer County closed the request without producing any records and indicating that it had no responsive records. Exhibit L.
109. On January 31, 2024, Mercer county received an OPRA request, number R006350-013124 seeking “any and all logs of the chain of custody of ballots, ballot bags, and ballot boxes that were signed between any Mercer County district poll workers, municipal clerks, and Board of Elections officials, in the November 8, 2022 general election, between election day, and through at least November 15, when such materials were

still being received at the County warehouse.” As of the time of filing, the County still has not produced evidence for any chain of custody anywhere in the county in 2022.

110. On March 16, 2023 an OPRA request was submitted to Mercer County requesting “any and all logs of the chain of custody of ballots, ballot bags, and ballot boxes that were signed between any Mercer County district poll workers, municipal clerks, and Board of Elections officials, in the November 8, 2022 general election, between election day, and through at least November 15, when such materials were still being received at the County warehouse.” Exhibit M.

111. The County denied the request and set forth its belief that *N.J.S.A.* 19:18-3 (which requires municipal clerks to take custody of the ballot boxes, which contain the ballots, and to document the chain of custody of the ballots to the municipal clerk’s office by recording the name of the district board members who delivered it and the exact time it arrived) “no longer applies.” Exhibit M.

112. Upon information and belief, Mercer County thinks *N.J.S.A.* 19:18-3 no longer applies because ballot bags are used instead of ballot boxes to contain the ballots.

113. *N.J.S.A.* 19:47-2 states that “[a]ll provisions of law relating to elections shall apply to all elections where voting machines are used so far as the same may be applicable thereto and so far as such provisions are not inconsistent with the provisions of this subtitle.”
114. *N.J.S.A.* 19:53A-13 states that “[t]he provisions of Title 19 of the Revised Statutes except as herein modified shall be applicable to the use of electronic voting systems in elections as herein provided for.”
115. Title 19’s requirement that the ballots be returned to the municipal clerks, with proper and documented chain of custody, has not been superseded by any subsequent statutes concerning elections or voting.
116. Pursuant to *N.J.S.A.* 19:18-4, ballots should be in the care of municipal clerks in the ballot bags for three months after which point they may be removed from the ballot bags and be preserved elsewhere for a further period of two years.
117. Upon information and belief, the County has usurped this duty from the municipal clerks.
118. Mercer County failed to follow Title 19’s requirements that preserve the chain of custody for ballots throughout Election Day and after the polls closed.

119. Unfortunately, the chaos and chain of custody issues worsened as the counting commenced and proceeded.

THE MANNER IN WHICH THE VOTES WERE COUNTED AND THE ELECTION CERTIFIED DEPRIVED MERCER COUNTY RESIDENTS OF A FAIR ELECTION

120. *N.J.S.A.* 19:16-2 requires that the counting of votes proceed continuously and publicly. That did not happen in Mercer County in 2022.

121. The counting of the votes in Mercer County was not continuous and it is not clear that it was always public.

122. Tabulation of the votes was supposed to take place at the district board level. That was the purpose of the tabulators.

123. *N.J.S.A.* 19:53A-8(d) provides that “[i]f for any reason it becomes impracticable to count all or part of the ballot cards with tabulating equipment, the county board of elections may direct that they be counted manually, following as far as practicable the provisions governing counting of paper ballots contained in Title 19 of the Revised Statutes.”

124. *N.J.S.A.* 19:53A-8(a) requires that “[p]rior to the start of the count of the ballots, each county board of elections shall have the automatic tabulating equipment tested to ascertain that it will accurately count the votes cast for all offices and on all measures.” The statute requires that the time and place of the test be given at least 48 hours prior by publication in

at least three daily or weekly newspapers. The same test is to be conducted after the count and must be passed before the votes can be certified as official.

125. Two types of tabulators were used in Mercer County in 2022, Image Cast Central tabulators, which were located at Spruce Street in Trenton and which were intended to tabulate only vote-by-mail ballots, and Image Cast Precinct tabulators, which were located in the polling locations and which were intended to tabulate early voting and Election Day ballots.
126. System logs provided pursuant to Open Public Records Act requests evidence no testing on any Image Cast Precinct tabulators (the ones in the polling locations) prior to Election Day. Exhibit Q, Certification of Mark Demo (“Demo Cert.”) at ¶7.
127. This means that even if the Image Cast Precinct tabulators had worked correctly on Election Day, the County would still have been in violation of *N.J.S.A. 19:53A-8(a)* because those tabulators did not undergo the statutorily required testing.
128. System logs show that Image Cast Center Tabulators numbered 1009, 1018, 1019, 1020 and 1021 did undergo testing on October 13, 2022, however this was with the faulty Dominion deck that had not been updated

pursuant to the changes requested by the Mercer County Clerk. Exhibit Q, Demo Cert. at ¶8.

129. Thus, upon information and belief, in November 2022, it was impossible for the votes to have been counted on any tabulators in Mercer County. None of them had been tested in accordance with *N.J.S.A. 19:53A-8(a)*.

130. The tabulation therefore should have been done manually and by the District Boards to comply with Title 19 and the Constitutions of New Jersey and the United States. *N.J.S.A. 19:53-8(d)*.

131. In November 2022, Mercer County disregarded the safeguards of Title 19 and instead had ballots transported to a central location in Trenton without maintaining chain of custody.

