

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Defendants, Middlesex  
County Board of Elections and Daniel  
Frankel  
R. J. Hughes Justice Complex  
25 Market Street  
P.O. Box 112  
Trenton, New Jersey 08625

**FILED**  
**DEC 11 2013**  
Judge Heidi Willis Currier

By: George N. Cohen  
Deputy Attorney General  
(609) 943-5626

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
MIDDLESEX COUNTY  
DOCKET NO. C-85-11

RUTGERS UNIVERSITY STUDENT )  
ASSEMBLY (RUSA), Matthew Codeiro, )  
Gabriela Agata Gryzbowski, Beth )  
Rose Breslaw, Edward James )  
Vasconcellos III, Bon-Jin Kun, )  
Annalee Switek, Latino Leadership )  
Alliance of New Jersey (LLANJ), )  
New Jersey Citizen Action (NJCA), )  
and the American Civil Liberties )  
Union of New Jersey (ACLU-NJ), )

Plaintiffs, )

v. )

Middlesex County Board of )  
Elections and Daniel Frankel, )  
Commissioner of Registrations of )  
Middlesex County, )

Defendants. )

CIVIL ACTION

ORDER GRANTING DEFENDANTS'  
CROSS-MOTION TO DISMISS

This matter having been opened to the court by  
Applesseed Public Interest Law Center and Rutgers Constitutional

Litigation Clinic, attorneys for plaintiffs Rutgers University Student Assembly, et al. (Renee Steinhagen, Esq. and Frank Askin, Esq. respectively appearing) in support of a motion for summary judgment; and John J. Hoffman, Acting Attorney General of New Jersey, attorneys for defendants Middlesex County Board of Election and Daniel Frankel (George N. Cohen, Deputy Attorney General, appearing) in support of a cross-motion to dismiss the Complaint; and the Court having considered the papers submitted in support and in opposition herein to plaintiffs' motion for summary judgment and defendants' cross-motion to dismiss; and oral argument having been heard; and for good cause shown;

IT IS, on this 11<sup>th</sup> day of December, 2013;

ORDERED that plaintiffs' motion for summary judgment is hereby denied;

AND IT IS FURTHER ORDERED that defendants' cross-motion to dismiss plaintiffs' Complaint is hereby granted.

*Heidi Willis Currier*

Hon. Heidi Willis Currier, J.S.C.

*Opinion mailed with this order.*

**NOT FOR PUBLICATION WITHOUT  
APPROVAL OF THE COMMITTEE ON PUBLICATION**

---

RUTGERS UNIVERSITY  
STUDENT ASSEMBLY,  
(RUSA), ET ALS.

PLAINTIFFS,

v.

MIDDLESEX COUNTY BOARD  
OF ELECTIONS AND DANIEL  
FRANKEL COMMISSIONER OF  
REGISTRATIONS OF  
MIDDLESEX COUNTY

DEFENDANTS,

---

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – CIVIL PART  
MIDDLESEX COUNTY

Docket No. MID C-85-11

**OPINION**

**Argued: November 4, 2013**

**Decided: December 11, 2013**

**Hon. Heidi Willis Currier, J.S.C.**

Counsel for Plaintiffs:

Frank Askin, Esq. of Rutgers Constitutional Litigation Clinic

Renee Steinhagen, Esq. of Applesseed Public Interest Law Center

Edward L. Barocas, Esq. of American Civil Liberties Union of New Jersey Foundation

Counsel for Defendants:

George N. Cohen, Deputy Attorney General of the State of New Jersey, appearing on behalf of  
defendants

The plaintiffs, Rutgers University Student Assembly (“RUSA”) as well as individual former and current undergraduate students at Rutgers move for summary judgment asking this Court to rule that the twenty-one day registration requirement set forth under N.J.S.A. 19:31-6 be declared in violation of the New Jersey Constitution and New Jersey Civil Rights Act.

