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NATASHA C. MARCHICK,	:	SUPERIOR COURT OF NEW JERSEY
	:	MIDDLESEX COUNTY:
	:	LAW DIVISION
Plaintiff,	:	
--vs.--	:	
	:	
MIDDLESEX COUNTY BOARD OF	:	Action in Lieu of Prerogative Writ
ELECTIONS, DANIEL FRANKEL,	:	
Middlesex Cty. Commissioner of Registration,	:	
and KIM GUADAGNO, N.J. Chief	:	VERIFIED COMPLAINT
Election Officer,	:	and <u>R.</u> 4:69-4 Certification
	:	
Defendants.	:	

The Plaintiff, NATASHA C. MARCHICK, by way of her Verified Complaint, states as follows:

PRELIMINARY STATEMENT

This action challenges the rejection of Plaintiff Natasha Marchick’s provisional ballot, which she cast at the most recent General Election held on November 6, 2012, by the Middlesex

County Board of Elections. Her challenge is based on the fact that she satisfied New Jersey's advance registration requirements, and thus was entitled to have her ballot count for all candidates for whom, and each public question upon which, she voted. Initiated as an action in lieu of prerogative writ, this action also seeks declaratory and injunctive relief, pursuant to New Jersey's Civil Rights Act, N.J.S.A. 10:6-2 and New Jersey's Declaratory Judgment Law, N.J.S.A. 2A:16-50 et seq. , against all parties.

PARTIES

1. Plaintiff NATASHA C. MARCHICK resides, and at all times relevant to this complaint, resided at C-210, Jameson Hall, Rutgers University, New Brunswick, 08901. She is, and was on Election Day, November 6, 2012, over 18 years of age, a citizen of the United States, not on parole or probation, and a resident of Middlesex County for at least 30 days. On September 25, 2012, she completed a change of address voter registration form, which was delivered to the Office of the Secretary of State soon thereafter. She has a constitutional and statutory right to vote in New Jersey, to cast her ballot in New Brunswick, Middlesex County, and to have that ballot counted.

2. Defendant MIDDLESEX COUNTY BOARD OF ELECTIONS is responsible for determining the validity of provisional ballots cast in Middlesex County. Pursuant to N.J.S.A. 19:53C-18, "the decision of a majority of the county board on any question concerning a provisional ballot matter shall be deemed the decision of the board and final." The Board of Elections shall also, with respect to provisional ballots, "tally the votes given for each person for any office to be filled at the election or any public question and note the same upon the tally sheets," which must be signed by all Board members. N.J.S.A. 19:53C-19(b).

3. Defendant DANIEL FRANKEL, is, and at all times relevant to this complaint, has been the Middlesex County Commissioner of Registration. In that capacity, he sits on the Board

of Elections and serves as its Secretary. On November 13, 2012, he voted to reject Plaintiff's provisional ballot in its entirety. In accord with N.J.S.A. 19:31-2, Mr. Frankel, in his capacity as Commissioner, is "responsible for adding to, deleting from, amending and maintaining the records of persons registered to vote in [Middlesex] county contained in the Statewide voter registration system." Mr. Frankel is sued in his official capacity only.

4. Defendant KIM GUADAGNO is, and at all times relevant to this complaint, has been the Secretary of State of New Jersey. Pursuant to N.J.S.A. 19:31-6a, she is "designated the chief State election official" and is "responsible for the coordination of this State's responsibilities pursuant to the provisions" of the "National Voter Registration Act of 1993" and the "Help America Vote Act of 2002." Such responsibilities include the establishment, administration and maintenance "at the State level" of a "single, uniform, official, centralized, interactive computerized statewide voter registration list." 42 U.S.C. § 15483(a)(1)(A). Ms. Guadagno is sued in her official capacity only.

COUNT ONE

5. On September 25, 2012, Natasha Marchick fully completed and signed a voter registration change of address form on the campus of Rutgers University-New Brunswick. Attached hereto as Exhibit "A." She received that form while present at the Douglass College Center from another student, who was participating in Rutgers University Student Association's voter registration drive. She returned the fully-completed and signed form to that same person. At the time Ms. Marchick signed the registration form, she resided in New Brunswick, and desired to change her voter registration record to reflect that change in address. She previously had resided and voted in Manville, New Jersey in Somerset County.

6. During Fall 2012, the United States Student Association ("USSA") ran a national student voter registration drive. The New Jersey portion of this drive was coordinated by New

Jersey United Students (a USSA member), various student governments and student organizations active at specific New Jersey college campuses, and the USSA Empire Garden National Field Associate, John Aspray. Specifically, at Rutgers University-New Brunswick, this registration drive was coordinated by the Rutgers University Student Assembly (“RUSA”) (the undergraduate student government of Rutgers-New Brunswick), Mr. Aspray, and other student organizations, such as NJ-PIRG.