132. Unsecured, uncounted ballots were still being found seven days after Election Day.

133. In Trenton, witnesses reported chaos and a lack of transparency as the votes were tallied.

134. For example, live ballots were spit into the air from the tabulators, which would cause ballots to go flying around until the workers collected them, restacked them, and scanned the pile again.

135. John Muka witnessed that ballots were being adjudicated more than 30 feet away from where witnesses were seated in another room which meant that observers “were unable to determine anything about the process.” Exhibit H (Decl. of John Muka). Mr. Muka questioned Commissioner Chuck Farina as to what was going on behind the glass windows and the Commissioner responded, “I’m not sure what I’m allowed to tell you. I’ll get someone else to answer your questions.” *Id.*

136. Jill Moyer, another BOE commissioner, was walking around with boxes of ballots and told Mr. Muka that it was for the “temps” to work on. *Id.*

137. Pursuant to *N.J.S.A. 19:53A-8(b)*, “[a]ll persons who are engaged in processing and counting of the ballots shall be deputized and take an oath that they will faithfully perform their assigned duties.” However, an OPRA request for a “list of all persons deputized Election Day 2022 and any documents evidencing they were deputized” was responded to with the statement that “The County has no records responsive to this request.” Exhibit N.

138. Upon information and belief Mercer County had non-deputized temporary workers and third-party vendor employees handling and counting ballots on Election Day.

139. Even when the vote counting was public, members of the public were kept at too great a distance to observe (see and hear) properly and were often treated rudely by County employees when they tried to better observe what was happening. This is contrary to *N.J.S.A. 19:53A-8* which provides that “all proceedings shall be conducted under the observations of the public.”

140. Moreover, on November 8, 2022 at the Spruce Street location, Plaintiff Pat Johnson along with two other Mercer County residents were advised that the building was closing and that no more tabulation would take place that evening. Plaintiff Pat Johnson and her two companions both recall leaving the building between 11:30pm and 12:00am, that the lights were turned off, and doors were closed and locked. All three were led to believe that the tabulation was ending for the night.

141. However, the ballot images show that the tabulators were running until past 12:00am.

142. At the warehouse, when the machines were being searched for empty ballots, Plaintiff Patricia Johnson and other witnesses report that the county always opened the machines with the bins facing away from observers so they could not observe whether there were ballots in the machine.

**THE NUMBER OF VOTES CAST AND COUNTED IN THE
NOVEMBER 2022 GENERAL ELECTION IS UNKNOWN AND
UNKNOWNABLE**

143. The disorder of Election Day and the subsequent counting of the votes is reflected in reported numbers for the election, which are inconsistent between what was reported to the public, to the state voter history file, and to the federal government. The true outcome of the elections held in Mercer County in November 2022 are not, and cannot be known.

144. The Election Day ballots, provisional ballots, and mail-in ballots were tabulated separately and there are discrepancies in the numbers reported for each of these types of ballots.

Issues with Counting Election-Day ballots

145. As outlined above, the Election Day ballots should have been counted in the manner of paper ballots by the District Boards as provided under Title 19, which would have preserved chain of custody.

146. Instead, after being haphazardly transported from the polling locations to Trenton, Election Day ballots were counted over a period of 13 days. System logs and ballot images show that 26,660 Election Day ballots were counted on November 8th and 30,314 were counted on November 9th. The rest were counted on Thursday, November 11th (280), Friday, November 12th (1,460), Monday, November 14th (1,702), Wednesday, November

16th (5), Saturday, November 19th (56) and Sunday November 20th (250).

Demo Cert. at ¶9.

147. The counting of Election Day ballots was not continuous, and it is not clear that it was all done in public with public observation. When the public was allowed to observe, it was far away and/or from a different room where observers could not hear what was happening.

148. In addition, the County reported, in response to an Open Public Records Act request, that the Election Day ballots were tabulated on one set of tabulators, which had undergone testing in October with the incorrectly labeled Dominion ballots. However, the ballot images, which record which tabulator each ballot was counted on, show that the ballots were actually tabulated on different machines, which had not undergone public testing. Demo Cert. at ¶10.

149. This hid the fact that the Election Day ballots were counted on tabulators that had not undergone the statutorily required testing before and after tabulating the ballots.

150. Upon information and belief, the ballot images show hastily done testing on tabulators 10000, 10001, 10002, 10003, 10004 on November 8th around 5pm-6pm. Demo Cert. at ¶11.

151. This testing did not comply with *N.J.S.A.* 19:53-8(a) because it was not public and was not advertised to the public.
152. Moreover, upon information and belief, the County did not perform the required testing after the counting and before certification of the election results.
153. The County has refused to provide the system logs for Tabulator 10003. Demo Cert. at ¶12.
154. Mercer County's 2022 ballot tabulator system logs and ballot images show that the County scanned 60,727 Election Day ballots using 243 unique ballot styles (264 through 506) on Image Cast Central tabulators 10000, 10001, 10002, 10003, and 10004. Ballots scanned on each tabulator were 11,022, 13,189, 14,487, 12,505 and 9,524 respectively. Demo Cert. at ¶13.
155. However, the Official Tabulator Summary report prepared by the County, which purports to detail Election Day ballots scanned by tabulator ID, represents that Election Day ballots were counted on tabulators 1009, 1018, 1019, 1020 and 1021. The Tabulator summary represents that Ballots scanned on each tabulator were 27,316, 14,993, 9,044, 9,374 and 0 respectively. See Exhibit O (Mercer County Tabulator Status 2022 General

