

**KING, MOENCH & COLLINS, LLP**

Matthew C. Moench, Esq.  
Attorney ID. No. 031462007  
51 Gibraltar Drive, Suite 2F  
Morris Plains, NJ 07950  
(973) 998-6860  
(973) 998-6863 (facsimile)  
mmoench@kingmoench.com  
Attorney for Plaintiffs

**BURLINGTON COUNTY REGULAR  
REPUBLICAN ORGANIZATION, and  
SEAN EARLEN, in his capacity as Chair,  
and SAM FOSTER, a candidate in the  
Republican Primary for Moorestown  
Township Council**

**Plaintiffs,  
v.**

**JOANNE SCHWARTZ, Burlington  
County Clerk,**

**Defendant.**

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION**

BURLINGTON COUNTY

**DOCKET NO. BUR-L-\_\_\_\_\_ -24**

CIVIL ACTION

**ORDER TO SHOW CAUSE SEEKING  
TEMPORARY RESTRAINTS**

This matter, having been opened to the Court upon application of Matthew C. Moench, Esq. of King, Moench, & Collins LLP, Attorneys for Plaintiffs, Burlington County Regular Republican Organization and Sean Earlen, seeking relief by way of temporary restraints pursuant to R. 4:52, based upon the facts set forth in the Verified Complaint, Letter Brief and Certification filed herewith; and it appearing that immediate and irreparable damage will probably result before notice can be given and a hearing held, and for good cause shown;

**IT IS ORDERED** that on the \_\_\_\_\_ day of \_\_\_\_\_, 2024, **ORDERED** that Defendant, Burlington County Clerk Joanne Schwartz, appear and show cause before the Superior Court at the Burlington County Courthouse in Mount Holly, New Jersey at \_\_\_\_\_ o'clock in the

day, or soon thereafter, as counsel may be heard, why an Order should not be issued preliminarily enjoining and restraining Defendant, Burlington County Clerk Joanne Schwartz from:

- A. Ordering Defendant, Burlington County Clerk Joanne Schwartz from imposing an office-block ballot design on the Republican Primary over the objections of the BCRRO and Republican Candidates who have approved bracketing requests and who wish to bracket together;
- B. Ordering that Defendant, Burlington County Clerk Joanne Schwartz shall conform with N.J.S.A. 19:49-2 and honor all validly received bracketing requests and to utilize a ballot design consistent with N.J.S.A. 19:49-2;
- C. Granting Plaintiff's request for Attorneys' fees in accordance with, and for reasons cited, in the Plaintiff's Certification. Defendants shall pay counsel fees and costs associated with this Order to Show Cause in the amount of \$\_\_\_\_\_, made payable to Plaintiff's attorney, Matthew C. Moench, Esq. within ten days of this Order.
- D. Granting such other relief as this court deems equitable and just;

And it is **FURTHER ORDERED** that:

1. A copy of this Order to Show Cause, Verified Complaint, and all supporting affidavits or certifications submitted in support of this application be served upon the Defendants within \_\_\_\_ days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process
2. Plaintiff must file with the Court their proof of service of the pleadings on the Defendants no later than three (3) days before the return date.
3. Defendants shall file and serve a written answer, an answering affidavit or a motion response on the return date to this Order to Show Cause and the relief required in

the Verified Complaint and proof of service of the same by \_\_\_\_\_, 2024. The answer, answering affidavit or motion, as the case may be, must be filed with the Clerk of the Superior Court in the county listed above and a copy of the papers must be sent directly to the chambers of Judge \_\_\_\_\_.

4. The Plaintiff must file and serve any Reply to Defendants' Order to Show Cause opposition by \_\_\_\_\_, 2024. The Reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the papers must be sent directly to the chambers of Judge \_\_\_\_\_.
5. If the Defendants do not file and serve opposition to this Order to Show Cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the Plaintiffs file proof of service and a proposed form of Order at least three days prior to the return date.
6. Defendants take notice that Plaintiffs have filed a lawsuit in the Superior Court of New Jersey. Plaintiff's Verified Complaint attached to this Order to Show Cause states the basis of the lawsuit. If Defendants dispute this Verified Complaint, they must file a written answer, an answering affidavit, or a motion returnable on the return date of the Order to Show Cause and proof of service before the return date of the Order to Show Cause.
7. These documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of these offices is available in the Civil Division Management Office in Burlington County and online at [www.judiciary.state.nj.us/prose/10153\\_deputyclerklawref.pdf](http://www.judiciary.state.nj.us/prose/10153_deputyclerklawref.pdf). Include a filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your

answer, answering affidavit, or motion to the Plaintiff's attorney whose name and address appear above. A telephone call will not protect your rights; you must file and serve your answer, answering affidavit, or motion with the fee or judgment may entered against you by default.

8. If you cannot afford an attorney, you may call the Legal Services Office in the county in which you reside or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-552). If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at [www.judiciary.state.nj.us/prose/10153\\_deputyclerklawref.pdf](http://www.judiciary.state.nj.us/prose/10153_deputyclerklawref.pdf).
9. The Court will entertain argument, but not testimony, on the return date of the Order to Show Cause, unless the Court and parties are advised to the contrary no later than \_\_\_\_ days before the return date.

KING, MOENCH & COLLINS, LLP  
Matthew C. Moench, Esq.  
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51 Gibraltar Drive, Suite 2F  
Morris Plains, NJ 07950  
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**BURLINGTON COUNTY REGULAR  
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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION

BURLINGTON COUNTY

DOCKET NO. BUR-L-\_\_\_\_\_-24

CIVIL ACTION

**VERIFIED COMPLAINT**

Plaintiffs, Burlington County Regular Republican Organization (hereinafter “BCRRO”) Sean Earlen (hereinafter “Chairman Earlen”), and Sam Foster, a candidate in the Republican Primary for Moorestown Township Council, by way of Verified Complaint against Defendant, Joanne Schwartz, Burlington County Clerk, (“Schwartz”), states as follows:

**GENERAL ALLEGATIONS**

1. BCRRO is the official county Republican Party in the County of Burlington authorized and organized under N.J.S.A. 19:5-1 et seq. and applicable state statutes.
2. Sean Earlen is the Chairman of the BCRRO, elected pursuant to Title 19.
3. Chairman Earlen and the BCRRO are responsible for advocating the interests of Republican candidates in Burlington County.

