

WILLIAM CONNOLLY, KEVIN GERMANN,
JOHN SZCZOMAK, and ANTOINETTE RAVO,

Plaintiffs,

v.

PASSAIC COUNTY REGULAR REPUBLICAN
ORGANIZATION, INC. and CHAIRMAN
JOHN TRAIER, in his capacity as Chairman of
the Passaic County Regular Republican
Organization, Inc.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION:
PASSAIC COUNTY
DOCKET NO.:

CIVIL ACTION

**BRIEF ON BEHALF OF PLAINTIFFS WILLIAM CONNOLLY, KEVIN GERMANN,
JOHN SZCZOMAK, AND ANTOINETTE RAVO IN SUPPORT OF ORDER TO SHOW
CAUSE SEEKING PRELIMINARY INJUNCTIVE RELIEF AND TEMPORARY
RESTRAINTS**

GENOVA BURNS LLC

494 Broad Street

Newark, New Jersey 07102

(973) 533-0777

Attorneys for Plaintiffs,

William Connolly, Kevin Germann,

John Szczomak, and Antoinette Ravo

Of Counsel

Angelo J. Genova, Esq. (055001979)

On the Brief

Brett M. Pugach, Esq. (032572011)

TABLE OF CONTENTS

TABLE OF AUTHORITIESiv

PRELIMINARY STATEMENT 1

STATEMENT OF FACTS4

LEGAL ARGUMENT 14

POINT I 14

 PLAINTIFF IS ENTITLED TO TEMPORARY AND PRELIMINARY RESTRAINTS
 PENDING A HEARING AND FINAL RESOLUTION OF THIS MATTER. 14

 A. Plaintiffs Can Establish A Reasonable Probability Of Success On The Merits
 Of Their Underlying Legal Claims. 15

 1. The procedures and conduct of Defendants in adopting a rule that requires
 members to vote for two candidates and prohibits bullet voting, and in
 rejecting Plaintiff Connolly’s ballot violate the spirit and intent of N.J.S.A.
 19:5-3.2. 15

 a. The rule adopted by Defendants and the decision to reject Plaintiff Connolly’s
 ballot violates the very procedures Defendants were required to follow under its
 own By-Laws. 16

 b. Chairman Traier’s conduct of the meeting and act of rejecting Plaintiff Connolly’s
 ballot violated the requirement of fundamental fairness and violated the rights of
 members of the county committee. 19

 2. The procedures and conduct of PCRRO in adopting a rule that requires
 members to vote for two candidates and prohibits bullet voting, and in
 rejecting Plaintiff Connolly’s ballot violate the right to vote for the candidate
 of one’s choice, the right of free speech, and the right of freedom of
 association under the First and Fourteenth Amendments of the United States
 Constitution and Article I, Paragraph 6 of the New Jersey Constitution. 22

 a. The action of the PCRRO in providing endorsements to Republican candidates for
 a primary election constitutes state action and is otherwise subject to review by
 this Court. 22

b.	The PCRRO’s adoption of a rule requiring Plaintiff Connolly to vote for two candidates, and prohibiting bullet voting, violated his constitutionally protected right to vote and freedom of association.	25
B.	Preliminary Injunctive Relief is Warranted to Prevent Immediate, Irreparable Harm.	27
C.	The Legal Rights Underlying The Plaintiffs’ Claims Are Settled.	29
D.	Preliminary Injunctive Relief Is Appropriate In This Case Because The Balance Of Harms Favors Granting Preliminary Relief To The Plaintiffs.....	30
CONCLUSION		32