- Election Official Report dated December 5, 2022) and Exhibit Q, Demo Cert. at ¶15.
156. Moreover, while the total number of Election Day ballots reported on the Mercer County Tabulator Status 2022 General Election Official Report (60,727) equals the total number of Election Day ballots scanned from ballot image and system log records (60,727), the number of ballots reportedly scanned on the reported tabulators does not correspond to any of tabulators actually used. Exhibit Q, Demo Cert. at ¶16.
157. The County publicly reported that Election Day ballots were scanned through a completely different set of tabulators than the ballots actually were scanned.
158. Upon information and belief, this misrepresentation was deliberate to obscure the fact that the 2022 Election Day ballots were counted on tabulators that had not been tested in accordance with *N.J.S.A. 53:A-8(a)*.
159. Consequently, upon information and belief, every Election-Day ballot from the November 2022 election was tabulated on a machine that had not been tested to tabulate those ballots.
160. Moreover, while the County reported to the public that it counted 60,727 Election Day ballots, as of December 2, 2022, the County only reported 55,878 Election Day ballots to the NJ State Voter History File.

There is a 4,849-vote discrepancy between the number of votes the County reported to the public and the number of Election Day votes the County reported to the State and has not been resolved. Exhibit Q, Demo Cert. at ¶17.

161. Roughly, 9,700 early votes are recorded correctly in the State Voter History File. The discrepancy is only related to Election Day ballots.

162. The County Clerk and BOE certified the election results without resolving this discrepancy.

Issues with counting provisional ballots

163. The Mercer County electronic poll book logs indicate that 1,420 individuals checked in to vote during the first hour that the polls were open (6:00am to 7:00am). Exhibit Q, Demo Cert. at ¶18.

164. 1,091 of these 1,420 individuals were checked into the electronic poll books in the first hour without issue, meaning these individuals were unquestionably qualified to vote with a regular ballot. Exhibit Q, Demo Cert. at ¶19.

165. However, 518 of the 1,091 individuals who successfully checked in to vote during the first hour of voting had their Provisional ballot rejected because they had “voted by machine.” See Exhibit P (provisional reject report) and Exhibit Q, Demo Cert. at ¶20.

166. In total, 759 individuals throughout the County had their Provisional ballot rejected because they had “voted by machine” despite the fact that the voting machines were not working and these voters could not have voted by machine. Exhibit P, Provisional Reject Report.
167. These 759 votes were wrongfully sent for adjudication by the BOE and then wrongfully rejected. These voters were disenfranchised because of the Defendants’ actions.
168. In addition, 2,416 people were told they had to vote provisionally because they had requested a vote-by-mail ballot. However, according to data provided by Mercer County in response to an OPRA request, at least 83 of those people were not even sent a mail-in ballot. Exhibit Q, Demo Cert. at ¶21.
169. An additional 639 voters were told they must vote provisionally because they had already voted by mail. However, data provided by Mercer County shows that 533 of those voters had not voted by mail. Exhibit Q, Demo Cert. at ¶22.
170. 19 voters from the group of 106 who had voted by mail and who also voted provisionally do not appear on the provisional reject list. Exhibit Q, Demo Cert. at ¶22.
171. These voters may have had their votes counted twice.

172. Upon information and belief, errors in the electronic poll book caused voters who had not requested or been sent vote-by-mail ballots to be incorrectly marked as having requested a vote-by-mail ballot. These voters should not have had to vote provisionally, and their ballots should not have been subject to adjudication.
173. Upon information and belief, errors in the electronic poll book caused at least 533 voters who had not voted by mail to have been improperly recorded as having voted by mail. These voters should not have had to vote provisionally, and their ballots should not have been subject to adjudication.
174. In addition, comparison of the November 29, 2022 Provisional Reject Report to the November 29, 2022 all provisional report and the 2022 Election Certification shows that 378 provisional votes were recorded by the county as received, but not reported to the state as accepted or rejected. *See* Exhibit P (Provisional Reject Report) and Exhibit Q, Demo Cert. at ¶24.
175. Specifically, the County certified that 3,862 provisional votes were counted and reported that 1,288 provisional votes were rejected. These numbers equal 5,150 total provisional ballots received. However, the County provided an “all provisional” report pursuant to an OPRA request that shows

5,528 provisional votes received. *Id.* These 378 provisional ballots are not accounted for as received.

176. The County Board of Elections and its members are responsible for adjudicating provisional ballots and the County Clerk is responsible for certifying the results and reporting them to the State. Neither corrected nor resolved these discrepancies.

177. Provisional ballots were supposed to be inventoried publicly by the District Board, but upon information and belief, this did not happen at many, most, or potentially all, polling locations in Mercer County in November 2022. *See* Exhibit A at pg. 35 (explaining process for inventorying provisional ballots).

178. Upon information and belief, the provisional ballots were not inventoried by the District Board's in the 2023 General Election either.

179. Upon information and belief, Mercer County has adopted a policy for inventorying (or not inventorying) provisional ballots that is contrary to Title 19.

