

PREPARED BY THE COURT

NEW JERSEY REPUBLICAN STATE
COMMITTEE a/k/a the NJGOP, KEAN
FOR CONGRESS, SOMERSET COUNTY
REPUBLICAN ORGANIZATION, and
UNION COUNTY REPUBLICAN
ORGANIZATION,

Plaintiffs,

vs.

TAHESHA WAY, in her Official Capacity
as SECRETARY OF STATE,
ATLANTIC COUNTY BOARD OF
ELECTIONS; BERGEN COUNTY BOARD
OF ELECTIONS, BURLINGTON
COUNTY BOARD OF ELECTIONS,
CAMDEN COUNTY BOARD OF
ELECTIONS, CAPE MAY COUNTY
BOARD OF ELECTIONS, CUMBERLAND
COUNTY BOARD OF ELECTIONS,
ESSEX COUNTY BOARD OF
ELECTIONS, GLOUCESTER COUNTY
BOARD OF ELECTIONS, HUDSON
COUNTY BOARD OF ELECTIONS,
HUNTERDON COUNTY BOARD OF
ELECTIONS, MERCER COUNTY BOARD
OF ELECTIONS, MIDDLESEX COUNTY
BOARD OF ELECTIONS, MONMOUTH
COUNTY BOARD OF ELECTIONS,
MORRIS COUNTY BOARD OF
ELECTION, OCEAN COUNTY BOARD
OF ELECTIONS, PASSAIC COUNTY
BOARD OF ELECTIONS, SALEM
COUNTY BOARD OF ELECTIONS,
SOMERSET COUNTY BOARD OF
ELECTIONS, SUSSEX COUNTY BOARD
OF ELECTIONS, UNION COUNTY
BOARD OF ELECTIONS, and WARREN
COUNTY BOARD OF ELECTIONS,

Defendants

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MERCER COUNTY

Docket No.: 1947-20

Civil Action

**ORDER DENYING TEMPORARY
RESTRAINTS**

THIS MATTER being brought before the Court by King, Moench, Hirniak & Mehta, LLP, attorneys for Petitioners, New Jersey Republican State Committee a/k/a NJGOP, Kean for Congress, Somerset County Republican Organization, Union County Republican Committee, by way of Verified Complaint and Order to Show Cause with Temporary and Permanent Restraints, for an Order against Defendant Tahesha Way, in her Official Capacity as Secretary of State, and against all twenty-one County Boards of Elections; and Defendant Way and the county boards of election being represented by the Office of the Attorney General, by Deputy Attorney General Steven Gleeson; and counsel for Interested Party Democratic Party of New Jersey being represented by Rajiv Parikh, and the court having scheduled an emergent hearing on the application for temporary relief on November 3, 2020; and the court having heard the arguments of counsel for the parties; and for the reasons set forth below and on the record on November 3, 2020, and for good cause shown:

It is on this 3rd day of November 2020,

ORDERED as follows:

- (1) The application for temporary relief insofar as requiring poll workers in each district to provide the number of Vote By Mail (VBM) ballots received at the polling place to Plaintiffs every two hours is withdrawn as impractical given the timing of the filing of the application and the court's consideration of it.
- (2) The application for temporary relief insofar as requiring poll workers in each district to provide the total number of VBM ballots received at the polling place to Plaintiffs by 8 pm tonight is DENIED.

- (3) The application for temporary relief insofar as requiring the county boards of elections to provide copies of the certifications of voters submitting VBM ballots at polling places within 48 hours of the closing of the polls on Election Day is reserved pending receipt by the court of Defendants' position on this issue by 3 P.M. on November 4, 2020.
- (4) The application for temporary relief seeking to require each county board of Elections to provide a daily update on all ballots received each day in the time period following Election Day until the date of certification of the election results is reserved pending receipt by the court of Defendants' position on this issue by 3:00 p.M. on November 4, 2020.

/s/Mary C. Jacobson

Hon.

Mary C. Jacobson, A.J.S.C.

Reasons:

Plaintiffs made application for emergent relief on November 2, 2020, to require the Secretary of State and all County Boards of Elections to instruct poll workers to post the number of Vote By Mail (VBM) ballots hand-delivered to polling locations every two hours on Election Day; to provide to Plaintiffs the total number of VPM ballots hand-delivered to polling places by 8 pm on Election Day; for the County Boards of Elections to provide copies to Plaintiffs of all certifications submitted by voters who hand-delivered their VBM ballots to polling locations within 48 hours of the close of polls on Election Day; and for county Boards of Election to provide to Plaintiffs a daily update of all VBM ballots received each day following Election Day until the date of the Certification of the 2020 Election. Plaintiffs rely on N.J.S.A. 19:7-5, which

provides that all county boards of election shall provide election challengers with the number of votes placed by provisional ballot and by machine voting every two hours during Election Day. This provision does not address Vote By Mail ballots, which can be received at polling places on Election Day under N.J.S.A. 19:63-31 (h). Notably, the Legislature did not amend the statute to add that requirement when it provided that the General Election of 2020 would be primarily by mail-in voting. Since the Legislature did not add this requirement to the statute for the 2020 election, and Plaintiffs did not seek to compel the Secretary of State and Boards of Election to mandate collection of this data until after 4 PM on the day before Election Day, the court denies the requested relief as unauthorized by statute and as potentially disruptive to the election process, which is being conducted by the county boards of election pursuant to guidance issued by the Secretary of State and the Division of Elections. Moreover, N.J.S.A. 19:63-31 (h) provides that the Secretary of State shall establish appropriate standards for the acceptance of VBM ballots submitted to polling places and how those ballots were to be returned to the boards of elections. The Secretary did not require that poll workers provide information about the number of VPM ballots returned at each polling location every two hours or at the close of voting on November 3, 2020, and the court will not substitute its judgment or the judgement of Plaintiffs for the judgment of the official to whom the Legislature delegated discretion to establish the standards for the acceptance of VBM ballots at polling places.

Plaintiffs also rely on N.J.S.A. 19:52-3.1, which provides that district boards of elections shall create and publicly display notice of the official count of the cumulative number of voters who have voted at each precinct on machine and by provisional ballot every two hours on Election Day. As with N.J.S.A. 19:7-5, this provision does not address VBM ballots delivered to polling places on Election Day, which process requires such voters to provide a certification to

deliver their ballots at the polling places. Notably, voters depositing their ballots in drop boxes on Election Day are not required to provide any additional certification. Absent legislative directive, the court is concerned that providing the relief requested would not only go beyond legislative intent, but would disrupt election administration and the processing of ballots at the last minute. Again, the Secretary of State had the opportunity to provide guidance to the boards of election on how to collect and provide the data, and did not require the additional steps that Plaintiffs request the court to order. In addition, VBM ballots were designed to be filled out at home or wherever the voter chose to fill them out, and likely not at the polling place. Notably, N.J.S.A. 19:63-31(h) uses past tense when referring to voters who have personally voted before returning their ballots to the polling place on Election Day, further supporting the conclusion that N.J.S.A. 19:52-3.1 does not technically apply to VBM ballots, even though some VBM ballots may be voted at the polling place before being submitted to poll workers there.

The court also notes that the Plaintiffs, and other political parties, can and may have sent challengers to every polling location where they can unofficially collect the same data that is being requested here. Any discrepancies between official and unofficial counts could be brought to the attention of election officials in any challenges that may be brought post-election. Finally, Plaintiffs did not meet the standards for obtaining injunctive relief, nor did they show that the relief requested was necessary to ensure the integrity of the election.