TABLE OF AUTHORITIES

Cases

<u>Bates v. Little Rock</u> , 361 U.S. 516 (1960).....	26
<u>Bontempo v. Carey</u> , 64 N.J. Super. 51 (Law Div. 1960).....	21
<u>Buckley v. Valeo</u> , 424 U.S. 1 (1976).....	26
<u>Cal. Democratic Party v. Jones</u> , 530 U.S. 567 (2000).....	26
<u>Child Evangelism Fellowship of N.J. v. Stafford Township Sch. Dist.</u> , 233 F. Supp. 2d 647 (D.N.J. 2002).....	29
<u>Clemency v. Beech</u> , 306 N.J. Super. 244 (Law. Div. 1997).....	25, 28
<u>Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Association</u> , 192 N.J. 344 (2007).....	24
<u>Coskey's Television & Radio Sales & Serv., Inc. v. Foti</u> , 253 N.J. Super. 626 (App. Div. 1992).....	30
<u>Crowe v. De Gioia</u> , 90 N.J. 126 (1982).....	14, 27, 28, 30
<u>Deamer v. Jones</u> , 42 N.J. 516 (1964).....	18, 21, 22
<u>Dublirer v. 2000 Linwood Avenue Owners, Inc.</u> , 220 N.J. 71 (2014).....	24, 25
<u>Elrod v. Burns</u> , 427 U.S. 347 (1976).....	26
<u>Empower our Neighborhoods v. Guadagno</u> , Docket No. MER-L-3148-11, 2012 N.J. Super Unpub. Lexis 2275 (Law Div. Oct. 3, 2012).....	29

<u>Gangemi v. Rosengard,</u> 44 N.J. 166 (1965)	25, 27
<u>Gonzalez v. State Apportionment Commission,</u> 2011 N.J. Super. Unpub. LEXIS 2366 Docket No. MER-L-1173-11, (Law Div. Aug. 31, 2011)	27
<u>Gray v. Sanders,</u> 372 U.S. 368 (1963)	22, 23, 24
<u>Ispahani v. Allied Domecq USA,</u> 320 N.J. Super. 494 (App. Div. 1999)	14
<u>J.H. Renarde, Inc. v. Sims,</u> 312 N.J. Super. 195 (Law Div. 1998)	14, 27
<u>Knox v. SEIU, Local 1000,</u> 132 S. Ct. 2277 (2012)	26
<u>Kusper v. Pontikes,</u> 414 U.S. 51 (1973)	26
<u>Lynch v. Torquato,</u> 343 F.2d 370 (3d Cir. 1965)	22, 23, 24
<u>NAACP v. Button,</u> 371 U.S. 415 (1963)	26
<u>NAACP v. Alabama ex rel. Patterson,</u> 357 U.S. 449 (1958)	26
<u>New Jersey Democratic Party, Inc. v. Samson,</u> 175 N.J. 178 (2002)	25
<u>O'Neill v. Lerner,</u> 154 N.J. Super. 317 (App. Div. 1977)	15
<u>Peters v. Public Service Corp. of N.J.,</u> 132 N.J. Eq. 500 (Ch.1942), <u>aff'd o.b.</u> , 133 N.J. Eq. 283 (E. & A. 1943)	30
<u>Roberts v. United States Jaycees,</u> 468 U.S. 609 (1984)	26
<u>Smith v. Allwright,</u> 321 U.S. 649 (1944)	22

State v. Miller,
83 N.J. 402 (1980)25

State v. Schmid,
84 N.J. 535 (1980)23, 24

Tashjian v. Republican Party of Conn.,
479 U.S. 208 (1986).....26

Valenti v. Pennsylvania Democratic State Committee,
844 F. Supp. 1015 (M.D. Pa. 1994)24

Zimmer v. Castellano,
432 N.J. Super. 412 (App. Div. 2013) 16

Statutes

N.J.S.A. 19:5-24

N.J.S.A. 19:5-3.2passim

N.J.S.A. 19:14-17, 28

N.J.S.A. 19:23-146, 28

N.J.S.A. 19:23-176

N.J.S.A. 19:23-186

N.J.S.A. 19:23-246, 28

N.J.S.A. 19:23-256, 28

Other Authorities

N.J. Const., Art. I, Para. 6.....passim

Robert’s Rules of Order (11th ed.)passim

PRELIMINARY STATEMENT

Plaintiffs William Connolly (“Plaintiff Connolly”), Kevin Germann (“Germann”), John Szczomak (“Szczomak”), and Antoinette Ravo (“Ravo”) (collectively “Plaintiffs”) submit this Brief in Support of Plaintiffs’ Order to Show Cause Seeking Preliminary Injunctive Relief and Temporary Restraints against defendants Passaic County Regular Republican Organization, Inc. (“PCRRO”) and Chairman John Traier (“Chairman Traier”), in his official capacity as Chairman of the PCRRO (collectively “Defendants”). Defendants’ conduct in this matter violated the PCRRO’s bylaws, contravened statutory requirements of fundamental fairness, and abridged constitutional rights of the Plaintiffs, and thus warrants this Court’s consideration.