Issues with counting the Mail-in Ballots

180. According to the system logs from the tabulators and the ballot image data, the County scanned 25,512 Mail-In ballots using 243 unique ballot

styles (1 through 243) on tabulators 1000, 1001, 1002, 1003 and 1012. Exhibit Q, Demo Cert. at ¶25.

181. The County certified to the public that 2,528 fewer Mail-In ballots were received (25,512) versus what they reported as received and accepted to the December 2nd, 2022 NJ State Voter History file (28,040). Exhibit R (Election Certification) and Exhibit Q, Demo Cert. at ¶26.

182. The County clerk and the individual Board of Election commissioners are responsible for receiving, counting and certifying Mail-In ballots and the County Clerk is responsible for reporting results to the State. Neither the Board of Elections nor the County Clerk resolved this discrepancy involving thousands of votes.

183. Moreover, the NJ State Board of Elections reported to the Federal Election Administration Commission that Mercer County received and accepted 27,890 Mail-In ballots, which does not match the certified total of mail in ballots or the mail-in ballots reported as received to the state. Exhibit R (Election Certification) and Exhibit Q, Demo Cert. at ¶27.

184. There is a more than a 2,000 vote discrepancy between the number of Mail-In ballots Mercer County scanned versus the number reported to the state voter history as received and accepted. The NJ State Board of

Elections reported a third, entirely different number, to the federal government.

185. Upon information and belief, Mercer County counted 51% of the Mail-In ballots prior to Election Day and then waited another 8 days to resume counting mail in ballots. Thus, the counting of Mail-in ballots was not continuous and it is not clear that it was public.

186. Unfortunately, efforts to better understand what happened with the counting of the votes through the submission of requests for information under the Open Public Records Act have not shed light on the cause of these discrepancies.

187. On the contrary, Mercer County denies having records that should not only exist, but should be readily accessible to the public, such as tally sheets, chain of custody logs, and a list of all District Board members and where they were stationed on Election Day.

188. The true results of the November 8th, 2022, General Election cannot be known because:

- a. Mercer County certified and counted 60,727 Election Day ballots but only reported 55,858 to the state voter history file as of December 2, 2022. This is a discrepancy of 4,869 votes;

- b. The County apparently falsified the Official Tabulator Summary Report to obscure which tabulators were used to count Election Day ballots;
- c. Mercer County rejected 1,288 Provisional ballots, many or most of which should have been cast and accepted as regular or emergency ballots instead of provisional ballots;
- d. Mercer County apparently failed to count 2,528 Mail-In ballots because it reported to the State of New Jersey that it received and accepted 28,040 Mail-in ballots, but the County certified that it received only 25,512 Mail-in ballots;
- e. Chain of custody was not kept on many, most, or all ballots;
- f. Qualified voters, whose eligibility was not in question, were required to vote provisionally and the Board of Elections improperly rejected their ballots.

THE 2023 ELECTION WAS PLAGUED BY MANY OF THE SAME PROBLEMS AS THE 2022 ELECTION

- 189. The 2023 general election was plagued by many of the same problems as the 2022 election.
- 190. Technical issues were present in many districts and affected all types of machines including electronic poll books, tabulators, and ballot marking machines.

191. Just as in 2022, Mercer County District Board workers did not know how to conduct an election when the machines did not work.

192. David S. Lee was a challenger at a polling place in Pennington Borough, called Project Freedom, for the general election on November 7, 2023.

193. Mr. Lee observed one district with only 3 poll workers. Exhibit S at ¶5, Declaration of David S. Lee.

194. The polls opened at 6am and there was an immediate issue with the electronic poll books, which were not connected to the internet. *Id.* at ¶6.

195. The first voter Mr. Lee observed was able to cast a vote without issue, however the next voters were unable to scan their ballots into the tabulator. Exhibit *Id.* at ¶¶7-8.

196. Just as in 2022, the district board workers told the voters that they had to vote by provisional ballot because the machine was not working. *See id.* at ¶¶8-9.

197. Issues with the voting process caused delays prompting several would-be voters to leave, some after checking in, but without voting. These voters left the smartcards that enabled them to vote on an unmanned table. *Id.* at ¶11.

198. Mr. Lee observed a district board worker telling voters to come back another time. *Id.* at ¶12.
199. Mr. Lee observed voters leaving the polling place with their ballots. *Id.* at ¶13.
200. Mr. Lee observed that around 8am one of the ballot marking machines became inoperable. *Id.* at ¶15.
201. Mr. Lee observed two unidentified women enter the polling place, act with authority, and instruct the district board workers to shut down the inoperable ballot marking device and to pull the memory card out of the broken tabulator and to put it in a plastic bag the women provided. The district board workers were not able to do these tasks because they could not figure out how. A master poll worker was not present at this time, but when the master poll worker returned, she also did not know who the women were. *Id.* at ¶21.
202. Mr. Lee observed that around 1pm, the district board member who had been updating the public vote counter was told to go to another district. Mr. Lee observed that from that point forward, the public counter was not updated properly because the remaining district board workers did not know how. *Id.* at ¶22.

203. Mr. Lee observed that the provisional vote tally was also not kept. *Id.* at ¶22.

204. From 1pm to 5pm, Mr. Lee observed that one of the tabulators was working only intermittently. Mr. Lee observed many voters being forced to “re-do” voting because the first attempt at using the tabulator failed. Mr. Lee observed voters having to complete their ballots 3 times because the tabulator was not working. *Id.* at ¶25.