4. Chairman Earlen is also the campaign manager for the Republican County candidates running under the BCRRO slogan.

5. Sam Foster resides at 310 Park Drive, Moorestown, County of Burlington, State of New Jersey.

6. Sam Foster is a candidate in the Republican Primary for Moorestown Township Council who requested and was awarded the BCRRO slogan.

7. The BCRRO endorses candidates in the Republican primary, and pursuant to N.J.S.A. 19:49-2, has awarded its slogan "BCRRO" to candidates who receive approval to bracket with candidates for County Office who have received the endorsement of the BCRRO.

8. Joanne Schwartz is the Burlington County Clerk, who is responsible for receiving petitions for candidates for county office.

9. Pursuant to N.J.S.A. 19:49-2, Schwartz is responsible for receiving requests for slogans and for requests to bracket with candidates for County Office.

10. Upon receiving those requests, Schwartz is required to notify the campaign manager for the county candidates.

11. Thereafter, Schwartz is required to process approvals for bracketing and joint slogans.

12. Pursuant to N.J.S.A. 19:49-2, candidates for municipal and state office have the right to request to be "bracketed" with the joint county candidates, and if approved, they are entitled to appear bracketed with other candidates utilizing the same slogan, as Sam Foster has done.

13. This system has been utilized in Burlington County consistent with N.J.S.A. 19:49-2 for decades.

14. That process under N.J.S.A. 19:49-2 begin this year on Tuesday, March 26, 2024, after candidate petitions were due to be filed on March 25, 2024.

15. Burlington County Deputy Clerk Phil Warren sent an email to Chairman Sean Earlen and Burlington County Republican Committee Executive Director Anthony Veneri, asking whether there was anything the Republicans needed from their office regarding candidate petitions.

16. Mr. Warren asked if BCRRO would be turning in bracketing paperwork giving the endorsed candidates permission to bracket and use the Burlington Republican slogan.

17. Mr. Veneri confirmed they would, and on Wednesday, March 27, 2024, the paperwork was provided to the Deputy County Clerk confirming the name of Plaintiff Foster as a bracketed candidate.

18. Mr. Warren confirmed receipt of the list of candidates and slogans that were being used by BCRRO candidates and that the BCRRO should reach out to Michelle Zeno with any additional bracketing and slogan issues.

19. On April 1, 2024, the BCRRO sent a letter from the Moorestown Republican Committee to Defendant Clerk, that confirmed a change in candidates for Moorestown Town Council.

20. That letter advised of a switch, which stated that the new candidate would also be bracketed with the other two candidates in Moorestown.

21. Ms. Zeno from the Clerk's office confirmed the change in the County's records.

22. Additionally, on April 1, 2024, BCRRO sent Ms. Zeno an email regarding candidates that were using the BCRRO slogan without the proper bracketing paperwork and permission to use it.

23. Ms. Zeno confirmed receipt and that she had taken the slogans away from those candidates.

24. Ms. Zeno also sent an email to candidates who had filed with the BCRRO slogan but did not have the bracketing paperwork.

25. BCRRO confirmed who was permitted to bracket and who was not.

26. Ms. Zeno again confirmed receipt and that the County records would be updated.

27. At no point did Ms. Zeno, or any other official from the Clerk's office indicate that they did not intend on honoring those requests or would not comply with N.J.S.A. 19:49-2.

28. On April 3, 2024, Ms. Zeno sent BCRRO an updated list of candidates and slogans that the county had on file.

29. BCRRO confirmed that the clerk's office had removed the bracketed slogan from all candidates who did not have permission to bracket or use the slogan.

30. Ms. Zeno then confirmed that a final list would be provided after the drawing.

31. Again, no indication was made about an intention to not honor the bracketing requests.

32. It was not until late morning on April 4 2024, hours before the ballot draw, that BCRRO heard rumors that the Clerk was considering implementing office-block voting on the Republican primary.

33. That was confirmed by counsel for the Clerk through a telephone call, and then subsequently confirmed through correspondence with counsel.

**COUNT I – VIOLATION OF N.J.S.A. 19:49-2**

34. Plaintiff repeats and incorporates each and every allegation contained in Paragraphs 1 through 31 as if fully set forth herein.

35. N.J.S.A. 19:49-2 permits candidates to bracket in a primary election utilizing the same slogan if requested and if permission was given by the county candidates.

36. N.J.S.A. 19:49-2 does not provide the County Clerk any discretion in granting bracketing requests which are properly requested and approved pursuant to the statute.

37. There is no current order prohibiting the Clerk from fulfilling her statutory obligations.

38. However, the County Clerk has indicated her intention of refusing to honor bracketing request and to impose an office-block ballot design on Republican candidates against their will .



39. BCRRO and Chairman Earlen as campaign manager for the County candidates approved bracketing requests and wish to have their endorsed candidates appear together on the ballot bracketed together, that includes Plaintiff Foster.

40. The County Clerk is refusing to honor this request.

**WHEREFORE**, Plaintiffs demands judgment as follows:

- A. The Court enter an Order enjoining the County Clerk from imposing an office-block ballot design on the Republican Primary over the objections of the BCRRO and Republican Candidates who have approved bracketing requests and who wish to bracket together;
- B. Directing that the County Clerk shall conform with N.J.S.A. 19:49-2 and honor all validly received bracketing requests and to utilize a ballot design consistent with N.J.S.A. 19:49-2;
- C. Awarding Attorney Fees and Costs, and
- D. Any such other relief deemed by the Court to be equitable and just.

