UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
NEWARK DIVISION

EUGENE MAZO,

and

LISA McCORMICK,

Plaintiffs,

v.

TAHESHA WAY, in her official capacity as New Jersey Secretary of State,

CHRISTOPHER DURKIN, in his official capacity as Essex County Clerk,

E. JUNIOR MALDONADO, in his official capacity as Hudson County Clerk,

JOANNE RAJOPPI, in her official capacity as Union County Clerk,

PAULA SOLLAMI COVELLO, in her official capacity as Mercer County Clerk,

ELAINE FLYNN, in her official capacity as Middlesex County Clerk,

and

STEVE PETER in his official capacity as Somerset County Clerk,

Defendants.

Civil Action No. _____

Judge _____

VERIFIED COMPLAINT

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Counsel for Plaintiffs

STREET AND POST OFFICE ADDRESSES

1. Plaintiff Eugene Mazo: 625 Broad St., Ste. 240, Newark, NJ 07102;

Plaintiff Lisa McCormick: 118 Skillman St., Lambertville, New Jersey 08530;

Defendant Tahesha Way: 20 W. State St., 4th Floor, Trenton, NJ 08625; Mailing Address: P.O. Box 300, Trenton, NJ 08625;

Defendant Christopher Durkin: 465 Martin Luther King Blvd., Room 247, Newark, NJ 07102-0690;

Defendant E. Junior Maldonado: 257 Cornelison Avenue, 4th Floor, Jersey City NJ 07302;

Defendant Joanne Rajoppi: Union County Courthouse, 2 Broad St., Elizabeth, NJ 07207;

Defendant Paula Sollami Covello: Mercer County Administration Building, 640 S. Broad St., Trenton, NJ 08650; Mailing Address: P.O. Box 8068 Trenton, NJ 08650-0068;

Defendant Elaine Flynn: Middlesex County Administration Building, 4th floor, 75 Bayard St., New Brunswick, NJ 08901;

Defendant Steve Peter: 20 Grove Street, Somerville, NJ 08876; Mailing Address: P.O. Box 3000, Somerville, NJ 08876.

NATURE OF ACTION

2. Plaintiffs, Eugene Mazo and Lisa McCormick, allege the content-based speech restrictions for candidate slogans on New Jersey primary election ballots violate the First and Fourteenth Amendments to the United States Constitution. *See* U.S. Const. amends. I, XIV; N.J. Stat. §§ 19:23-17 and 19:23-25.1 (the "Slogan Statutes").

3. The Slogan Statutes allow a New Jersey primary election candidate to print a slogan (up to six words) next to his or her name on the election ballot. *See* Slogan Statutes.

4. But the Slogan Statutes forbid any slogan that includes or refers to the name of any person or any New Jersey incorporated association without the written consent of that person or association. *Id*.

5. The Slogan Statutes prohibitions are unconstitutional content-based speech regulations.

6. The Slogan Statutes prohibitions fail First Amendment strict scrutiny because they serve no compelling government interest and are not narrowly tailored to any such interest.

JURISDICTION

7. This Court has jurisdiction because this action arises out of the First and Fourteenth Amendments. *See* 28 U.S.C. § 1331.

8. This Court has jurisdiction because this action arises under Section 1 of the Civil Rights Act of 1871. *See* 42 U.S.C. §§ 1983, 1988; 28 U.S.C. § 1343(a).

9. This Court has jurisdiction to grant relief under the Declaratory Judgment Act. *See* 28 U.S.C. §§ 2201 and 2202.

VENUE

10. Venue is proper under 28 U.S.C. §§ 1391(b)(1) ("a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located") and (b)(2) (the "judicial district in which a substantial part of the events or omissions giving rise to the claim occurred").

PARTIES

11. Plaintiff Eugene Mazo is a 2020 candidate for the Democratic Party nomination for the U.S. House of Representatives in New Jersey's Tenth Congressional District. Mr. Mazo is a resident and citizen of New Jersey.

12. Plaintiff Lisa McCormick is a 2020 candidate for the Democratic Party nomination for the U.S. House of Representatives in New Jersey's Twelfth Congressional District. Ms. McCormick is a resident and citizen of New Jersey.

13. Defendant Tahesha Way, in her official capacity as New Jersey Secretary of State, is the state's chief election official and certifies candidate petitions for the U.S. House of Representatives. *See* N.J. Stat. §§ 19:13-3; 19:23-21; 52:16A-98(b).

14. Defendant Christopher Durkin, in his official capacity as Essex County Clerk, furnishes, prepares, stores, and distributes primary election ballots in New Jersey's Tenth Congressional District. *See* N.J. Stat. §§ 19:9-2; 19:14-19.

15. Defendant E. Junior Maldonado, in his official capacity as Hudson County Clerk, furnishes, prepares, stores, and distributes primary election ballots in New Jersey's Tenth Congressional District. *Id*.