205. Significant delays in voting resulted from these issues.

206. Mr. Lee observed that at 5pm, one of the electronic poll books became inoperable. *Id.* at ¶26.

207. Mr. Lee observed that at 5pm all four District 10 ballot marking machines were inoperable. *Id.* at ¶27.

208. Mr. Lee observed a voter who had attempted to vote in the morning return at night to vote only to be told that she was marked as having already voted in the electronic poll book. Mr. Lee observed that this voter was required to vote provisionally. *Id.* at ¶31.

209. Mr. Lee observed that in District 10 every machine except for one electronic poll book became inoperable at some point during the day. *Id.* at ¶32.

210. Mr. Lee observed that the district board worker in District 10 did not know how to close the polls and had to wait for a master poll worker to arrive more than one hour after the polls had officially closed. *Id.* at ¶24.
211. The master poll worker questioned Mr. Lee about why he was still there. He replied that he was waiting for the bags to be sealed. *Id.* at ¶36.
212. Mr. Lee observed that two provisional bags were in use for District 10 through the day and that they were not sealed until 10pm. *Id.* at ¶39.
213. Beth Scheurerlein was also a challenger in the November 2023 general election. She observed five different polling locations throughout the day, all of which experienced significant problems.
214. When Ms. Scheurerlein arrived at the Pennington Town Hall polling location, she observed that one of two ballot marking devices for one district was not working, and one of the two smartcard encoders for another district was not working. Exhibit T, Declaration of Beth Scheurerlein at ¶¶6, 8.
215. Ms. Scheurerlein also observed poll workers having to unplug and plug back in devices to get them to work at this location. *Id.* at ¶8.
216. At the Union Fire House, Ms. Scheurerlein arrived around 6:30 pm and found that the only working tabulator had stopped working due to a paper jam. *Id.* at ¶17. Ms. Scheurerlein witnessed two men from the warehouse

(presumably the Superintendent of Elections' office) come to fix the tabulator but being unable to do so. She then witnessed a Dominion employee come to the location and try to fix the tabulator, but also being unable to do so. *Id.* at ¶¶20-21.

217. Ms. Scheuerlein witnessed voters leaving because of the long wait time, exceeding one and a half hours. *Id.* at ¶¶22-23.

218. Ms. Scheuerlein witnessed that at 7:40pm the master poll worker told people who had already completed paper ballots and were waiting due to the tabulator being inoperable being told that they could spoil their ballots and vote provisionally, which a few voters did. *Id.* at ¶¶23.

219. 10 minutes before the polls closed, the district board workers opened the emergency slot in the tabulator to collect the completed paper ballots. *Id.* at ¶¶24.

220. Mr. Scheuerlein observed various issues with the electronic poll books in multiple locations, including:

- a. At the Pennington Town Hall, at 10am a reminder to do the public vote tally popped up on the electronic poll book, which disrupted the check in process for two voters who were in the process of signing in. This caused their status to change to ineligible. Ms. Scheuerlein observed that the district board worker tried to encode

the smartcards again, but the electronic poll book now said those voters had already voted. Ms. Scheuerlin observed that one voter was then required to vote provisionally with a new smartcard. Ms. Scheuerlin observed that the district board worker who was checking in with the other voter was not able to load a new smartcard because her screen was black. Ms. Scheuerlin observed that this voter was told he could not vote at all and was turned away from the polls. *Id.* at ¶9.

- b. Also at the Pennington Town Hall, at 12pm, Ms. Scheuerlin witnessed the same thing happen with another voter; the pop-up message caused the check-in to be interrupted. Ms. Scheuerline witnessed that the district board worker spoiled the ballot and accidentally pressed the button that said, “don’t reissue.” The voter was then told to vote provisionally. *Id.* at ¶10.
- c. Also at the Pennington Town Hall, Ms. Scheuerlin witnessed a smart code encoder stop working and begin working again only when the district board worker rebooted the electronic poll book.
- d. At the Pennington Senior Center, Ms. Scheuerlin witnessed district board workers with 2% charges on their electronic poll books because the chargers were not working properly. Ms. Scheuerlin

witnessed district board workers removing the encoder and plugging in their personal cell phone chargers to charge the electronic poll book while checking in voters, and then replacing the phone charger with the encoder to load the smart card and finish checking the voter in, and then switching back to the phone charger when the check-in process was complete. This was necessary to prevent the electronic poll books from running out of charge while checking voters in. *Id.* at ¶15.

e. Ms. Scheuerlin saw two voters who lived at the same address (a father and son) registered in and required to vote in different districts. *Id.* at ¶13.

221. Ms. Scheuerlin witnessed polling locations running out of resources, including the Union Fire House location running out of smart cards and one of the districts at the Union Fire House running out of paper for the authority to vote slip printer. *Id.* at ¶¶18-19.

222. Ms. Scheuerline witnessed district board workers at the Pennington Town Hall confused about how to record provisional ballots, unable to find the form for tracking provisional ballots, and admitting that they had forgotten to keep count of provisional ballots. *Id.* at ¶7.

