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June 5, 2024

VIA eCourts

The Honorable Michael J. Blee, A.J.S.C.
Superior Court of New Jersey – Atlantic & Cape May Vicinage
Atlantic County Civil Courts Building
1201 Bacharach Blvd., Floor 3
Atlantic City, New Jersey 08401

Re: IMO June 4, 2024 Primary Election Regarding Disputed
Mail-In Ballots
Docket No. ATL-L-

Dear Judge Blee:

Please accept this letter on behalf of the Atlantic County Board of Elections (“Board”), under N.J.S.A. 19:63-17 as a petition referring to the court 1,909 ballots for determination as to whether the ballots should be counted where upon adjudicating these ballots, the Board deadlocked two votes for accepting and two votes for rejecting.

During the first week of May, the Board received 1,909 mail-in ballots for the June 4, 2024 Primary. For several days at the beginning of May 2024, the inner envelopes of mail-in ballots were sliced open. On June 4, 2024, the Board members voted on whether to accept or reject these mail-in ballots whose inner envelopes had been prematurely sliced open. The Board deadlocked with two members voting to accept and two voting to reject. The matter was then referred to the court for a determination.

On June 4, 2024, Your Honor heard this matter and ordered that the Board file a petition with the court, indicating that a hearing would be held on June 7, 2024.



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The Board hereby petitions the court to make a determination, pursuant to N.J.S.A. 19:63-17, as to whether the 1,909 ballots should be accepted or rejected, breaking the Board's tie-vote.

It is the duty of the Board to canvass mail-in ballots and to vote whether to accept or reject based on specific criteria outlined in Title 19. N.J.S.A. 19:63-17, -22. Ordinarily, that authority rests exclusively with the Board. Matarese v. Superintendent of Elections, 228 N.J. Super. 148, 154 (Law Div. 1988) (“Responsibility for the counting and the acceptance or rejection of absentee ballots resides in the board of elections . . .”). However, if the Board deadlocks on whether to accept or reject mail-in ballots, the matter is referred to the Superior Court for a determination. N.J.S.A. 19:63-17(a) (“Disputes about the qualifications of a mail-in voter to vote or about whether or not or how any mail-in ballot shall be counted in such election shall be referred to the Superior Court for determination, as provided under section 4 of P.L.2020, c. 70 (C.19:63-17.1).”).

Title 19 requires a prompt determination by the court. In In re Absentee Ballots Cast by Five Residents of Trenton Psychiatric Hosp., 331 N.J. Super. 31, 34 (App. Div. 2000), the board of elections deadlocked on whether to accept or reject absentee ballots cast by involuntarily committed residents of a psychiatric hospital. The board referred the matter to the Law Division. Ibid. After a hearing, the judge ordered that the disputed ballots remain unopened and segregated at the board's office. Id. at 34-35.

The Appellate Division reversed and ordered that the ballots be opened and counted rather than remaining segregated and unopened. Id. at 39. The court stated:

The Board was deadlocked. Therefore, the issue was properly referred to the Superior Court for determination. “Determination” means that the court has a duty to decide the validity of the ballots based on statutes or case law authority. Merely segregating the ballots for a possible disposition does not constitute a determination.

[Ibid.]

The Appellate Division was mindful of concerns that the Law Division's determination on the ballots might result in accepting illegal votes or rejecting legal votes but it noted that those concerns could be addressed through an election contest. Ibid. (“We understand that the judge was concerned that the election result could be

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tainted if the ballots were allowed to be counted, but thereafter found to have been cast by individuals who were disqualified on competency grounds. However, the Legislature has provided a procedure to contest an election result.”).

Relevant to a determination in this matter, Title 19 prohibits the Board from opening the inner envelopes of mail-in ballots earlier than five days prior to the day of the election. N.J.S.A. 19:63-22(b). But Title 19 is silent as to what to do if the Board intentionally or unintentionally opens inner envelopes before five days prior to the election. Elsewhere, Title 19 directs that “[a]ny mail-in ballot which is received by a county board of elections shall be rejected if the inner envelope is unsealed or if either the inner or outer envelope has a seal that has been tampered with.” N.J.S.A. 19:63-17. At the same time though, “[m]ail-in ballots shall not be rejected due to any defect arising out of or relating to the preparation or mailing of the ballot or envelope that was not reasonably caused by the voters, such as a torn envelope and missing or insufficient glue to allow the ballot to be sealed.” Ibid.

Lastly, election laws should be construed liberally “consonant with their purpose and with practical considerations related to process.” New Jersey Democratic Party, Inc. v. Samson, 175 N.J. 178, 195, n.6 (2002). And they should be interpreted “to allow the greatest scope for public participation in the electoral process . . . most importantly to allow the voters a choice on Election Day.” Catania v. Haberle, 123 N.J. 438, 448 (1990); see also In re Gray-Sadler, 164 N.J. 468, 476 (2000) (election statute had to “be read in light of the broad purpose of the election laws to prevent disenfranchisement of qualified voters.”).

With these principles in mind, the Board respectfully requests that the court determine whether the disputed mail-in ballots should be accepted or rejected. And, in the event, that the court orders that the ballots be accepted, acceptance should still be subject to the ballots being otherwise valid under Title 19.

Respectfully submitted,

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