**KING MOENCH & COLLINS, LLP**  
*Attorneys for Plaintiffs*

**/s/ Matthew C. Moench**  
Matthew C. Moench

Dated: April 5, 2024

**VERIFICATION**

Sam Foster, hereby certifies as follows:

1. I am the petitioner in the foregoing matter.
2. I am also a candidate in the Republican Primary Election for Moorestown Township Council.
3. I have read the contents of the petition and incorporate same by reference and state that the contents therein are true to the best of my knowledge, information and belief.
4. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: April 5, 2024



A handwritten signature in black ink, appearing to read 'S. Foster', is written over a horizontal line.

Sam Foster

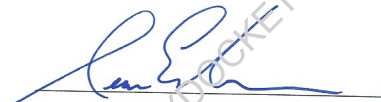
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VERIFICATION

Sean Earlen, hereby certifies as follows:

1. I am the petitioner in the foregoing matter.
2. I am also the Chairman of the BCRRO and authorized to sign on its behalf.
3. I have read the contents of the petition and incorporate same by reference and state that the contents therein are true to the best of my knowledge, information and belief.
4. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: April 5, 2024



Sean Earlen

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**DESIGNATION OF TRIAL COUNSEL**

Matthew C. Moench, Esq. is hereby designated as trial counsel in this matter.

**RULE 4:5-1 CERTIFICATION**

I certify that the matter in controversy is not the subject of any other action pending in any court or a pending arbitration proceeding, and no such action is contemplated. I know of no other parties that should be made part of this lawsuit. I recognize my continuing obligation to file and serve on all parties and the Court any amended certification, if there is a change in the facts stated in the original certification.

**RULE 1:38-7 CERTIFICATION**

I certify that any of the defendant(s)' confidential identifiers have been redacted from the documents submitted to the Court and will be redacted from any documents submitted in the future, in accordance with R. 1:38-7(b).

**KING MOENCH & COLLINS, LLP**  
*Attorneys for Plaintiffs*

**/s/ Matthew C. Moench**  
Matthew C. Moench

Dated: April 5, 2024

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**KMC** | KING, MOENCH  
& COLLINS LLP

ATTORNEYS AT LAW

PETER J. KING ◊  
**MATTHEW C. MOENCH** \*  
MICHAEL L. COLLINS \*

ROMAN B. HIRNIAK ^  
KRISHNA R. JHAVERI \*+  
TIFFANY TAGARELLI

RYAN WINDELS

◊ Certified by the Supreme Court of New Jersey  
as a Municipal Court Attorney  
\* Also Member of the New York Bar  
+ Also Member of the Arizona Bar  
^ Of Counsel

Writer's Address:

51 Gibraltar Drive, Suite 2F  
Morris Plains, NJ 07950  
(973) 998-6860

Writer's E-Mail:  
[MMoench@kingmoench.com](mailto:MMoench@kingmoench.com)



Monmouth County Office:  
225 Highway 35, Suite 202  
Red Bank, NJ 07701  
(732) 546-3670

Website:  
[www.kingmoench.com](http://www.kingmoench.com)

A limited liability partnership of Peter J. King, LLC,  
Moench Law, LLC & Collins Law, LLC

April 5, 2024

**VIA ECOURTS FILING:**

Honorable Jeanne T. Covert, A.J.S.C.  
Burlington County Superior Court  
Burlington County Courts Facility  
49 Rancocas Road, 7<sup>th</sup> Floor  
Mount Holly, New Jersey 08060

**Re: BCRRO v. Schwartz**

Dear Judge Covert,

As the saying goes, “everything old is new again.” And so it is for the issue now before the Court, which was resolved in 1975 by the New Jersey Supreme Court in Quarembra v. Allan, 67 N.J. 1 (1975) – that candidates have a right to bracket in the primary under a common slogan and that County Clerks lack the discretion to unilaterally decide otherwise. While the Federal District Court may not be bound the Supreme Court’s Quarembra decision, that decision remains binding on this Court and upon Defendant, Burlington County Clerk Joanne Schwartz. Pursuant to N.J.S.A. 19:49-2, Republican candidates in Burlington County have a right to appear to together on the ballot under a common slogan. Those rights are statutorily protected by the New Jersey Legislature and upheld by the New Jersey Supreme Court. Clerk Schwartz has no ability to overstep the Legislative mandates, ignore the Supreme Court’s decisions, or expand the Federal

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District Court's Orders, and any effort to do so is an abuse of her powers. An injunction must be issued to compel Clerk Schwartz to comply with the law as it exists today and perform her obligations as the County Clerk.

### **FACTS AND PROCEDURAL BACKGROUND**

Since the 1940s, political candidates in a primary election have had the right to "bracket" together in a single row or column under a common slogan. This right has been set forth in statute, N.J.S.A. 19:49-2, upheld by the New Jersey Supreme Court and numerous lower court decisions, and has been a bedrock principle of New Jersey politics of nearly 90 years. While the statute has been challenged in the past, those efforts have been thoroughly rebuffed by the New Jersey courts.

In 2020, Plaintiff Christine Conforti brought an action in federal court challenging several aspects of New Jersey's bracketing and ballot design statutes, including portions of N.J.S.A. 19:49-2. That case, Conforti v. Hanlon, 20-8267, is pending while the parties engage in discovery after a motion to dismiss was denied.

On February 26, 2024, Congressman Andy Kim, in his capacity as a Democratic Party candidate for U.S. Senate, and two other Democratic Party candidates for federal office in the upcoming June 4, 2024, Democratic primary challenged the constitutionality of N.J.S.A. 19:49-2 and other various statutes impacting bracketing and ballot placement of candidates in the Democratic Primary. Kim v. Hanlon, 24-1098. On March 29, 2024, the Honorable Zahid N. Quraishi, U.S.D.J., entered a preliminary injunction finding that the Democratic plaintiffs had demonstrated a likelihood of success on the merits of their constitutional claims, and entering an injunction prohibiting county clerks from using traditional bracketing methods, and instead directing that a specific form of office-block voting should be utilized. (See Certification Tiffany

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D. Tagarelli, Esq., dated April 5, 2024 ( hereinafter “Tagarelli Cert.”), **Ex. A**) (hereinafter referred to as “Preliminary Injunction”).