CAUSES OF ACTION

COUNT ONE

**Civil Rights Act- *N.J.S.A. 10:6-2*
(against all Defendants)**

223. “The right to vote is only meaningful...if all qualified voters have the full opportunity to participate in fair and lawful elections. Our voters are, dependent, therefore upon those person charged with election responsibilities.” Exhibit A, NJ District Board Worker Training Manual.
224. The right to vote is a fundamental right recognized by both the New Jersey and United States Constitutions.
225. The New Jersey Constitution provides: “Every citizen of the United States, of the age of 18 years, who shall have been a resident of this State and of the county in which he claims his vote 30 days, next before the election, shall be entitled to vote for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people.” N.J. Const. art. II, § 1, ¶ 3
226. The right to equal protection is recognized by the both the New Jersey and United States Constitutions.
227. The New Jersey Constitution states: “Government is instituted for the protection, security, and benefit of the people, and they have the right at all times to alter or reform the same.” N.J. Const. art. I, ¶ 2.
228. Defendants’ have a constitutional duty is to administer elections in a

fair and transparent manner in accordance with the statutes developed by the NJ legislature and required by the Constitutions of the United States and New Jersey so that the votes of qualified voters are not diluted through misconduct and fraud and the right of the people to alter or reform the government is not thwarted or subject to interference by government actors or those acting under the color of law.

229. The failure to administer the elections in such a way that maintains chain of custody of ballots and ascertains the will of the people violates these rights.

230. Defendants' have a duty to maintain poll books in such a manner that errors are not common so that the constitutional right to vote is not interfered with arbitrarily.

231. Plaintiffs have a constitutional right to vote without the interference of being forced to vote provisionally and having their votes subject to the process of adjudication despite being unquestionably qualified to vote.

232. Defendants failed to administer the 2022 and 2023 general elections in accordance with Title 19 and the NJ and United States Constitutions, which deprived Plaintiffs of constitutional and statutory rights and interfered with Plaintiffs' constitutional and statutory rights.

233. Specifically, Defendants:

- a. failed to provide functioning equipment on Election Day;
- b. failed to train District Board Members on what to do in the event of an Election Day machine failure;
- c. failed to have a plan in place to deal with tabulator failure;
- d. failed to maintain chain-of-custody of ballots throughout the county;
- e. failed to count the votes continuously in public;
- f. failed to update the public counters;
- g. required voters to vote by provisional ballot even though there was no question concerning the fact that they were qualified voters;
- h. failed to train District Board Workers about the proper use of provisional ballots so that they could properly assist voters;
- i. improperly rejected provisional ballots for reasons the Commissioners knew could not be correct;
- j. tabulated votes on machines that had not been tested for accuracy;
- k. Certified vote numbers that could not possibly be correct (e.g., certifying election results with fewer accepted mail-in ballots than were reported to the State voter history file);
- l. Failed to preserve the chain of custody of the voting authority papers by stringing them on a wire or string pursuant to *N.J.S.A. 19:52-2.1*;
- m. Failed to train District Board Workers on the proper sealing of the

machines;

- n. Failed to have the ballots tabulated by the District Boards;
- o. Failed to train District Board workers about procedures for counting paper ballots;
- p. Failed to adequately staff District Board in accordance with Title 19;
- q. Did not allow adequate public observation of the counting;
- r. Left ballots in tabulating machines that were not secured and were in unsecured locations for at least six days following the election;
- s. Failed to provide District Boards with necessary supplies to secure ballots;
- t. Improperly removed duties that are statutorily assigned to municipal clerks to be conducted at the County level instead;
- u. Failed to provide properly functioning electronic poll books to the District Boards;
- v. Maintained an electronic poll book riddled with errors that led to voter disenfranchisement;
- w. Failed to train District Board members on the need to elect a judge and inspector and the roles that judges and inspectors play in election administration pursuant to *N.J.S.A. 19:6-10*;

x. Upon information and belief, had people handling the ballots who had not been properly deputized.

234. Plaintiff Bethany Murranko was told she already voted when she had not.

235. Plaintiff Bethany Murranko was required to vote provisionally because of an electronic poll book or District Board member error.

236. Plaintiff Bethany Murranko's vote was rejected due to "missing ballot" even though she placed her ballot in the provisional envelope.

237. Plaintiff Bethany Murranko was disenfranchised and her fundamental right to vote in the 2022 General Election was violated due to Defendants' actions and inactions.

238. Plaintiff Bethany Murranko's right to equal protection under the 14th Amendment was violated because she was arbitrarily classified as having already voted and treated differently than similarly situated voters while exercising this fundamental right.

239. Plaintiff Mark Murranko, a qualified voter, was told he already voted when he had not.

240. Plaintiff Mark Murranko was required to vote provisionally because of an electronic poll book or District Board member error.

