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April 10, 2024

VIA ELECTRONIC FILING

Hon. John E. Harrington, JSC
Burlington Superior Court
49 Rancocas Road
Mount Holly, NJ 08060

Re: Maia-Cusick, et. al. v. Sollami-Covell, et. al.
Docket No.: Bur-L-684-24 and Mer-L-677-24

Dear Judge Harrington:

Please be advised that this firm represents the Honorable John S. Hogan, Clerk of Bergen County, and co-defendant in the above Mercer County matter.

Initially, Plaintiffs failed to provide either our firm or our client with notice of the Court's April 9, 2024. Our firm only found out about the order implementing a briefing schedule and hearing date for April 12, 2024, upon being alerted to a local media article this afternoon prompting the undersigned's review of the electronic docket.

As a constitutional officer, the Bergen County clerk will, of course, comply with any order Your Honor enters in this matter. However, we must advise that considering the New Jersey Statutes imposing strict time frames upon the County clerks, Plaintiff's 11th hour suit is imminently threatening to disenfranchise over 56,000 Bergen County voters, including those actively serving in our military.

As set forth in the Certification of Mr. Chong, Bergen County held the ballot drawing for both political parties on April 4, 2024 ("Ballot Drawing") in strict accordance with N.J.S.A. 19:23-

24 and the March 29, 2024, Court Order of the Honorable Zahid N. Quraishi, USDJ and March 30, 2024, Text Order of Judge Quraishi in the matter of Kim, et. al. v. Hanlon, et. al., Case No. 3:24-cv-01098-ZNQ-TJB¹ (Exhibit 1 hereto) (“Federal Suit”). After the April 4th ballot drawing, the ballot designs for each political party were immediately forwarded to Bergen County’s printer to begin the process of implementing, reviewing, and finalizing the ballot design so that ballots can be sent to over 56,000 Bergen County voters who utilize vote-by-mail, including United States military members deployed overseas (“Mail Ballots”). The Bergen County clerk needs to finalize those Mail Ballots and begin the process of sending them out by April 18, 2024, to ensure that they are all in transit by the statutory deadline of April 20, 2024 (a Saturday). Plaintiffs’ incredible delay only now results in great risk that those thousands of Bergen County voters will be disenfranchised.

As this Court is certainly aware, the United States Supreme Court has made clear that “[w]hen an election is close at hand, the rules of the road should be clear and settled.” Purcell v. Gonzalez, 549 U.S. 1 (2006); Democratic National Committee v. Wisconsin State Legislature, 141 S. Ct. 28, 31 (2020); and Republican National Committee v. Democratic National Committee, 140 S. Ct. 1205 (2020). To that end, the Supreme Court has also provided Courts clear direction when considering “emergent” applications seeking to alter election-related laws. Analogous to the issues here, and as Federal offices are impacted, in Merrill v. Milligan, 142 S. Ct. 879, 880 (2022), the Court set forth a four-prong matrix by which Courts must employ when dealing with 11th hour suits seeking to alter election-related laws and procedures

- (i) the underlying merits are entirely clearcut in favor of the plaintiff; (ii) the plaintiff would suffer irreparable harm absent the injunction; (iii) the plaintiff has not

¹ To the extent the plaintiffs seek to substantively rely upon Judge Quraishi’s preliminary injunction opinion in the Federal Suit, those defendants were provided an incredible accelerated briefing schedule with no opportunity to depose or take any discovery as to those plaintiffs’ experts or retain their own experts to offer rebuttal testimony.

unduly delayed bringing the complaint to court; **and** (iv) the changes in question are at least feasible before the election without significant cost, confusion, or hardship.

[emphasis added]

Much like New Jersey's Crowe standard, a plaintiff must satisfy all the prongs to be afforded the extraordinary relief it now seeks at the 11th hour.

Here, as it relates to the April 12th hearing, we do not take a position as to the constitutional issues raised by Plaintiff (as our client will comply with the directive of the Court or Legislature) at this juncture. However, as the voting rights of over 56,000 Bergen County voters are imminently threatened, we respectfully submit the dilatoriness of these plaintiffs in filing the instant suit necessitates the denial of the relief they seek.