The PCRRO, as a political party organization under Title 19, is required to adopt bylaws that ensure fundamental fairness and the rights of its members pursuant to N.J.S.A. 19:5-3.2. The bylaws governing the PCRRO (“PCRRO By-Laws”) provide that, in the event such bylaws are silent with respect to certain procedures, the PCRRO must abide by applicable provisions of Robert’s Rules of Order.

On February 21, 2015, the PCRRO, held a meeting to determine which Republican candidates it would endorse for New Jersey Assembly in the June 2, 2015 primary election. Candidates so endorsed are permitted to use the party slogan, “Passaic County Regular Republicans, Inc.” At this meeting the procedures required under the PCRRO By-Laws were ignored, and N.J.S.A. 19:5-3.2 was violated by Defendants.

In particular, the Executive Committee of the PCRRO was asked to vote with respect to the PCRRO’s endorsement of Assembly candidates from the 40th Legislative District (“District 40”). Pursuant to the PCRRO By-Laws, given a lack of specific procedures regarding the vote for endorsement, Robert’s Rules of Order govern. Under Robert’s Rules of Order, when a vote is held by secret ballot, then any proposals or motions with respect to such vote that would

require a potential objector to reveal the intent of his vote must also be conducted by secret ballot. Here, however, Defendants improperly adopted a rule requiring that members of the Executive Committee were required to vote for two candidates (out of three) that were running for Assembly in District 40, and prohibited voting for only one candidate (“bullet voting”). In addition, under Robert’s Rules, Defendants improperly rejected the ballot of Plaintiff Connolly on the ground that he only voted for one candidate, rather than two. In essence, Defendants failed to abide by its own By-Laws, thereby circumventing the spirit and intent of N.J.S.A. 19:5-3.2, in violation of Plaintiffs’ rights.

Furthermore, the procedures, decisions, and outcome of the meeting contravened any notion of fundamental fairness and the rights of members. Among other egregious conduct, punishing Plaintiff Connolly for voting for the candidate of his choice, and otherwise requiring members to vote for candidates whom they may not support and with whom they may not wish to associate flies in the face of any notion of fundamental fairness, as does preventing a member of the organization (and those he represents) from participating in the vote. Moreover, Chairman Traier’s act of recording a vote on behalf of the City of Paterson for a particular candidate, when in fact, the evidence demonstrates that a majority of those members of the Executive Committee voted for a different candidate, violates any notion of transparency, honesty, and fairness, as well as provision of the PCRRO requiring the determination authorizing the use of the party slogan to be by majority vote. In fact, such act particularly cries out for judicial intervention where, as here, such actions were outcome determinative, shifting the endorsement of the PCRRO in the June 2, 2015 primary election from one candidate, to another.

Similarly, Defendants actions abridged various constitutional rights of Plaintiffs including the right to vote, freedom of speech, and freedom of association under the First and

Fourteenth Amendments of the United States Constitution and N.J. Const., Art. I, para. 6. Defendants' adoption of a rule requiring members of the Executive Committee to vote for candidates for whom they do not want to vote, and rejection of Plaintiff Connolly's ballot deprives him of his right to vote for the candidate of his choice and punishes him for exercising his freedom to not associate with others. Such constitutional abridgements of protected fundamental rights call for this Court's intervention.

For such constitutional and statutory violations, Plaintiffs seek preliminary injunctive relief and temporary restraints designed to protect their rights, including with respect to the need to preserve the ballots cast at the February 21, 2015 meeting and in connection with the need to prevent the effectuation of the PCRRO's endorsement or authorization of use of its slogan pending a hearing. Such relief is necessary in order to ensure that Plaintiffs' rights are not further prejudiced pending the Court's determination as to whether a recount or new vote would be required wherein Defendants would be required to abide by its own By-Laws, statutory requirements of fundamental fairness and rights of members, and constitutional principles of the right to vote, freedom of speech, and freedom of association.