241. Plaintiff Mark Murranko's ballot was subject to a different procedure

- and adjudication because of Defendants' actions and inactions.
242. Plaintiff Mark Murranko's right to equal protection under the 14th Amendment was violated because he was arbitrarily classified as having already voted and treated differently than similarly situated voters while exercising a fundamental right.
243. Plaintiff Michael McKitish was not allowed to cast a regular paper ballot even though he was indisputably a qualified voter.
244. Plaintiff Michael McKitish's vote was improperly rejected for "voted by machine" even though he could not have possibly voted by machine.
245. Plaintiff Michael McKitish was disenfranchised and his fundamental right to vote in the 2022 General Election was violated due to Defendants' actions and inactions.
246. Plaintiff Jeremey Whaley was not allowed to cast a regular paper ballot even though he was indisputably a qualified voter.
247. Plaintiff Jeremey Whaley's vote was improperly rejected for "voted by machine" even though he could not have possibly voted by machine.
248. Plaintiff Jeremey Whaley was disenfranchised and his fundamental right to vote in the 2022 General Election was violated due to Defendants' actions and inactions.
249. Plaintiff David Matticoli was not allowed to cast a regular paper ballot

- even though he was indisputably a qualified voter.
250. Plaintiff David Matticoli's vote was improperly rejected for "voted by machine" even though he could not have possibly voted by machine.
251. Plaintiff David Matticoli was disenfranchised and his fundamental right to vote in the 2022 General Election was violated due to Defendants' actions and inactions.
252. Plaintiffs Michael McKitish, Jeremy Whaley, David Matticoli, and the other 749 voters who are improperly recorded in the poll book as having voted by machine and then trying to vote again by provisional ballot are officially recorded as having attempted to vote two times, even though they did not. This creates an implication of attempted criminal activity, which is damaging to them.
253. Plaintiff John Muka was a challenger for the 2022 election.
254. Plaintiff John Muka as a challenger, member of the public, and voter and resident of Mercer County had the statutory and constitutional right to observe the election tallying.
255. Plaintiff John Muka's statutory and constitutional rights were violated because Mercer County failed to conduct continuous and public counting of the votes and made it difficult for observers to observe the handling of the ballots and tallying of the votes.

256. Plaintiff Lisa Werdel was made to vote by provisional ballot because she was incorrectly marked as having already voted by mail.

257. Voters in the 2022 and 2023 elections were required to vote by provisional ballot when a voting machine is not working because Defendants have arbitrarily adopted an official or unofficial policy of requiring voters to vote by provisional ballot when a machine is not functional.

258. This policy, which has endured through at least two elections, violates the Constitutional and statutory rights of qualified voters to vote by regular ballot without interference.

259. This policy is arbitrary, capricious, and contrary to the law.

260. Plaintiff Patricia Johnson was a challenger for the 2022 election.

261. Plaintiff Patricia Johnson as a challenger, member of the public, and voter and resident of Mercer County had the statutory and constitutional right to observe the election tallying.

262. Plaintiff Patricia Johnson's statutory and constitutional rights were violated because Mercer County failed to conduct continuous and public counting of the votes, interfered with the ability of observers to observe the handling of the ballots and tallying of the votes.

263. It has been long recognized that "[t]he moment an individual's vote

becomes subject to an error in the vote tabulation process, the easier it is for one's vote to be diluted" and that "voters' exercise of the Franchise must not be diluted by another's fraudulent or illegal vote." *In re General Election of 1991 for the Office of Township Committee for the Twp. Of Maywood*, 255 N.J. Super. 690, 696 (Law Div. 1992).

264. All Plaintiffs had their votes improperly diluted because Mercer County has failed to properly administer the elections for at least two years making the actual election outcomes and will of the voters impossible to know and the entire election process susceptible to the fraud Title 19 is designed to prevent.

265. All Plaintiffs were deprived of their rights under N.J. Const. art. I, ¶ 2 because the failure to administer the elections in a manner that ascertained and expressed the will of the people violates the right of the people to alter and/or reform the government.

266. All Plaintiffs have sustained damages due to Defendants' actions and inactions, which deprived them of the right to vote, interfered with their exercise of the right to vote, and deprived them of the right to fair elections.

COUNT TWO

1983 of the Civil Rights Act (against all Defendants)

267. Plaintiffs repeat and reallege each of the preceding allegations as if set

forth fully herein.

268. Defendants' actions and inactions and failure to administer elections held within Mercer County in accordance with the laws of the State deprived Plaintiffs of their Constitutional rights and unconstitutionally diluted their votes because qualified voters were prevented from voting and the failure to maintain chain of custody on most, perhaps all, Election Day ballots is malconduct that prevented and/or thwarted the ability of the people to alter or reform the government through the election process.

269. Plaintiffs who were required to vote provisionally due to the County's failure to maintain an accurate electronic poll book were subject to unequal treatment in the exercise of a Constitutional right in violation of the right to equal protection under the law.

270. Plaintiffs whose votes were not counted despite being qualified voters were disenfranchised in violation of their rights under the NJ and United States Constitutions.

COUNT THREE

DECLARATORY JUDGMENT (against all Defendants)

271. Plaintiffs repeat and reallege each of the preceding allegations as if set forth fully herein.

272. Mercer County has, through Open Public Records Act requests, set

- forth its position that certain portions of Title 19 no longer apply.
273. Title 19 applies so long as it does not conflict with Chapter 53.
274. Provisional ballots should not be used for voters whose qualification is not in question.
275. Tabulation of votes is to take place at the District Board level unless the County designates a counting center and the tabulators at said counting center have undergone the statutorily required testing.
276. Ballots are to be returned to and preserved by the municipal clerks.
277. As detailed herein, Mercer County has adopted numerous policies and/or practices contrary to Title 19.
278. Plaintiffs are damaged by these policies.
279. Plaintiffs' request declaratory judgment on each and every violation of Title 19 described herein.