In response to the Preliminary Injunction several actions occurred relevant to the current dispute. First, the Morris County Republican Committee submitted a letter to the District Court asking for clarification as to the scope of the Preliminary Injunction. On March 30, 2024, the Judge Quraishi issued a Letter Order clearly and unequivocally stating that the Preliminary Injunction did not apply to the Republican primary. The Court’s Letter Order states:

The preliminary injunction granted in this case is, and must be, limited to the 2024 Democratic Primary Election. Plaintiffs’ allegations and sought relief only applied to the 2024 Democratic Primary Election . . . The Court’s order is therefore limited to the 2024 Democratic Primary Election only, and this Court declines to extend the scope of its decision beyond the limitations of the present litigation.

Letter Order, ECF No. 207, Kim v. Hanlon et. al, No. 24-1098-ZNQ-TJB (D.N.J. 2024). See Tagarelli Cert **Exhibit B**.

Following entry of the Preliminary Injunction numerous county clerks filed motions for a stay of the District Court’s decision and simultaneously sought emergent Third Circuit review. Later in the day after the District Court clarified that the Preliminary Injunction did not apply to the Republican primary, counsel for Clerk Schwartz submitted a letter stating that the Clerk was not going to seek an appeal or a stay, but instead, Clerk Schwartz was going to comply with the Court’s Orders and take steps to comply. (See Tagarelli Cert **Exhibit C**, Letter dated March 30, 2024).

While other county clerks raised various concerns about complying with the Preliminary Injunction, including concerns that the disparity between the Republican and Democratic primary, would create additional issues for the clerks, Schwartz raised none of those concerns. Her letter

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to the District Court did not indicate any intention to do anything other than comply with the District Court – an office-block design for the Democratic primary and traditional bracketing for Republicans. If the Burlington County Clerk knew then that her intention was not to comply with N.J.S.A. 19:49-2, she did not indicate as such to the District Court or to the Burlington County Republican party.

In fact, during the week preceding the Preliminary Injunction, Clerk Schwartz's office acted in conformance with N.J.S.A. 19:49-2. There was no indication that Clerk Schwartz believed that she had any inherent power to decide unilaterally and at any moment to reject the traditional bracketing enshrined in statute.

On Tuesday, March 26, 2024 Burlington County Deputy Clerk Phil Warren sent an email to Burlington County Republican Chairman Sean Earlen and Burlington County Republican Committee Executive Director Anthony Veneri, asking whether there was anything the Republicans needed from their office in regards to candidate petitions. Mr. Warren asked if BCRRO would be turning in bracketing paperwork giving the endorsed candidates permission to bracket and use the Burlington Republican slogan. Mr. Veneri confirmed they would, and on Wednesday, March 27, the paperwork was provided to the Deputy County Clerk. Mr. Warren confirmed receipt of the list of candidates and slogans that were being used by BCRRO candidates and that the BCRRO should reach out to Michelle Zeno with any additional bracketing and slogan issues.

On April 1, the District Court denied the other clerks' request for a stay. While the District Court did not address the merits of the arguments on the motion for the stay, other than to reincorporate the Judge's prior Preliminary Injunction Opinion, he did briefly address the only new arguments raised by the clerks – that the District Court's March 30 Order refusing to extend



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the Preliminary Injunction to the Republican Primary while applying it to the Democratic Primary, would cause additional issues for the county clerks. Apparently, the District Court had the same understanding as BCRRO about Clerk Schwartz's intentions because Judge Quraishi specifically pointed to Schwartz's intention to comply to reject the argument that the dual system would cause confusion. (See Tagarelli Cert. **Exhibit D**, Order dated April 1, 2024, at 2, n.1). Clerk Schwartz did not correct the District Judge as to her intention nor did she otherwise indicate any different course to BCRRO. Instead, it was business as usual.

On April 1, the BCRRO sent a letter from the Moorestown Republican Committee that confirmed a change in candidates for Moorestown Town Council. That letter of the switch, which stated that the new candidate would also be bracketed with the other two candidates in Moorestown. Ms. Zeno from the Clerk's office confirmed the change in the County's records.

Also on April 1, BCRRO sent Ms. Zeno an email regarding candidates that were using the BCRRO slogan without the proper bracketing paperwork and permission to use it. Ms. Zeno confirmed receipt and that she had taken the slogans away from those candidates. Ms. Zeno also sent an email of candidates who had filed with the BCRRO slogan but did not have the bracketing paperwork. BCRRO confirmed who was permitted to bracket and who was not. Again Ms. Zeno confirmed receipt and that the County records would be updated. At no point did Ms. Zeno, or any other official from the Clerk's office indicate that they did not intend on honoring those requests or would not comply with N.J.S.A. 19:49-2.

On April 2, 2024, my office, on behalf of the New Jersey Republican Chairs Association, sent a letter to the Hudson County Clerk in response to a communication from the Hudson County Clerk that he was considering not following N.J.S.A. 19:49-2 and unilaterally applying office-block voting. (See Tagarelli Cert., **Exhibit E**). That letter was copied to all county clerks and sent

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to their attorneys of record in the Kim v. Hanlon case. Burlington County Clerk did not provide any response or suggestion that they were also considering applying office-block voting to the Republican primary.

