



**Jason N. Sena**  
Member of New Jersey and New York Bars  
jsena@archerlaw.com  
732-268-8007 Direct

Archer & Greiner, P.C.  
10 Highway 35  
Red Bank, NJ 07701-5902  
732-268-8000 Main  
732-345-8420 Fax  
www.archerlaw.com

September 16, 2024

**Via eCourts**

Hon. David A. Nitti, J.S.C.  
Superior Court of New Jersey  
Monmouth County Courthouse  
71 Monument Park  
Freehold, NJ 07728

Re: *Oceanport Board of Education, et al. v. County Clerk, et al.*  
*Docket No. MON-L-2984-24*

Dear Judge Nitti:

This office represents Defendant Christine Giordano Hanlon, in her official capacity as the Monmouth County Clerk (the "County Clerk") in this matter. Please accept this letter brief in lieu of a more formal submission in opposition to the emergent relief sought by the Plaintiffs in this action.

The County Clerk takes no position on the merits of Plaintiffs' substantive claims. However, the County Clerk opposes Plaintiffs' request for emergent relief, which would effectively require the County Clerk, and other election officials who are not named as parties in this litigation, to restart the election process from the beginning when there is insufficient time to do so without violating statutory deadlines. While the resolutions Plaintiffs complain of were adopted by the governing bodies of the Borough of Sea Bright and Borough of Highlands in July, Plaintiffs waited until Friday, September 6, 2024 at 5:00 pm to file this case. At the time this matter was initiated the September 3, 2024 statutory deadline for completion of the ballot design process had already passed and the printing of ballots and programming of election

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software had commenced, and is now complete. It is simply too late in the process to start over from scratch. Redesigning the ballots, while also reprogramming and retesting the election software for the November 5, 2024 General Election, cannot be done in time to meet certain statutory deadlines established by state and federal law. Plaintiffs have not demonstrated that they will suffer any harm—much less irreparable harm—that would warrant such extreme relief. For these reasons, the County Clerk respectfully Requests that the Plaintiffs’ application for emergent relief be denied.

### **FACTS**

For purposes of brevity, the County Clerk incorporates the facts set forth in the Certification filed herewith.

### **LEGAL ARGUMENT**

#### **I. PLAINTIFFS HAVE FAILED TO JOIN A NECESSARY PARTY**

Plaintiffs have failed to name the Monmouth County Superintendent of Elections (the “Superintendent of Elections”), who has custody and control over the voting machines that will be utilized in the upcoming November 5, 2024 General Election (the “General Election”) and that would have to be reprogrammed and retested if relief were granted, as a party to this action.

Structurally, three separate offices administer elections in Monmouth County: (1) the Board of Elections; (2) the Superintendent of Elections; and (3) the County Clerk in her capacity as Clerk of Elections. The Board of Elections is responsible for counting ballots and canvassing the vote. Every county in New Jersey has a Board of Elections, which exists pursuant to N.J.S.A. 19:6-1. In Monmouth County, the Board of Elections is comprised of six Commissioners, three from each of the two political parties receiving the first and second-most votes for members of the General Assembly in the last such election. See N.J.S.A. 19:6-17. The

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Board of Elections Commissioners also sit as the Board of County Canvassers that is responsible for canvassing all votes received in the county. N.J.S.A. 19:6-26. The Board is the exclusive body empowered under New Jersey law to determine the results of elections in the county:

The board of county canvassers, in case of officers voted for or public questions voted upon exclusively by the voters of a single county or any political subdivision thereof, except for any congressional district or part of a congressional district, shall proceed to determine what officers have been elected, and the result of the vote cast upon any public question setting forth that it was approved or rejected.

[N.J.S.A. 19:20-1.]

The “[r]esponsibility for the counting and the acceptance or rejection of absentee ballots resides in the board of elections.” Matarese v. Superintendent of Elections, 228 N.J.Super. 148, 154 (Law Div. 1988).

The Office of the County Clerk exists pursuant to Article 7, Section 2 of the New Jersey Constitution. See also N.J.S.A. 40A:9-63, et seq. Regarding voting-related election duties, the County Clerk designs, prints and furnishes vote by mail ballots, N.J.S.A. 19:63-7; serves as the Clerk of the Board of County Canvassers as a non-voting member, N.J.S.A. 19:6-26; and reports the results of elections to the public using the vote totals provided by the Board of Elections, see e.g. N.J.S.A. 19:52-3.1 (requiring public display of unofficial count of votes cast by district), among other things.