PRAYER FOR RELIEF

Wherefore, Plaintiff requests the following relief:

- a. Declare that Defendants violated the Constitutional and statutory rights of Plaintiffs Bethany Murranko, Michael McKitish, Joanne McKitish, Jeremy Whaley, and David Matticoli by improperly rejecting their votes in the 2022 election;
- b. Declare the Defendants violated the statutory rights of Plaintiffs

John Muka and Patricia Johnson by thwarting their ability to observe vote tabulation in the 2022 general election;

- c. Declare that Defendants violated the Constitutional and statutory rights of Plaintiffs Bethany Murranko, Mark Murranko, Michael McKitish, Joanne McKitish, Jeremy Whaley, Lisa Werdel, and David Matticoli by requiring them to vote provisionally due to machine failure;
- d. Declare that Defendants violated the Constitutional and statutory rights of all Plaintiffs by failing to maintain chain of custody on ballots throughout Mercer County for the general election held in November 2022;
- e. Declare that Defendants' formal and/or informal policy of requiring qualified voters to vote provisionally in the event of tabulator failure violates Title 19 and Plaintiffs' Constitutional rights;
- f. Declare that Defendants' formal and/or informal policy of removing the responsibility of vote tabulation from the District Boards to the County without designating a counting center violates Title 19;
- g. Declare that Defendants' failure to provide functioning poll books and failure to accurately maintain the poll books violates Title 19 and Plaintiffs' Constitutional rights;

- h. Declare that Defendants' failure to ensure that tabulators will properly tabulate votes violates Title 19 and Plaintiffs' Constitutional rights;
- i. Declare that Defendants' failure to provide functional equipment in the 2022 and 2023 general elections, including tabulators and electronic poll books violates Title 19 and Plaintiffs' Constitutional rights;
- j. Declare that Defendants' failure to have an emergency plan in the event of machine failure violates Title 19 and Plaintiffs' Constitutional rights;
- k. Declare that Defendants' failure to update the public counters on Election Day and adequately train District Board workers as to this Title 19 obligation violates Title 19;
- l. Declare that Defendants' failure to train District Board workers on how to maintain chain of custody of ballots and Defendants' violates Title 19 and the New Jersey and United States Constitutions;
- m. Declare that Defendants' failure to train District Board workers on how to administer elections and use the machines provided by the County violates Title 19 and the New Jersey and United States' Constitutions;

- n. Declare that Defendants' failure to string voting authority slips and train District Board members to do so in accordance with Title 19 violates Title 19;
- o. Declare that Defendants' failure to adequately staff polling places with sufficient District Board members violates Title 19 and the New Jersey and United States Constitutions;
- p. Order that Defendants undergo training concerning Title 19 and how to properly administer an election pursuant to New Jersey laws;
- q. Order that Defendants train District Board workers on how to count paper ballots in accordance with Title 19;
- r. Order that Defendants train District Board workers to properly perform all of their other duties under Title 19;
- s. Order that Defendants reconcile the ballots from the 2022 by ballot type;
- t. Order the Defendants correct the improper designation of "voted by machine" for voters who did not, and could not have, voted by machine in the 2022 general election;
- u. Order that Defendants shall publish a public reconciliation of all ballots types for the 2023, 2024, and 2025 primary and general elections;

- v. Order that Defendants identify the cause of errors in the electronic polling books and adopt measures to prevent such errors in the future;
- w. Order that Defendants identify all machines and electronic polling books that failed to work properly in the 2022 and 2023 elections, identify the cause of errors and failures of any and all tabulators, electronic poll books, and ballot marking devices, and take all steps necessary to prevent such errors in the future;
- x. Order that Defendants develop a plan in the event of machine failure and train all District Board workers accordingly;
- y. Award Plaintiffs' compensatory damages of \$50 for each day the County has conducted business without counting their vote;
- z. Award Plaintiffs' consequential damages;
- aa. Award Plaintiffs' pre-judgment and post-judgment interest;
- bb. Award Plaintiffs' attorneys fees pursuant to the New Jersey Civil Rights Act and/or section 1988 of the U.S. Civil Rights Act;
- cc. Appointment an independent monitor to observe the 2024 primary and general elections to ensure compliance with Title 19 and the Constitutions of the United States and New Jersey;
- dd. Grant any and all other such relief as this Court deems just and

equitable.

Respectfully submitted,

Dated: February 14, 2024

s/ Dana Wefer, Esq.

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DESIGNATION OF TRIAL COUNSEL

Pursuant to R 4:25-4, Dana Wefer, Esq. is hereby designated as trial counsel.

Dated: February 14, 2024

s/ Dana Wefer, Esq.

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JURY TRIAL DEMANDED

Pursuant to R. 4:35-1, Plaintiffs demand a jury trial on all issues herein.

Dated: February 14, 2024

s/ Dana Wefer, Esq.

Law Offices of Dana Wefer, LLC
Dana Wefer, Esq.

CERTIFICATION PURSUANT TO R. 1:38-7(C)(2) AND 4:5-1(B)(3).

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

Dated: February 14, 2024

s/ Dana Wefer, Esq.

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CERTIFICATION PURSUANT TO R 4:5-1

The matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

Dated: February 14, 2024

s/ Dana Wefer, Esq.

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