On April 3, 2024, the Third Circuit denied requests for a stay, and instead set an accelerated merits briefing schedule over the next week and set oral arguments for Friday, April 12. At that point in time, all parties knew that no stay was imminent and thus ballot drawing would occur on April 4 as set in the statute. No change in conduct occurred from the Burlington County Clerk's office

Instead, it continued to be business as usual. On April 3, Ms. Zeno sent BCRRO an updated list of candidates and slogans that the county had on file. BCRRO confirmed that the clerk's office had removed the bracketed slogan from all candidates who did not have permission to bracket or use the slogan. Ms. Zeno then confirmed that a final list would be provided after the drawing. Again, no indication was made about an intention to not honor the bracketing requests.

It was not until late morning on April 4 2024, hours before the ballot draw, that BCRRO heard rumors that Burlington County Clerk was considering implementing office-block voting on the Republican primary. That was confirmed by counsel for the Burlington Clerk through a telephone call, and then subsequently confirmed through correspondence with counsel where Mr. Natale confirmed Clerk Schwartz's intention to move forward with office-block ballot despite for the Republican primary. (See Tagarelli Cert., **Exhibit F**).<sup>1</sup>

This suit follows.

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<sup>1</sup> This communication is included solely to establish the time frame and confirmation as to the Clerk's intention (which remains the only known confirmation of the office-block voting intention of the Clerk. Counsel engaged in a series of emails relating to the legal merits of the issues pending before this Court as well as some discussion of procedural and timing of this motion. That correspondence is not otherwise relevant and not included.

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## **LEGAL ARUGMENT**

### **INJUNCTIVE RELIEF IS APPROPRIATE UNDER CROWE V. DEGIOIA**

In the State of New Jersey, whether preliminary relief should be granted is procedural in nature and governed by the principles set forth in Crowe v. DeGioia, 90 N.J. 126 (1982). The Supreme Court of New Jersey has held that a preliminary injunction should only issue when necessary to prevent irreparable harm. Id. at 132. Moreover, a plaintiff seeking temporary relief must demonstrate that the underlying claims are well-settled and that he has a reasonable probability of ultimate success on the merits. Id. at 133. Finally, courts should consider the relative hardships to the parties in granting or denying the relief. Id. Plaintiff has satisfied each of these criteria, and thus, an injunction should issue.

### **POINT I – THE CLERK LACKS DISCRETION TO DEVIATE FROM THE MANDATES OF N.J.S.A. 19:49-2 AND MUST UPHOLD ALL VALID BRACKETING REQUESTS SUBMITTED BY REPUBLICAN CANDIDATES IN BURLINGTON COUNTY**

The crux of the Clerk Schwartz's position appears to be her mistaken belief that she has discretion to decide whether or not to follow bracketing scheme set forth in N.J.S.A. 19:49-2. Contrary to her position, there is no support in the statutory language or case law suggesting such a breadth of discretion. In fact, all cases addressing this issue have affirmatively held against Clerk Schwartz's position, and every other Clerk in the state is following the law as written.

N.J.S.A. 19:49-2 is a cumbersome statute governing multiple issues related to official ballots in New Jersey. The first paragraph provides various standards which apply to all ballots, general or primary, and addresses items like the color of ink, the position and format of public questions on the ballot, and how party nominations shall appear on general election ballots.

The second paragraph addresses bracketing for primary elections. In relevant part, it states that "all candidates who shall file a joint petition with the county clerk" and who request the same

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slogan or designation should appear together on the ballot. Then, the statute provides that if any candidates for municipal or party office request to use the same slogan or designation as the county candidates, they may request to appear with the county candidates “bracketed” on the same line. If that request is made, the statute provides that the County Clerk “**shall** forthwith notify the campaign manager” of the county candidates of the request, and that if the campaign manager shall file his consent to the county clerk, the county clerk “**shall** place the name of such candidate on the same line of the voting machine on which appears the names of the candidates who have filed the joint petition...” A similar process is repeated for candidates who file with the Secretary of State (state legislature, federal, or statewide candidates).

Ultimately, the statute provides no discretion to the County Clerk on whether to implement the bracketing system for primary candidates so long as they comply with the statute. The only discretion rests with the candidates and the campaign manager for the joint county ticket; not the clerk.

N.J.S.A. 19:49-2 in its entirety is as follows:

All official ballots shall be in black ink in type as large as space will reasonably permit; provided, however, that any public question which shall be placed on the ballot shall be in red and above any public question to be voted upon by the voters of the entire State there shall be, also in red, a description of the public question, which description shall not exceed six words and shall be in type as large as is practicable. Party nominations shall be arranged on each voting machine, either in columns or horizontal rows; the caption of the various ballots on the machines shall be so placed on the machines as to indicate to the voter what device is to be used or operated in order to vote for the candidates or candidate of his or her choice. The providing of the official ballots, the order of the precedence and arrangement of parties and of candidates, and the instructions for the use of a device to be used or operated in order to vote for candidates shall be as now required by law, except that in those counties where voting machines are used, the county clerk shall have the authority to determine the specifications for, and the final arrangement of, the official ballots.

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For the primary election for the general election in all counties where voting machines are or shall be used, all candidates who shall file a joint petition with the county clerk of their respective county and who shall choose the same designation or slogan shall be drawn for position on the ballot as a unit and shall have their names placed on the same line of the voting machine; and provided further, that all candidates for municipal or party office in municipalities in counties where voting machines are or shall be used who shall file a petition with the clerk of their municipality bearing the same designation or slogan as that of the candidates filing a joint petition with the county clerk as aforesaid, may request that his or her name be placed on the same line of the voting machine with the candidates who have filed a joint petition with the county clerk as aforesaid by so notifying the county clerk of said county in writing within two days after the last day for filing nominating petitions and thereupon the county clerk shall forthwith notify the campaign manager of such candidates filing a joint petition as aforesaid of said request, and if the said campaign manager shall file his consent in writing with the said county clerk within two days after the receipt of said notification from said county clerk, the clerk of said county shall place the name of such candidate on the same line of the voting machine on which appears the names of the candidates who have filed the joint petition as aforesaid; provided, also, that any candidate filing a petition with the Attorney General may request that his or her name be placed on the same line of the voting machine with the candidates who have filed a joint petition with the county clerk as aforesaid by so notifying the county clerk of said county in writing within two days after the last day for filing nominating petitions, and thereupon the county clerk shall forthwith notify the campaign manager of such candidates filing a joint petition as aforesaid of said request, and if the said campaign manager shall file his consent in writing with the said county clerk within two days after the receipt of said notification from said county clerk, the clerk of said county shall place the name of such candidate on the same line of the voting machine on which appears the names of the candidates who have filed the joint petition as aforesaid.