These plaintiffs could have easily intervened in the Federal Suit, as other political organizations had, or filed their own suit before now if they believed they were exposed to any harm in the ballot design used for the Republican party ballot drawing on April 4th. Indeed, if they had done so, perhaps the preliminary injunction order entered by the Court would have applied to the Republican primary and therefore Bergen County would have created the Republican primary ballot design for the April 4th ballot drawing consistent with that Court's order as Bergen County did for the Democratic primary. Rather, it is clear that these plaintiffs chose to sit back and wait the outcome of the preliminary injunction application in the Federal Suit before filing this suit.

Should this Court now on April 12th or thereafter enter an Order disturbing the ballots already designed, drawn, and as to the ballots regarding the Federal offices-finalized, it would greatly prejudice Bergen County, the Bergen County Clerk's office and staff, and over 56,000 Bergen County voters. It would necessitate: 1) a hasty re-scheduling of the ballot drawing; 2) a

new ballot drawing; and 3) additional proof-reading and re-finalizing the Mail Ballots, all of which would need to be done no later than the morning of April 18, 2024.

For these reasons, Bergen County requests the Court deny Plaintiff's last-minute application.

Respectfully submitted,

**DECOTIIS, FITZPATRICK, COLE
& GIBLIN, LLP**

By: /s/ Jason Nunnermacker
Jason S. Nunnermacker, Esq.

JN/st

cc: All parties by e-filing

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EXHIBIT 1

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ANDY KIM *in his personal capacity as a
candidate for U.S. Senate, et al.,*

Plaintiffs,

v.

CHRISTINE GIORDANO HANLON, *et al.,*

Defendants.

Civil Action No. 24-1098 (ZNQ) (TJB)

ORDER

QURAIISHI, District Judge

THIS MATTER, having come before the Court on Plaintiffs' Motion for a Preliminary Injunction (ECF No. 5) and Defendants' Motions in Limine (ECF Nos. 152–158), for the reasons set forth in the accompanying Opinion, and for good cause shown.

IT IS on this **29th** day of **March 2024**,

ORDERED THAT:


1. Defendants' Motions in Limine (ECF Nos. 152–158) are hereby **DENIED**.
2. Plaintiffs' Motion for Preliminary Injunction (ECF No. 5) is hereby **GRANTED**.
3. Defendants and each of them; their officers, agents, servants, employees, and attorneys as follows (collectively, "Defendants"), with regard to the June 4, 2024 New Jersey Primary Election are enjoined as follows:

- (a) Defendants are enjoined from preparing, disseminating, using, displaying, or counting any ballot, in any form, whether on paper or electronic, that:
 - i. Is designed by columns or rows, rather than by office sought;
 - ii. positions candidates on the ballot automatically based upon a ballot draw among candidates for a different office;
 - iii. places candidates such that there is an incongruous separation from other candidates running for the same

office;

- iv. places candidates underneath another candidate running for the same office, where the rest of the candidates are listed horizontally, or to the side of another candidate running for the same office, where the rest of the candidates are listed vertically; and
 - v. bracketing candidates together on the ballot such that candidates for different offices are featured on the same column (or row) of the ballot;
- (b) Defendants are enjoined from conducting draws for ballot positions that do not include a separate drawing for every office and candidate, and where every candidate running for the same office has an equal chance at the first ballot position; and
- (c) Defendants are required to use a ballot for all voters, whether mail-in, at a polling site, or otherwise, that is organized by office sought (commonly known as a “office-block ballot,”) rather than by column or row, and which implements for each office on the ballot, a randomized ballot order system (e.g. random draw) which affords each candidate for the same office an equal chance at obtaining the first ballot position.
4. The Court waives the requirement to post bond or security under Fed. R. Civ. P. 65(c).
5. The Court retains jurisdiction of this matter for the purpose of ensuring compliance.

Date: March 29, 2024



ZAIID N. QURAISHI
UNITED STATES DISTRICT JUDGE

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U.S. District Court

District of New Jersey [LIVE]

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Case Name: KIM et al v. HANLON et al

Case Number: [3:24-cv-01098-ZNQ-TJB](#)

Filer:

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Docket Text:

LETTER ORDER clarifying that the Preliminary Injunction Order [195] applies to the 2024 Democratic Primary but NOT the 2024 Republican Primary. Signed by Judge Zahid N. Quraishi on 03/30/2024. (Gonzalez, P)

3:24-cv-01098-ZNQ-TJB Notice has been electronically mailed to:

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