16. Defendant Joanne Rajoppi, in her official capacity as Union County Clerk, furnishes, prepares, stores, and distributes primary election ballots in New Jersey's Tenth and Twelfth Congressional Districts. *Id.*

17. Defendant Paula Sollami Covello, in her official capacity as Mercer County Clerk, furnishes, prepares, stores, and distributes primary election ballots in New Jersey's Twelfth Congressional District. *Id.*

18. Defendant Elaine Flynn, in her official capacity as Middlesex County Clerk, furnishes, prepares, stores, and distributes primary election ballots in New Jersey's Twelfth Congressional District. *Id.*

19. Defendant Steve Peter, in his official capacity as Somerset County Clerk, furnishes, prepares, stores, and distributes primary election ballots in New Jersey's Twelfth Congressional District. *Id.*

FACTS

Plaintiffs' Political Activity

20. Plaintiffs are candidates for the 2020 Democratic Party nomination for the U.S. House of Representatives in New Jersey's Tenth and Twelfth Congressional Districts, respectively.

21. If Plaintiffs are elected to congress, then they intend to seek reelection in 2022.

22. If Plaintiffs are defeated in the 2020 primary or general election, then they intend to be candidates for the 2022 Democratic Party nomination for the U.S. House of Representatives in New Jersey's Tenth and Twelfth Congressional Districts, respectively.

23. Accordingly, this challenge will "fit comfortably within the established exception to mootness for disputes capable of repetition, yet evading review." *Fed. Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 462 (2007) (collecting cases). "That exception applies where (1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *Id.*

24. An election primary candidate is permitted to print a slogan next to his or her name on the ballot that does not exceed six words. *See* Slogan Statutes.

25. Plaintiffs want a slogan printed next to their respective name on the primary election ballot.

26. However, officials representing the Defendant Secretary Way denied the Plaintiffs' request to use their chosen slogans, citing provisions in the Slogan Statutes.

The Statutes at Issue

27. New Jersey Annotated Statute § 19:23-17 states: "Any person indorsed as a candidate for nomination for any public office or party position whose name is to be voted for on the primary ticket of any political party, may, by indorsement on the petition of nomination in which he is

indorsed, request that there be printed opposite his name on the primary ticket a designation, in not more than six words, as named by him in such petition, for the purpose of indicating either any official act or policy to which he is pledged or committed, or to distinguish him as belonging to a particular faction or wing of his political party; provided, however, that no such designation or slogan shall include or refer to the name of any person or any incorporated association of this State unless the written consent of such person or incorporated association of this State has been filed with the petition of nomination of such candidate or group of candidates."

28. New Jersey Annotated Statute § 19:23-25.1 states: "No designation or slogan shall be printed on any ballot to be used in the conduct of any primary election in connection with any candidate or group of candidates for office, which designation or slogan includes or refers to the name of any other person unless the written consent of such other person has been filed with the petition of nomination of such candidate or group of candidates."

Plaintiffs' Desired Slogans

29. On his petition of nomination for the New Jersey primary election, Plaintiff Eugene Mazo listed three slogans to be printed on the ballot in Essex, Hudson, and Union counties respectively.

30. The three slogans were: "Essex County Democratic Committee, Inc."

"Hudson County Democratic Organization"

"Regular Democratic Organization of Union County"

31. However, officials within the Division of Elections of the Office of the New Jersey Secretary of State informed Mr. Mazo that these slogans referred to the names of New Jersey incorporated associations and unless he was authorized by the chairperson of these organizations, he could not use his desired slogans. Without the authorizations, his nomination petition would be certified as "NO SLOGAN."

32. Mr. Mazo did not obtain the required authorizations, but, instead, used three different slogans with the authorization of three other New Jersey incorporated associations that he created.

33. On her petition of nomination for the New Jersey primary election, Plaintiff Lisa McCormick listed "Not Me. Us.," as her slogan for the primary election ballot.

34. However, officials within the Division of Elections of the Office of the New Jersey Secretary of State informed Ms. McCormick that this slogan referred to the name of a New Jersey incorporated association and unless she was authorized by the chairperson of this organization, she could not use her desired slogan. Without the authorization, her nomination petition would be certified as "NO SLOGAN."

35. Subsequently, Ms. McCormick listed "Bernie Sanders Betrayed the NJ Revolution," as her slogan for the primary election ballot.

36. However, officials within the Division of Elections of the Office of the New Jersey Secretary of State informed Ms. McCormick that without the consent of Bernie Sanders, she could not use her desired slogan. Without the authorization, her nomination petition would be certified as "NO SLOGAN."

37. Ms. McCormick did not obtain the required authorizations, but, instead, used a different slogan, "Democrats United for Progress," with the authorization of that organization.

CAUSE OF ACTION

Count One:
Violation of U.S. Constitution Amendments I and XIV

38. Plaintiffs reallege and incorporate by reference paragraphs 1 through 37.

39. The First Amendment prevents Congress from enacting laws that abridge the freedom of speech. *See* U.S. Const. amend. I.

40. The First Amendment is applicable to the States through the Fourteenth Amendment. *See Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

41. Accordingly, States cannot "restrict expression because of its message, its ideas, its subject matter, or its content." *Id*. (internal quotation marks and citation omitted).

42. "Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." *Id*.