In Quarembra v. Allan, 67 N.J. 1 (1975), the New Jersey Supreme Court addressed a challenge to the constitutionality of N.J.S.A. 19:49-2 as well as its application by the County Clerk. The New Jersey Supreme Court upheld the constitutionality of the statute as well as rejected arguments that the County Clerk had discretion to modify the provision of N.J.S.A. 19:49-2. The plaintiffs in Quarembra wanted the clerk to put everyone in a single grouping and argued that the County Clerk abused its discretion in not doing so. The Court found that “There is no merit to plaintiffs’ contention that the ballots should be structured as they suggest. Indeed such a separation

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of the names of those affiliated candidates – unless they consent thereto – would be contrary to the legislative purpose evidence in N.J.S.A. 19:49-2.” The Court then stated that “unless impossible because of the physical limitations of the voting machine at a particular primary election, the county clerk **must** ‘give effect on the ballot to a consensual arrangement whereby all of the candidates at a given level agree to run on a line of their own for any given office with no other candidate.’” Quarembra v. Allan, 67 N.J. at 17 (quoting Alaimo v. Burdge, 63 N.J. 575, 575 (1973)) (emphasis added).

In a number of cases before and after Quarembra which have addressed ballot design and bracketing issues or questions of the clerks’ discretion, courts have first looked to determine whether there is a statutory mandate governing the clerk’s course of conduct. If the statute is silent, then a clerk’s discretion is given deference so long as it is rooted in reason. However, when a clerk’s determination was outside the statutory scheme, it cannot withstand the “rooted in reason” test.” Caltabiano v. Gill, 449 N.J. Super. 331, 342-43 (App. Div. 2017). While courts defer to clerks on many ballot design issues, this does not “preclude our intervention when county clerks fail to apply that expertise in a manner that accords with the standards established by the Legislature.” Andrews v. Rajoppi, 2008 N.J. Super. Unpub. LEXIS 1111, \*13 (App. Div. Apr. 29, 2008). In Andrews, the court mandated a redraw of the ballot where the clerk did not comply the statutory provisions governing ballot positions related to U.S. Senate candidates).

In this case, the Clerk Schwartz is relying upon the last sentence of the first paragraph of N.J.S.A. 19:49-2 to suggest that she has discretion to accept or reject the entire following paragraph which sets forth the bracketing rights. That sentence states:

The providing of the official ballots, the order of the precedence and arrangement of parties and of candidates, and the instructions for the use of a device to be used or operated in order to vote for candidates shall be as now required by law, except

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that in those counties where voting machines are used, the county clerk shall have the authority to determine the specifications for, and the final arrangement of, the official ballots.

In fact, this argument was rejected nearly 70 years ago in Perry v. Guliano, 46 N.J. Super. 550 (App. Div. 1957). In Perry, the court was faced with a question as to the level of discretion reserved to the county clerk for determining issues related to the general election ballot. In upholding the clerk's exercise in discretion over the general ballot question posed in that case, the court contrasted the clear legislative mandates impacting primary elections, with the less clear statutes applying to general elections. The court "observe[d] the care with which the Legislature has **preserved to the candidates** of the same persuasion, *i.e.*, of the same designation or slogan,' filing in the primary election, **the right to be located on the 'same line of the voting machine,'**..." Id. at 555 (emphasis added). The court found that if a similarly clear provision as set forth in N.J.S.A. 19:49-2 had applied to the situation in Perry, it "would have prevented the issue from arising, inasmuch as such a provision would have been a clear chart of duty for the county clerk." Id. Thus, the court made clear in Perry that the bracketing of N.J.S.A. 19:49-2 was a "clear chart of duty for the county clerk" and not subject to her discretion.

Similarly, in Axtell v. Caputo, 85 N.J. Super. 80 (App. Div. 1964), the Court specifically rejected Clerk Schwartz's current argument and held that legislative mandates on ballot design are not "neutralized or countermanded by the proviso which follows and which permits the county clerk in voting machine counties to draw 'the specifications of the printing of the official ballots.'" Id. at 84. While Axtell dealt with a provision requiring the political parties to occupy the first two columns (or rows) in a general election ballot, the court was clear that the discretion in N.J.S.A. 19:49-2 does not permit a clerk to disregard statutorily mandated ballot design or array requirements.

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In Giuliano v. Reichenstein, 110 N.J. Super. 489 (Law Div. May 25, 1970) (holding that “if a legislative enactment by its express terms or by a fair construction thereof charts a procedure prescribed by the Legislature for the clerk to follow, he does not have discretion in the matter.” Id. at 499 (citing Axtell v. Caputo, 85 N.J. 80 (App. Div. 1964)). The court there then held that “the decision of the city clerk denying the right to plaintiffs to bracket and use a common designation in the run-off election cannot be sustained as a permissible exercise of his discretion in a delegated matter.” Id. While this case dealt with municipal clerk discretion related to municipal run-off elections, the court found that where the statute provides that the “municipal clerk ‘shall’ grant such petitions [to bracket] and he has no discretion in the matter.” Id. at 504.