The Monmouth County Superintendent of Elections acts as the County’s Commissioner of Registration, regulating voter registrations and maintaining the official list of eligible voters in the County. See N.J.S.A. 19:31-2. In addition, the Superintendent of Elections has custody of the County’s voting machines. N.J.S.A. 19:48-4.

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There is no question that the Superintendent of Elections is a necessary party to this action. Plaintiffs' Complaint asks the Court to order the County Clerk to remove the ballot questions at issue from the ballots for the Borough of Highlands and the Borough of Sea Bright. While not expressly acknowledged in the Complaint, granting the requested relief would require reprogramming and retesting of the unified election software utilized by the County Clerk's office, the Board of Elections and the Superintendent of Elections. (Certification of County Clerk, ¶15.) Since that relief would require action to be taken relative to the County's voting machines, the Superintendent of Elections is a necessary party to this action as complete relief cannot be afforded in his absence.

## **II. PLAINTIFFS FAIL TO MEET THE STANDARD TO OBTAIN INJUNCTIVE RELIEF AGAINST THE COUNTY CLERK**

Preliminary injunctive relief may be granted only when (1) necessary to prevent irreparable harm (i.e., if the alleged harm cannot be redressed adequately by monetary damages); (2) the plaintiff's claim is based upon a settled legal right; (3) the plaintiff has shown a reasonable probability of ultimate success on the merits (including that the material facts are not in dispute); and (4) upon a balancing of the equities, the harm to the applicant if the injunction is denied will be greater than the inconvenience or loss to the opposing party if the injunction is granted. Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982); McKenzie v. Corzine, 396 N.J. Super. 405, 413 (App. Div. 2007); Waste Management of N.J., Inc. v. Union County Utilities Auth., 399 N.J. Super. 508, 519-520 (App. Div. 2008). The applicant bears the burden of establishing each of the four prerequisites for temporary injunctive relief by clear and convincing proof. McKenzie, 396 N.J. Super. at 414; Subcarrier Communications, Inc. v. Day, 299 N.J. Super. 634,

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639 (App. Div. 1997). All of the Crowe factors must weigh in favor of injunctive relief. Waste Mgmt., 399 N.J. Super. at 520.

Plaintiffs have failed to demonstrate that they will suffer irreparable harm if relief is not granted. The balance of the equities weighs heavily in favor of the County Clerk given the tremendous burden that would result if relief were granted. Since the County Clerk does not take a position on the merits of Plaintiffs' substantive claims, factors 2 and 3 of Crowe are not addressed in this brief.

**A. Plaintiffs Will Not Suffer Irreparable Harm if Relief is Granted**

Plaintiffs, which are Boards of Education, fail to demonstrate that they will suffer irreparable harm if relief is not granted. It is a "fundamental principle" that "a preliminary injunction should not issue except when necessary to prevent irreparable harm." Crowe, 90 N.J. at 132. Plaintiffs describe the alleged irreparable harm as follows: "The outcome of the broad and biased questions will produce skewed results which will result in the undue influence upon the currently pending appellate division matter." (Plaintiffs' brief, p. 7.) Put another way, the allegation is that the legal positions of the Oceanport Board of Education and Shore Regional High School Board of Education will somehow be prejudiced in other pending litigation involving those parties because the Appellate Division panel hearing the case will somehow be influenced by the votes cast for or against the non-binding ballot questions at issue. This position suffers from several logical and legal defects.

Foremost, the results of the General Election could not be included in the record on appeal in the cases refers to because the case is already pending and the General Election has not occurred yet. The Appellate Division is a court of record which decides cases based upon the record before it. See R. 2:5-4(a) ("[t]he record on appeal shall consist of all papers on file in the

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court or courts or agencies below.”) According to the Complaint, the matter Plaintiffs are concerned with has been pending since 2023. (Complaint, ¶12.) Presumably, the record in that case is already set. To accept Plaintiffs’ argument, one would also have to accept the possibility the result of the upcoming General Election would somehow be included in the appellate record for that matter, an impossibility if the record is already set and the General Election has not yet occurred. Plaintiffs’ fear that they will suffer irreparable harm is therefore unfounded.

To the extent that Plaintiffs are concerned that another party will seek to supplement the appellate record to include the result of the General Election, Plaintiffs would have the opportunity to oppose any such a request before the Appellate Division. Even if the election results were somehow included in the appellate record, Plaintiffs would be free to argue the significance of those results in their merits brief. Any “harm” that Plaintiffs might claim to suffer in having to litigate such issues is certainly not irreparable and is not the type of permanent, irreversible injury contemplated by Crowe as a basis for injunctive relief.