The defendants, Middlesex County Board of Elections and Commissioner of Registration of Middlesex County, cross-moved for summary judgment and asked this Court to deny plaintiffs' summary judgment motion and to find no constitutional violation.

### **STATEMENT OF FACTS**

The plaintiffs are a group of individuals and organizations who claim to be burdened and disenfranchised by the advance voter registration deadline of 21 days currently set forth at N.J.S.A. 19:31-6. Several of the named students state that they registered to vote 21 days prior to the General Election in 2009, but when they arrived at the polling place their names were not on the poll books. Several of these students were then permitted to vote by provisional ballot, but their votes were not counted because there was no confirmation that these students had registered in a timely manner. Their ballot affirmation statements were, however, accepted as registrations for future elections.

New Jersey has a central database for voter information that includes identification data, voter history and voter fraud, allows counties to share and transfer voter information and eliminates the possibility of double voting. As of May 30, 2007, Statewide Voter Registration System ("SVRS") became the official repository for all voter registration records. SVRS is linked to Direct Interface Agencies ("DIA"), a service that facilitates the cross-reference of voter data from the New Jersey Motor Vehicle Commission, Social Security Administration, the New Jersey Department of Corrections, the New Jersey Administrative Office of the Courts and other governmental agencies.

In New Jersey a person may register to vote at numerous governmental offices by completing an official registration application that is prepared and supplied in various languages by the State Division of Elections. Every person that enters a Motor Vehicle

Commission office, an agency providing public assistance, an agency providing assistance to individuals with disabilities or an Armed Forces recruitment office is affirmatively asked if he or she wishes to register to vote. These locations are known as active voter registration agencies.

Other government offices, designated as “Public Agencies,” simply have the obligation to display voter registration applications and to receive them if tendered. Public agencies include any office or commercial establishment where New Jersey licenses or permits are issued, and include offices of the State Division of Workers Compensation, the Division of Employment Security and the Division of Unemployment and Temporary Disability Insurance.

Finally a New Jersey citizen may also register through voter registration drives held by candidates, political parties and nonpartisan groups or through individual effort. A voter registration application may be copied or down-loaded for use directly from the internet. Applications are available in various languages.

In contrast, eight other states have Election Day Registration, which allows a voter to register and cast a vote on the day of an election. These states are Idaho, Iowa, Maine, Minnesota, Montana, New Hampshire, Wisconsin, Wyoming and the District of Columbia (collectively, the “EDR States”). On the date of oral argument the Court was advised that Connecticut would imminently become operational as an EDR State.

### **LEGAL ANALYSIS**

Both parties now bring motions for summary judgment. Summary judgment is granted “if a pleading, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to judgment as a matter of law.” Rule 4:46-2 (c).

In determining whether an issue is material the crux of the inquiry is “whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” Brill v. Guardian Life Insurance Company of America, 142 N.J. 520, 533 (1995).

In this matter both parties have advised the Court that it is appropriate to decide this case by way of summary judgment. The parties have completed discovery and agree that the case requires a judicial ruling as to the constitutionality of the statutory twenty-one day registration requirement.

It is undisputed that New Jersey attaches paramount importance to an individual’s right to vote. The New Jersey Constitution of 1947 devotes an entire article to a citizen’s right to vote and eligibility requirements. Paragraph 3 thereof details some specific age and residency requirements. These constitutional provisions, are not, however, exclusive.<sup>6</sup> As former Chief Justice Weintraub explained in Gangemi v. Rosengard, 44 N.J. 166 (1965) “registration is upheld as part of the regulatory machinery intended to protect the right to vote.” Id. at 172. It has long been recognized “that the legislature may, in order to ensure honest elections, pass laws to prevent those not entitled to vote from voting.” In re Freeholders of Hudson County, 105 N.J.L. 57, 60 (1928).