43. Even laws that are "facially content neutral, will be considered content-based regulations of speech" if they "cannot be justified without reference to the content of the regulated speech." *Id*. at 164 (internal quotation marks and citation omitted).

44. Content based laws are subject to strict scrutiny. *Id*.

45. Therefore, content-based laws "are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Id*. at 163.

46. "A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of animus toward the ideas contained in the regulated speech." *Id*. at 165 (internal quotation marks and citation omitted).

47. "[A] speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter," *id*. at 169, and "is content based if the law applies to particular speech because of the topic discussed or the idea or message expressed." *Id*. at 171.

48. The Slogan Statutes restrict Plaintiffs' freedom of expression because of the content of their respective ballot slogans.

49. The Slogan Statutes apply to Plaintiffs' ballot slogans because of the message expressed in the slogans.

50. Defendants cannot justify the Slogan Statutes without reference to the content of the Plaintiffs' regulated ballot slogans.

51. Therefore, the Slogan Statutes are content-based laws and subject to strict scrutiny.

52. It is irrelevant that the Slogan Statutes do not discriminate among viewpoints. *Id*. at 169.

53. The Slogan Statutes "are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Id*. at 163.

54. There is no compelling state interest for the speech restrictions in the Slogan Statutes.

55. The Slogan Statutes are not narrowly tailored.

56. Accordingly, the Slogan Statutes are unconstitutional under the First Amendment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, Eugene Mazo and Lisa McCormick, request judgment be entered in their favor and against Defendants as follows:

A. A declaration that N.J. Stat. §§ 19:23-17 and 19:23-25.1 are content-based regulations of speech that are facially unconstitutional and as-applied to Plaintiffs' desired primary ballot slogans.

B. A declaration that N.J. Stat. §§ 19:23-17 and 19:23-25.1 serve no compelling governmental interest.

C. A declaration that N.J. Stat. §§ 19:23-17 and 19:23-25.1 are not the least-restrictive means to advance any governmental interest.

D. A declaration that N.J. Stat. §§ 19:23-17 and 19:23-25.1 are not appropriately tailored to serve any governmental interest.

E. Such injunctive relief as this Court may direct.

F. Costs and attorneys' fees pursuant to any applicable statute or authority.

G. Any other relief this Court may grant in its discretion.

Respectfully submitted,

/s/ Walter M. Luers

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Dated: July 2, 2020

VERIFICATION

STATE OF NORTH CAROLINA)
) ss.
COUNTY OF FORSYTH)

I, Eugene Mazo, being first duly sworn, state under oath that I have read the foregoing VERIFIED COMPLAINT, and that the statements contained therein are true and correct to the best of my knowledge, information, and belief.

Eugene D. Mazo

Subscribed and sworn before me this 1st day of July, 2020.

Notary Public

My Commission Expires: 12-08-2024

RYAN TWIGG
My Commission Expires
NOTARY
PUBLIC
12-08-2024
GUILFORD COUNTY, NC

VERIFICATION

STATE OF NEW JERSEY)
) ss.
COUNTY OF HUNTERDON)

I, Lisa McCormick, being first duly sworn, state under oath that I have read the foregoing VERIFIED COMPLAINT, and that the statements contained therein are true and correct to the best of my knowledge, information, and belief.

Lisa McCormick

Subscribed and sworn before me this 1ST day of July, 2020.

Notary Public

My Commission Expires: 5/17/2024

DAVID F. SCANNELL
NOTARY PUBLIC OF NEW JERSEY
Commission # 50105015
My Commission Expires 5/17/2024

CERTIFICATE OF PERSONAL SERVICE

The foregoing document will be personally served on all Defendants at the addresses listed below within the timeframe required by the Federal Rules of Civil Procedure:

Tahesha Way
Secretary of State
20 W. State St., 4th Floor
Trenton, NJ. 08625

Christopher Durkin
Essex County Clerk
465 Martin Luther King Blvd.
Room 247
Newark, NJ 07102-0690

E. Junior Maldonado
Hudson County Clerk
257 Cornelison Ave.
4th Floor
Jersey City NJ 07302

Joanne Rajoppi
Union County Clerk
Union County Courthouse
2 Broad St.
Elizabeth, NJ 07207

Paula Sollami Covello
Mercer County Clerk
Mercer County Administration Bldg.
640 S. Broad St.
Trenton, NJ 08650

Elaine Flynn
Middlesex County Clerk
Middlesex County Admin. Bldg.
75 Bayard St.
4th Floor
New Brunswick, NJ 08901

Steve Peter
Somerset County Clerk
20 Grove St.
Somerville, NJ 08876

/s/ Walter M. Luers
Walter M. Luers

CERTIFICATE OF SERVICE

Pursuant to Federal Rules of Civil Procedure 5 and 5.1, I certify that on the 2nd day of July, 2020, I caused the foregoing document to be served on the following, via certified U.S. mail:

Gurbir Grewal
Attorney General
RJ Hughes Justice Complex
25 Market St., Box 080
Trenton, NJ 08625-0080

/s/ Walter M. Luers
Walter M. Luers