**B. The Balancing of the Equities Weighs Heavily in Favor of the County Clerk**

The balancing of the equities weighs heavily in favor of the County Clerk and against granting injunctive relief to the Plaintiffs. Conspicuously absent from Plaintiffs’ brief is any discussion of the harm that would result *to the County Clerk and the election process* if relief is granted. Plaintiffs brief on this point is exclusively devoted to alleged harm that the Plaintiffs would suffer balanced against potential harms to the other Co-Defendants, all of which are municipal governments. (Plaintiffs’ brief, p.8.) Whether intentional or inadvertent, the omission of this analysis is a fatal flaw to Plaintiffs’ application. When the effects of injunctive relief are

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analyzed as to all parties, it is clear that harm to the County Clerk and the election process will far outweigh any potential benefit to the Plaintiffs.

Foremost, the September 3, 2024 deadline for preparation of the General Election ballot had already passed by the time this case was filed after close of business in Friday, September 6, 2024.<sup>1</sup> N.J.S.A. 19:14-1. The Co-Defendant municipalities took the formal action that Plaintiffs complain of in July 2024. (Complaint, ¶¶14, 15.) The fact that Plaintiffs waited until a Friday night after the statutory deadline for the County Clerk to finalize the ballot design process is dispositive and warrants denial of the relief sought outright.

As set forth in the County Clerk's certification, it is far too late in the election process to remove the ballot questions at issue from the ballots for Highlands and Sea Bright, which Plaintiffs seem to misunderstand as a simple ministerial task. The ballots for every race in Monmouth County have already been designed using the County's unified election software and are nearly done being printed. (Certification of County Clerk, ¶18.) Those ballots that have already been printed are already being prepared for mailing by the County Clerk. (Certification of County Clerk, ¶19.) Since the paper ballots have already been printed, it is not possible to remove the ballot questions at issue without entirely reprinting the ballots for all of Sea Bright and Highlands. Any requirement to reprint the paper ballots for Highlands and Sea Bright would almost certainly cause the County Clerk to violate the statutory deadline to commence sending mail-in ballots to voters by Saturday, September 21, 2024, three days after the final hearing in this matter. See N.J.S.A. 19:63-5. It would similarly be impossible for the County Clerk to

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<sup>1</sup> The deadline to complete the ballot design process falls 64 days before the November 5, 2024 General Election; this year, the deadline fell on September 2, 2024—Labor Day. September 3<sup>rd</sup> was the next business day following the holiday.

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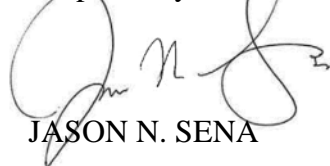
*complete* mailing military and overseas ballots by the September 21, 2024 deadline established by federal law. 52 U.S.C.A. §20302(a)(8).

It is also not possible to reprogram the unified election software just for Sea Bright and Highlands without reprogramming and retesting the election software for all of Monmouth County. As is explained in detail in the County Clerk's certification, the election software used for ballot design, voting machines and ballot scanners is a single, unified system. (Certification of County Clerk, ¶6.) The election software has already been fully programmed for the General Election, utilized to design the ballots, programmed into the voting machines and ballot scanners and tested by the election systems vendor. (Certification of County Clerk, ¶¶12-14.) The software cannot be reprogrammed to remove a single question on ballots for two towns at this late hour. (Certification of County Clerk, ¶15.) Though it appears that Plaintiffs may not be aware of the complexities of the election process, the extraordinary burden on the County Clerk that would result if relief were granted—including the likely violation of State and federal law—far outweighs any relief that could be awarded to Plaintiffs.

### **Conclusion**

For the reasons set forth herein, the County Clerk respectfully requests that Plaintiffs' request for injunctive relief be denied.

Respectfully submitted,



JASON N. SENA

cc: All counsel of record (via eCourts)



**ARCHER & GREINER, P.C.**

Jason N. Sena, Esq. (016842012)

10 Highway 35

Red Bank, NJ 07701

732-268-8000

*Attorneys for Defendant Christine Giordano Hanlon,  
in her official capacity as Monmouth County Clerk*

OCEANPORT BOARD OF EDUCATION,  
Monmouth County, and SHORE REGIONAL  
HIGH SCHOOL BOARD OF EDUCATION,  
Monmouth County,

Plaintiffs,

v.