It should be further noted that the portion of N.J.S.A. 19:49-2 relied upon by Clerk Schwartz to support her alleged power of discretion was amended in 2012, specifically to give the clerk the ability to handle the formatting of general election ballots to include Board of Education elections, which were permitted to move to November general elections. (See Tagarelli Cert., **Exhibit G**) That discretion is exactly what it was intended to provide – to permit the clerk the ability to determine exactly how the ballot should be laid out, *within the statutory guidelines provided by the Legislature*.

In Vecchio v. Randall, 2011 N.J. Super. Unpub. LEXIS 1433 (Law Div. Apr. 29, 2011), the trial court addressed a question regarding the order of the ballot draw. The Court rejected arguments that the clerk had discretion to ignore bracketing requests or positioning statutes when an unbracketed senate candidate he should be entitled to the first position. Even though the clerk had general discretion over ballot design and array “the plain meaning of the statute, where its meaning is clear and unambiguous, must guide the day, absent any legislative intent to the contrary or absent any indication that the statute requirements were not met by the county clerk.” Id. at 11. See also:



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Millman v. Kelly, 171 N.J. Super. 589 (Law Div. Oct 25, 1979) (“The County Clerk has no discretion with respect to statutory provisions.” Id. at 602); Gillen v. Sheil, 174 N.J. Super. 386, 394 (Law Div. May 8, 1980) (In rejecting a claim that N.J.S.A. 19:49-2 only applies when there are at least two county candidates, that “In enacting N.J.S.A. 19:49-2, the Legislature intended to provide for bracketing of candidates in all primary elections.”); Moskowitz v. Grogan, 101 N.J. Super. 111, 116 (App. Div. 1968) (holding that where there are two or more groups of candidates whose joint petitions were filed with the County Clerk, there must be a drawing for position as between those groups, and if there was a request for affiliation by state candidates with the county candidates “their names **must be placed on the same line** as the county candidates with which they affiliated...””) (emphasis added).

When the Supreme Court in Robinson v. Caputo, 46 N.J. 3 (1965) recognized that clerks had discretion on matters not set forth in the statutes by the Legislature, the Court cautioned that “[d]iscretion, of course, is never the plaything of office” and when the clerk abuses her discretion and “the bounds of the delegated authority have been exceeded [] it is the duty of the court to say no.” Id. at 9. Clerk Schwartz is abusing her authority and it is the Court’s duty to step in and say no. Candidates have a right under New Jersey law to bracket and the Clerk cannot unilaterally decide not to comply.<sup>2</sup>

**POINT II – THE CLERK’S DECISION IS UNREASONABLE AND NOT ROOTED IN REASON AND HER ACTION VIOLATE PLAINTIFFS’ RIGHTS AND BINDING NEW JERSEY SUPREME COURT LAW**

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<sup>2</sup> Defendant Clerk’s counsel raised a question regarding two counties which do not use the bracketing system – Salem and Sussex. However, the statute does not say that a Clerk can force candidates to bracket, but only that when a bracketing request is made, those requests must be honored. In those counties, the political parties do not make the requests to bracket based upon their county party by-laws. There is no suggestion anywhere to support the notion that those clerks have the discretion to unilaterally rejected bracketing over the requests of a properly bracketed slate of candidates.

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Even if this Court found that the Clerk somehow had discretion, there is no reasonable basis for permitting the Clerk to do so under the facts presented here.

**A. The Parties have relied Upon The Clerk's Office's Intention to Bracket**

Up until about 11 am on April 4, 2024, the Republican candidates in Burlington County expected to bracket, as they have done in the past. Despite the federal litigation, the Burlington County Clerk's office continued to operate in a business-as-usual manner. Bracket requests were accepted, slogan designations were awarded or rejected, and the staff engaged in the usual back and forth with the County party to finalize the list of approved candidates for the primary. At no point did the Clerk's office indicate that bracketing would not occur until her counsel was directly posed the question.<sup>3</sup>

For the Clerk to wait until the day of the ballot draw to confirm her intentions to ignore the statute, and intentionally place an undue burden on the candidates, the parties, and the Court to force an emergent hearing after the parties otherwise relied upon her office's intention to proceed with bracketing is unreasonable and should not be permitted. This decision, which seems either ill-conceived or intentionally sneaky, should not be permitted to be dropped on the candidates at the eleventh hour. If this was the intention of the Clerk, and she believed she had every right to exercise this authority, she should have clearly articulated it to the candidates well in advance of this time. Her failure to do so only adds the overall illegitimacy of these actions.

**B. Clerk Schwartz cannot rely upon the Federal Court's Preliminary Injunction to Justify Her Improper Actions**

To the extent that Clerk Schwartz tries to cloak her abuse of power by hiding under the guise of the District Court's Preliminary Injunction, such efforts must be rejected.

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<sup>3</sup> One can only speculate as to whether any notice would have ever been given had the question not been asked or whether the Clerk would have simply printed the ballots unknowingly to the Republican candidates.

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First, the District Court has not stricken N.J.S.A. 19:49-2 as unconstitutional and it remains valid law. As this Court is aware, the procedural posture in the Federal Court is that of a preliminary injunction – an initial holding applicable only to the parties to the lawsuit and only granting relief to the Plaintiffs who appeared before him. While the District Judge has signaled his opinion on the statute and foreshadowed what could be the final ruling, the ultimate issue before the District remains to be determined. That is why the Court’s preliminary injunction is currently limited to just the June 4, 2024 Primary and why the District Judge further clarified in a separate Order that the Injunction did not apply to the Republican Primary. The District Court has not yet found the statute to be unconstitutional, and the District Court has not limited the Republican party’s rights under the statute.

Furthermore, New Jersey courts, including the New Jersey Supreme Court, have found opposite of the District Court and specifically upheld the constitutionality of N.J.S.A. 19:49-2. See Quarembra v. Allan, 67 N.J. 1 (1975). While the federal judge may not be bound by the State Supreme Court’s decision, this court, and every other New Jersey court and official does not have that discretion. Our Supreme Court and six decades of jurisprudence have upheld that constitutionality of the bracketing provisions and supported the constitutional rights of parties and candidates to bracket together under one slogan on the ballot. The court has even struck down a statute which prohibited bracketing with U.S. Senate candidates finding that it unconstitutionally violated the First Amendment rights of association. The courts have similarly recognized the rights of the legislature to govern in this arena.