In accordance with that authority, the New Jersey Legislature has enacted a statute that requires that a voter register “on or before the twenty-first day preceding the election.” N.J.S.A. 19:31-6 (hereinafter, the “ Statute”). It is noteworthy that before 2006, the Statute required voters to register 29 days before election day. See P.L. 2005, c. 139 § 8.

Plaintiffs assert that they are being disenfranchised by having to comply with the twenty-one day registration requirement of the Statute and that the current registration requirement is excessively burdensome. Defendants assert that all eligible voters are subject to

the same voter registration requirements and the one to two minutes it requires to complete a voter registration application is not a severe burden.

There is also much dispute between the parties as to the standard this Court should utilize in assessing the constitutionality of the Statute's twenty-one day registration requirement. Plaintiffs urge this Court to utilize a strict scrutiny standard. They argue that use of this standard would lead to a finding of a severe burden on potential voters and a holding that the Statute is unconstitutional. Defendants assert the proper standard to be used by this Court is the balancing test laid out in Burdick v. Takushi, 504 U.S. 428 (1992).

The United States Supreme Court recognized in Burdick that inherent in a legislature's ability to regulate elections is the imposition of some burden upon individual voters. Id. at 433. Therefore, application of the strict scrutiny standard to every voting regulation is not warranted. Id. The United States Supreme Court has specifically found that requiring voters to take some action to participate in the electoral process such as voter registration is a minor barrier and it does not compel strict scrutiny. Bullock v. Carter, 405 U.S. 134, 143 (1972). Instead, a balancing test should be used: this test would require the character and magnitude of the asserted injury be weighed against the State's interest in burdening its citizen's right to vote. Anderson v. Celebrezze, 460 U.S. 780, 789 (1983).

This Court finds the instant registration requirement to be distinguishable from the regulation discussed in Worden v. Mercer County Board of Elections, 61 N.J. 325 (1972). In Worden, a group of Mercer County college students challenged the durational residency requirement which had been enforced to deny them the right to register to vote in the county of their college. In that case, the Supreme Court found the restriction discriminated against individual plaintiffs because they were bona fide residents of Mercer County and "improperly

denied the right to register to vote in the communities where their college residences were located.” Id. at 348.

In this case, no discrimination has been asserted. The individual plaintiffs in this matter have not alleged they were treated differently than other similarly situated persons as a result of the twenty-one day registration requirement of the Statute. The plaintiffs seek a ruling instead that the registration requirement is unconstitutional on its face as applied to every New Jersey citizen. This registration requirement therefore does not treat similarly situated voters differently and therefore would not be subject to a strict scrutiny test.

Plaintiffs further argue that on a practical basis, the Legislature’s rationale for imposing a registration requirement in the past is no longer valid. Plaintiffs argue that there have been no problems with voter fraud in the EDR States, and that the technology in place would permit a voter in New Jersey to register to vote at the polling place on the day of an election. Plaintiffs may be correct. However, the appropriate forum in which to seek a change to this part of the Statute is the Legislature, and not the courts. Our courts have always found that “the Legislature is vested with the authority to determine the when, where, and how voting is to take place.” State v. Black, 54 N.J.L. 446, 449 (1892) *aff’d sub nom.: In re Freeholders of Hudson County*, 105 N.J.L. 57, 62 (1928). It is not for this Court to infringe upon the Legislature’s domain absent the demonstration of a constitutional violation.

Less than seven years ago the Legislature amended the Statute to reduce the registration period from 29 days to 21 days. If plaintiffs desire a further reduction, they should petition the Legislature accordingly.

Plaintiffs also argue that the twenty-one day voter registration deadline disenfranchises a significant number of eligible voters of every age and circumstances and in every election.



According to plaintiffs, the broad breadth of this disenfranchisement invokes a constitutional dimension, and thereby bestows on this Court the authority to review the Statute.