7. Upon receipt of completed voter registration forms from different campuses, Mr. Aspray would scan each form, and set them aside in a single unified location sorted by campus. Between the time Mr. Aspray received the completed registration forms, scanned them and delivered them to the Secretary of State’s office, he kept the forms in a single canvas bag (separated by campus and other factors in manila folders) and stored the bag either in RUSA’s office or his personal residence.

8. On October 16, 2012, which was on or before the statutory deadline for filing completed voter registration forms for this election, Mr. Aspray and persons assisting him went to the Department of State, Division of Elections, located at 225 West State Street in Trenton, New Jersey to deliver all the registration forms New Jersey United Students had collected, including Ms. Marchick’s change of address registration form. On that date, Mr. Aspray delivered approximately 3,000 forms, of which approximately 1,450 were from Rutgers-New Brunswick students.

9. On November 6, 2012, Ms. Marchick went to the Lord Stirling School polling place designated for persons residing in Jameson Hall. Because she was not in the poll books, she was given a provisional ballot on which she affirmed her residence as Jameson Hall, New Brunswick. The affirmation, attached hereto as Exhibit “B,” was properly completed and signed.

10. Soon thereafter, John Aspray and other persons associated with RUSA became aware of the fact that the provisional ballots of 13 students, including Ms. Marchick, out of the approximately 1,450 Rutgers-New Brunswick students whom they had registered had been rejected by the Middlesex Board of Elections. Accordingly, they challenged those rejections. Specifically, Mr. Aspray challenged the rejection of Ms. Marchick's provisional ballot, on the basis that she had "confirmed a current home address in New Brunswick." See challenge form attached hereto as Exhibit "C."

11. On November 13, 2012, Mr. Aspray and other challengers appeared before the Middlesex County Board of Elections. Natasha Marchick and a few other students whose provisional ballots were rejected (and who were present) were given the opportunity to give an unsworn allocution as to the circumstances surrounding the completion of their respective voter registration forms. Mr. Aspray was also permitted to give an unsworn allocution as to the chain of custody of those forms from the time of receipt until he delivered them to the Secretary of State. At that time, he submitted to the Board hard copies of the registration forms of 13 persons whose provisional ballots were rejected, which he had maintained electronically.

12. On November 13, 2012, two members of the Middlesex County Board of Elections voted to accept the provisional ballots of all 13 voters, while two members, including Defendant Daniel Frankel, voted to reject those ballots as invalid.

13. Because of the tie vote, the Middlesex County Board of Elections, Board made an application to the Superior Court to provide the tie breaking vote. A hearing was held on November 16, 2012, at which time, Ms. Marchick was present and tried to be heard when she understood that Judge LeBlon had rejected her provisional ballot in its entirety. Judge LeBlon, sitting as the tiebreaking member of the Board of Elections, did not permit her to speak or

otherwise be heard and rejected her ballot as well as the 12 other provisional ballots on which the Board had not been able to reach a determination.

14. Mr. Aspray was also present in the courtroom, but Judge LeBlon would not permit counsel for the rejected voters to present his testimony, Ms. Marchick's testimony or that of any other voters whose provisional ballot was at issue.

15. The Court found that there was "no evidence of receipt" by the Middlesex County Board of Elections of the 13 registration forms filed with the Secretary of State, thus justifying his decision to reject the provisional ballots at issue. A copy of that Order is attached hereto as Exhibit "D."

16. In accord with N.J.S.A. 19:31-6, "[a]ny person qualified to vote in an election shall be entitled to vote in the election if the person shall have registered to vote on or before the 21st day preceding the election by: . . . (e) completing and returning to the Attorney General or having returned thereto a voter registration form received from a door-to-door canvass or mobile registration drive, as provided for in section 19 of P.L.1974, c.30 (C.19:31-6.7)." Since 2008, the Secretary of State, rather than the Attorney General, is the Chief Election Officer in New Jersey.

17. There is no statutory provision requiring that a person filing a completed registration form or submitting a form on behalf of another registrant receive a receipt for that filing, whether as proof of the validity of that registration or for any other purpose. On information and belief, neither the Secretary of State, County Clerks nor Commissioners of Registration provide third-party registration organizations with "proof of filing" when they submit the numerous forms that they collect.