CHRISTINE GIORDANO HANLON, in her  
official capacity as the Monmouth County Clerk;  
BOROUGH OF SEA BRIGHT, Monmouth  
County; and BOROUGH OF HIGHLANDS,  
Monmouth County,

Defendants,

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MONMOUTH COUNTY  
DOCKET NO.: L-2984-24

**CERTIFICATION OF  
MONMOUTH COUNTY CLERK  
CHRISTINE GIORDANO HANLON**

**Christine Giordano Hanlon**, of full age, certifies as follows:

1. I am the Monmouth County Clerk. In my capacity as Monmouth County Clerk, I am also the Clerk of Elections for the County of Monmouth.
2. As Clerk of Elections, and pursuant to statute, I am responsible for the design and preparation of all ballots pertaining to elections in the County of Monmouth. This includes machine, mail-in, provisional, emergency, and sample ballots.
3. I am also responsible for intake and processing of mail-in ballot applications, and the issuance of mail-in ballots to voters on applications which are approved.
4. New Jersey law permits votes to be cast on a voting machine, on a paper mail-in ballot or, in certain circumstances, on a paper provisional ballot or emergency ballot.

5. All ballots for any election, regardless of type (mail-in, machine, provisional, emergency) are designed programmed into the County's unified voting and tabulation software. The programming, design and preparation process for ballots for a General Election is performed using the names of the partisan nominees from the Primary Election, independent candidates nominated through direct petition and inclusion of any ballot questions filed with the appropriate filing officer.

6. The same unified software system is utilized to program the county's electronic voting machines, which are maintained by the Superintendent of Elections; a separate and independent election office not under my control.

7. The same unified software program is also utilized to program the optical scanners used to canvass paper ballots, which is maintained by the Board of Elections; also a separate and independent election office not under my control.

8. On July 18, 2024, Resolution 24-138 adopted by the Borough Council of the Borough of Highlands was filed with my office; which authorized the inclusion of the ballot question at issue in this litigation on all ballots designed for the Borough of Highlands in connection with the November 5, 2024 General Election.

9. On July 26, 2024, Resolution 144-2024 adopted by the Borough Council of the Borough of Sea Bright was filed with my office; which authorized the inclusion of the ballot question at issue in this litigation on all ballots designed for the Borough of Sea Bright in connection with the November 5, 2024 General Election.

10. My office was required to design and prepare the General Election ballots for each election taking place in Monmouth County, and program the unified election software utilized by all County election officials, before the September 2, 2024 deadline for designing the

General Election ballot for printing pursuant to N.J.S.A. 19:41-1 (64 days before the General Election).

11. All ballots designed for Monmouth County for the November 5, 2024 General Election, including the ballots for the Borough of Highlands and the Borough of Sea Bright which includes the subject ballot question, have already been designed.

12. The programming of the unified election software for the November 5, 2024 General Election, which includes the ballots for the Borough of Highlands and the Borough of Sea Bright, has already been completed.

13. A test deck of all ballots for Monmouth County, including the Highlands and Sea Bright Ballots, was then submitted to the County's election software vendor, ES&S, to test the database to ensure votes can be properly cast in the different races and that the ballot design will correspond with the software for the mail-in ballot scanners and voting machines.

14. On September 13, 2024, ES&S completed testing the election software.

15. It is not possible to change the programming of the election software at this point in the process. Any changes in the programming of any portion of the unified election software after testing for any town or race any could lead to errors in not only the town or race that has been altered, but in any other race programmed into the database for that election.

16. By September 21, 2024, my office is required to commence mailing mail-in General Election ballots to voters pursuant to N.J.S.A. 19:63-5 (45 days before election).

17. Pursuant to federal law, September 21, 2024 is also the date that my office must complete mailing all General Election ballots to military and overseas voters under the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA").

18. All 59,347 mail-in ballots for the November 5, 2024 General Election in Monmouth County have already been printed.

19. My office has begun inserting the printed mail-in ballots into envelopes and preparing those mailings to be placed into the mail stream on town-by-town basis; and will continue to do so on a rolling basis to meet these statutory deadlines.

20. All mail-in ballots for the Borough of Sea Bright have already been inserted into envelopes, addressed, stamped, sorted and are in the mail stream ready to be sent to voters. It is not possible to remove these ballots from the mail stream at this point in the process.

21. It would be both practically and legally impossible to reprogram the election software and redesign, reprint and mail new paper ballots for the November 5, 2024 General Election in Sea Bright and Highlands without interfering with and potentially violating several statutory deadlines.

I hereby 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.

  
HON. CHRISTINE G. HANLON

Dated: September 16, 2024