The Clerk’s actions here violate the binding decisions of the New Jersey Supreme Court, and violate the First Amendment rights of association of the BCRRO and the candidates seek to

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bracket together under a common slogan consistent with Eu v. San Francisco County Democratic Central Comm., 489 U.S. 214 (1989) and Quarembra.

As this Court is well aware, issues regarding the constitutionality of the statute are currently being litigated in Federal Court. In the case of Kim v. Hanlon, the Court made clear that there was no impact at the moment on the Republican primary as a result of that litigation. Further, in the Court's order he did not indicate that County Clerk's had discretion to take matter into their own hands. Instead, Judge Quraishi suggested that Republicans could voluntarily choose to move towards office-block voting (by not making requests to bracket like done in Sussex County). However, Republican County organizations, and specifically BCRRO here, have not done so, instead continuing to exercise their statutory rights under N.J.S.A. 19:49-2.

As far as we are aware, no other County Clerk throughout the state has decided to go further than the Federal Court and decide on their own to void a currently valid statute in New Jersey. Clerk Schwartz's letter to the Court raised no issues with the ability or intention to comply with the District Court's Orders and the Clerk did not participate in any appeals to raise issues regarding philosophical or technological concerns. There are no technological hurdles which cannot be overcome and the District Court specifically rejected requests for a stay when some of those issues were raised. The fact that every county in the state besides Burlington is complying further evidences the lack of any merit in any contentions by the Clerk that she is unable to comply or that she maintains the authority to take the actions she is.

Clerk Schwartz has no authority to unilaterally decide to reverse the New Jersey Supreme Court's holding in Quarembra, to issue her own injunction where the District Court has declined to do so, or to rewrite the statutes enacted by the Legislature. Clerk Schwartz's statutory and constitutional obligation is to honor the bracketing requests consistent with the statute.

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**POINT III – PLAINTIFFS WILL SUFFER IRREPARABLE HARM IF THE BALLOTS ARE NOT CORRECTED AND THE BALANCE OF HARMS FAVORS PLAINTIFFS**

Plaintiffs—as well as all Republican candidates and voters in Burlington County—will be irreparably harmed if an injunction is not issued. Courts have held that irreparable harm is harm that “cannot be redressed adequately by monetary damages.” Crowe, 90 N.J. at 133. Indeed, “pecuniary damages may be inadequate because of the nature of the injury or of the right affected.” Id.

Here, if an injunction is not entered and the Clerk ordered to comply with the law, the BCRRO and all candidates who seek to exercise their constitutional right to association and their statutory rights set forth in N.J.S.A. 19:49-2, will be violated and no remedy will be available. If the Clerk is permitted to continue her course of action, the candidates will not appear on the ballot and BCRRO and its members will be prohibited by the universal actions of the Clerk, from appearing together on the ballot as permitted by N.J.S.A. 19:49-2. The right to do that, as discussed below, has been upheld by New Jersey Courts for decades, and while the District Court has raised questions about its future, it remains valid law in New Jersey and no order by any court has impacted its application of the Republican primary for June 2024.

In fact, ballot printing errors have lead to Appellate Division orders requiring reprints of ballots. *See e.g. Regalado v. Curling*, 430 N.J. Super. 342 (App. Div. 2013). In at least one case, a Court ordered a redesign of ballot even after the printing of absentee ballots. *Belfiore v. Netchert*, 2014 N.J. Super.Unpub. LEXIS 1059, (Hudson County Superior Court, May 8, 2014).

Finally, this Court must balance the hardships between the Plaintiff and the Defendants, which points in favor of Plaintiffs. If an injunction is not issued and the ballots not rectified in time for the upcoming election, it may result in irreparable harm to the democratic process and could

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have lasting impacts on the election. The Plaintiffs and their associational rights and those of the candidates will be irrevocably harmed, the will of the legislature will be ignored, and Republican voters will be faced with confusion and uncertainty.

In contrast, the hardship suffered by Defendant is *de minimis*. The Clerk will be required to do what those in her office have done for 70 years – bracket candidates which submit requests to do so. This is the same process being done all of the state for the June 2024 Republican primary.

### CONCLUSION

For the foregoing reasons, the Court should issue an injunction prohibiting the Clerk for imposing office-block voting on the Republican primary and direct her to comply with her statutory obligations as the County Clerk to honor balloting requests consistent with N.J.S.A. 19:49-2.

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Respectfully submitted

/s/ Matthew C. Moench

Matthew C. Moench

KING, MOENCH & COLLINS, LLP

51 Gibraltar Drive, Suite 2F

Morris Plains, NJ 07950

(973) 998-6860

[mmoench@kingmoench.com](mailto:mmoench@kingmoench.com)

**CERTIFICATE OF MAILING**

The undersigned hereby certifies as follows:

1. I am employed by the law firm of King, Moench & Collins LLP.
2. On April 5, 2024 the undersigned prepared and forwarded copies of the within Order to Show Cause Seeking Temporary Restraints to the following parties:

**VIA ECOURT FILING AND EMAIL (Nicholas.Gangemi@njcourts.gov)**

Honorable Jeanne T. Covert, A.J.S.C.  
Burlington County Superior Court  
Burlington County Courts Facility  
49 Rancocas Road, 7<sup>th</sup> Floor  
Mount Holly, New Jersey 08060

**VIA EMAIL (mnatale@malamutlaw.com)**

Mark R. Natale, Esq.  
457 Haddonfield Road, Suite 500  
Cherry Hill, New Jersey 08002

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

By: s/Tiffany D. Tagarelli  
TIFFANY D. TAGARELLI

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