18. Because Plaintiff provided sufficient probative evidence to the Middlesex Board of

Elections at the November 13, 2012 hearing that she had completed and returned, via John Aspray, a completed a voter registration form to the Secretary of State within 21 days before the November General Election, she was entitled to vote in that election and have her provisional ballot counted for all candidates for which she voted and for all public questions upon which she voted.

WHEREFORE Plaintiff Marchick demands relief against Defendant Middlesex Board of Elections, including Defendant Daniel Frankel, as Commissioner of Registration, (1) adjudging and declaring that its decision to reject her provisional ballot on the basis that she was not properly registered in Middlesex County was contrary to N.J.S.A. 19:31-6(e) and other applicable statutory law; (2) adjudging and declaring that Ms. Marchick's provisional ballot was valid and should have been counted for all candidates for which she voted and for all public questions upon which she voted; (3) directing the Middlesex Board of Elections to adjust the total voter turnout for the November 6, 2012, General Election and the total vote count for specific candidates and public questions to reflect votes cast by Plaintiff Marchick; (4) directing Commissioner Frankel to cause the State Voter Registration System to reflect the fact that Plaintiff Marchick was registered to vote in Middlesex County, and indeed voted in the November 6, 2012 General Election in New Brunswick, Middlesex County; and (5) granting Plaintiff such other and further legal and equitable relief as this Court may find just and proper.

COUNT TWO

19. Plaintiff repeats and restates each and every allegation contained in Paragraphs 1-18 as set forth herein.

20. In accord with N.J.S.A. 19:31-32(a), the Statewide Voter Registration System ("SVRS") is "a single system for storing and managing the official file of registered voters

throughout the State.” Each commissioner, including defendant Frankel, is responsible for “verifying the accuracy of the name, address and other data of registered voters in the commissioner's respective county as contained in the system,” and “for entering the information on [registration] forms into the system on an expedited basis.” N.J.S.A. 19:31-32(b) (emphasis added). See also 42 U.S.C. § 15483(a)(1)(A)(vi) (“All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official”) (emphasis added), and 42 U.S.C. § 15483(a)(1)(A)(vii) (“The chief State election official shall provide such support as may be required so that local election officials are able to enter information as described in clause (vi)”).

21. On November 13, 2012, and on November 16, 2012, the members of the Middlesex County Board of Elections (including Judge LeBlon, sitting as a member of the Board) were informed by local election officials that information in the SVRS did not indicate that Ms. Marchick had submitted, via John Aspray, a registration form on October 16, 2012, reflecting her change of residence from Somerset County to Middlesex County.

22. On information and belief, either Defendant Frankel or Defendant Guadagno did not process Ms. Marchick's registration form, which was filed with the Secretary of State's Office on October 16, 2012, on an expedited basis in accordance with state and federal law.

WHEREFORE Plaintiff Marchick demands relief against Defendants, their agents, officers and employees, (1) adjudging and declaring, pursuant to N.J.S.A. 2A: 16-50 et seq. and R. 4:42-3, that the Middlesex County Board of Election's rejection of Plaintiff's provisional ballot was invalid because the SVRS cannot be the sole determinative of whether votes cast by provisional ballot are counted in face of probative evidence indicating that the voter filed a valid

registration form in a timely manner; (2) adjudging and declaring, pursuant to N.J.S.A. 2A: 16-50 et seq. and R. 4:42-3, that Defendant Frankel, in his capacity as Commissioner of Registration and/or Defendant Kim Guadagno, in her capacity as Chief Election Officer, failed to process Plaintiff's registration form in a timely manner in accordance with N.J.S.A. 19:31-32(b); (3) directing Defendant Guadagno to input registration information that is received by her office directly into the SVRS to minimize risk of administrative error, rather than transferring it to the relevant county commissioner of registration to input; (4) appointing a special master or other supervisory personnel, under the Court's authority, to ensure the imposition of such administrative, training, and accountability protocols, along with reporting on the same, to ensure such violations and errors do not recur; and (5) granting Plaintiff such other and further legal and equitable relief as this Court may find just and proper.

COUNT THREE

23. Plaintiff repeats and restates each and every allegation contained in Paragraphs 1-22 as set forth herein.

24. Article I, sec. I, para. 3(a) of the New Jersey Constitution provides:

Every citizen of the United States, of the age of 18 years, who shall have been a resident of this State and of the county in which he claims his vote 30 days, next before the election, shall be entitled to vote for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people.

25. Plaintiff's constitutional right to vote is qualified by New Jersey's advance registration requirement. N.J.S.A. 19:31-5. Accordingly, a voter, such as Ms. Marchick, is entitled to cast a ballot and have her vote counted if she registers pursuant to N.J.S.A. 19:31-6.