There is some inconsistency among plaintiffs' pleadings and brief as to whether they make their claims of disenfranchisement on behalf of college students or all people affected by the Statute. In any event, even if this Court assumes that plaintiffs represent the broadest possible class, recent election results do not demonstrate a widely-based problem. Plaintiffs ask this Court to compare New Jersey voter turnout rates to the turnout rates in the eight EDR States in 2012. In that general election, New Jersey had a voter turnout rate higher than at least four of the EDR States and a rate within several percentage points of the turnout rate in the other four EDR States. As defendants correctly observe, despite the fact that the 2012 general election was held seven days after Super Storm Sandy rendered many parts of this State inoperational, New Jersey's turnout was 67% compared to the national voter turnout of 52.5%.

The Court finds the burden to register to vote, if any, to be minimal. There are numerous opportunities to register and the process is completed in a matter of minutes. The Court is not persuaded by plaintiff's arguments that it is an overwhelming burden. As students, plaintiffs are required to register prior to attending a class. Students know all too well that on the day of registration for classes, students must log into their computers in the early morning hours in order to get the classes that they desire. If they wait too long to register they may not be permitted to take the class, either because they did not comply with university rules or because the class is already full. Students such as the plaintiffs in this case are also very familiar with numerous other deadlines, including those pertaining to applications for matriculation, to add or drop a class and to submit financial aid materials. Students such as the plaintiffs must comply with rules similar to the election registration deadlines every single day.


There are numerous opportunities for a Rutgers student turning 18 or older to register to vote. One need only walk up and down College Avenue in the months before an election to see a number of tables set up specifically for these Rutgers students to register in a timely manner so that they might exercise their right to vote in November.

As the Court has determined the burden on the right to vote to be minimal, the State need not establish a compelling interest.

### CONCLUSION

This Court finds that the twenty-one day registration requirement of the Statute does not impose an unjustifiable burden on a citizen's right to vote. The Supreme Court has expressly held that "a person does not have a federal constitutional right to walk up to a voting place on Election Day and demand a ballot." Marston v. Lewis, 410 U.S. 679, 680 (1973). It is reasonable for people to have to take some action in a specified timeframe. The action required here is minimal and simple to accomplish. If the Legislature deems that, due to advances in technology, the 21 days wait currently imposed by the Statute is no longer necessary, then it is the Legislature's prerogative to effect the change.

Plaintiffs' Motion for Summary Judgment is denied. The defendants' Motion for Summary Judgment is granted. An order will be entered to that effect.

  
Heidi Willis Carrier, J.S.C.

SUPERIOR COURT OF NEW JERSEY  
56 PATERSON STREET  
POST OFFICE BOX 2633  
NEW BRUNSWICK, NEW JERSEY 08903

**FILED**

**DEC 11 2013**

Judge Heidi Willis Currier

\_\_\_\_\_  
RUTGERS UNIVERSITY  
STUDENT ASSEMBLY,  
(RUSA), ET ALS.

PLAINTIFFS,

v.

MIDDLESEX COUNTY BOARD  
OF ELECTIONS AND DANIEL  
FRANKEL COMMISSIONER OF  
REGISTRATIONS OF  
MIDDLESEX COUNTY

DEFENDANTS,  
\_\_\_\_\_

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – CIVIL PART  
MIDDLESEX COUNTY

Docket No. MID C-85-11

**OPINION**

This Matter having come before the Court on motion of Plaintiffs, RUTGERS UNIVERSITY STUDENT ASSEMBLY (RUSA), et als., in support of a motion for summary judgment, and the Court having considered the moving papers and oral argument and for good cause shown;

It is on this 11<sup>th</sup> day of **December**, 2013:

**ORDERED** that Plaintiffs' Motion for Summary Judgment is hereby denied.

**ORDERED** that a copy of this Order <sup>and the Opinion</sup> has been mailed to Plaintiffs in this matter.

*Heidi Willis Currier*

HEIDI WILLIS CURRIER J.S.C.