26. Plaintiff Marchick has complied with New Jersey's advance registration requirements.

27. By rejecting her provisional ballot because she did not have sufficient proof that the

Secretary of State received Ms. Marchick's registration form, which was filed by John Aspray on October 16, 2012, in Ms. Guadagno's office, Defendant Middlesex County Board of Elections has violated N.J.S.A. 10:6-2(c) authorizing "[a]ny person who has been deprived of . . . any substantive rights . . . secured by the Constitution or laws of this State . . . [to] bring a civil action for damages and for injunctive or other appropriate relief."

28. By failing to accurately and timely process Plaintiff Marchick's registration form Defendants Frankel and/or Guadagno have violated N.J.S.A. 10:6-2(c) authorizing "[a]ny person who has been deprived of . . . any substantive rights . . . secured by the Constitution or laws of this State . . . [to] bring a civil action for damages and for injunctive or other appropriate relief."

WHEREFORE Plaintiff demands relief against Defendants, their agents, officers and employees, (1) adjudging and declaring that Defendants have violated Plaintiff's substantive right to vote, which is secured by the New Jersey Constitution and statutory law; (2) directing Commissioner Frankel and/or Secretary of State, in her capacity as Chief Election Officer, to process Plaintiff Marchick's registration form in accord with N.J.S.A. 19:31-6(e) and to cause the State Voter Registration System to reflect the fact that Plaintiff Marchick was registered to vote in Middlesex County, and indeed voted in the November 6, 2012 General Election in New Brunswick, Middlesex County; (3) directing the Middlesex Board of Elections to accept Plaintiff's provisional ballot as valid and to adjust the total voter turnout for the November 6, 2012, General Election and the total vote count for specific candidates and public questions to reflect votes cast by Plaintiff Marchick; (4) granting attorneys' fees pursuant to N.J.S.A. 10:6-2(f); and (5) granting Plaintiff such other and further legal and equitable relief as this Court may find just and proper.

Respectfully submitted,

NEW JERSEY APPLESEED
PUBLIC INTEREST LAW CENTER, INC.

Date: December 31, 2012

By: Renée Steinhagen, Esq.

-- and--

RUTGERS CONSTITUTIONAL
LITIGATION CLINIC

-- and--

AMERICAN CIVIL LIBERTIES
UNION OF N.J. FOUNDATION

DESIGNATION OF TRIAL COUNSEL

Renée Steinhagen, Esq., Frank Askin, Esq. and Ronald Chen, Esq. are hereby designated as trial counsel for Plaintiff.

Renée Steinhagen, Esq.

Date: December 31, 2012

CERTIFICATION PURSUANT TO RULE 4:5-1

I, RENÉE STEINHAGEN, hereby certify that:

1. The matter in controversy is not the subject of any other pending Court or arbitration proceeding;
2. I am not aware of any other contemplated Court or arbitration proceeding and;
3. I am not aware at the present time of any other party that should be joined to this litigation.

Date: December 31, 2012

Renée Steinhagen, Esq.

CERTIFICATION PURSUANT TO RULE 4:69-4

I hereby certify that there the hearing before the Middlesex Board of Elections on November 13, 2012, was not recorded, and that I intend, within the week of filing this complaint, to order the transcript of the hearing before Judge LeBlon, which was held on November 16, 2012. His Order rejecting Ms. Marchick's provisional ballot is attached hereto.

Date: December 31, 2012

Renée Steinhagen, Esq.

CERTIFICATION OF JOHN ASPRAY

I, JOHN ASPRAY, being of full age do hereby swear and certify as follows:

1. During the Fall of 2012, I was employed by the United States Student Association as the Empire Garden National Field Associate; and, in that capacity, assisted the Rutgers University Student Assembly (the undergraduate student government of Rutgers-New Brunswick) in coordinating its voter registration drive at the Rutgers-New Brunswick campus. I personally delivered Ms. Marchick's voter registration form to the Office of the Secretary of State in Trenton and maintained a copy of that form, which I submitted to the Middlesex Board of Elections in support of my challenge to the rejection of her provisional ballot. Accordingly, I have personal knowledge of the facts and circumstances giving rise to this action.

2. I have read the annexed Complaint including all the facts alleged therein.

3. All the facts alleged in the Complaint are true and accurate to the best of my personal knowledge and belief.

4. Pursuant to R. 1:4-7, I intend this certification to constitute a verification of the Complaint in this matter.

5. I 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 that I am subject to punishment.

Dated: December 31, 2012

JOHN ASPRAY