The harm to Plaintiffs in the absence of the requested relief would be both immediate and irreparable, particularly in light of the statutory and constitutional violations and the fact that various statutory deadlines for the primary election, including the deadline to file nomination petitions and certification of candidates' designations or slogans are fast approaching. In addition, the legal rights underlying Plaintiffs' claims are well-settled, and the balance of harms weighs in favor granting preliminary relief to the Plaintiffs.

STATEMENT OF FACTS¹

Plaintiff, William Connolly is a Co-Chairperson/Municipal Leader of the City of Paterson Municipal Republican Committee (“Paterson Republican Municipal Committee”)² and, consequently per the PCRRO By-Laws, a member of the Executive Committee of the Passaic County Regular Republican Organization, Inc. (“Executive Committee”). (See Verified Complaint (“Compl.”), at ¶ 1.) Plaintiffs, Kevin Germann and John Szczomak, are members of the Paterson Republican Municipal Committee, which chose Plaintiff Connolly as a Municipal Leader to represent its interests as a member of the Executive Committee of the PCRRO, including with respect to the endorsement of Republican candidates for New Jersey Assembly in the June 2, 2015 primary election. (Compl. at ¶¶ 2-3.) Plaintiff, Antoinette Ravo, is a Municipal Chairperson of the North Haledon Republican Municipal Committee, and thus, per the PCRRO By-Laws, a member of the Executive Committee of the PCRRO, and is entitled to vote to endorse Republican candidates for the New Jersey Assembly in connection with the June 2, 2015 primary election. (Comp. at ¶ 4.)

Defendant, Chairman John Traier, is the Chairman of the PCRRO, and thus, per the PCRRO By-Laws, a member of the Executive Committee of the PCRRO. (Compl. at ¶ 5.) As Chairman, he also presides over the PCRRO’s meeting to select which candidates it will endorse in the primary election and is otherwise vested with such authorities and responsibilities of the office of Chairman, provided they are properly and legally executed per the bylaws of the PCRRO. (Compl. at ¶ 5.) Defendant, Passaic County Regular Republican Organization, Inc., is a non-profit corporation with a principal address of 1220 Hamburg Turnpike, Wayne, New

¹ The Statement of Facts section incorporates Plaintiffs’ Verified Complaint in its entirety, as well as all exhibits attached thereto.

² Plaintiff Connolly, as an elected member of the county committee, is also a member of the municipal committee wherein he resides, in accordance with N.J.S.A. 19:5-2.

Jersey 07470. (Compl. at ¶ 6.) PCRRO is the Passaic County Republican political party organization as defined under Title 19. (Compl. at ¶ 6.) In its role as a county political party, PCRRO is responsible for promoting the interests of Republican Party members within Passaic County including the authority and responsibility to grant authorization of the use of the party slogan, "Passaic County Regular Republicans, Inc." ("party slogan" or "line") to Republican candidates for public office in Passaic County, and specifically for legislative office in districts situated in Passaic County. (Compl. at ¶ 6.)

Pursuant to N.J.S.A. 19:5-3.2, in relevant part:

The members of the county committee of a political party shall adopt a constitution and bylaws, ensuring fundamental fairness and the rights of the members of the county committee in the governance of the county party.

PCRRO's By-Laws are required to comport with N.J.S.A. 19:5-3.2, which statute intends to govern the affairs of the PCRRO. (Compl. at ¶ 10; see Exhibit A, PCRRO By-Laws.) Article VI, Section E of the PCRRO By-Laws provides in relevant part:

The determination of which candidates for state and federal office shall be entitled to utilize the party slogan in a primary election shall be made by the Executive Committee in accordance with the same procedure specified above for candidates for countywide office.

(Compl. at ¶ 11; see Exhibit A, PCRRO By-Laws, Art. VI, Sec. E.) In turn, Article VI,

Section D of the PCRRO By-Laws provides in relevant part:

The determination of which candidates for county-wide office shall be entitled to utilize the party slogan in a primary election shall be made by the Executive Committee in accordance with the following procedure:

...

The Committee . . . shall determine their selection for each office by majority vote of those present.

(Compl. at ¶ 12; see Exhibit A, PCRRO By-Laws, Art. VI, Sec. D.) Article IX, Section B of the PCRRO By-Laws provides in relevant part:

In the event these bylaws are silent as to procedure and or conduct, Roberts Rules of Order shall control.

(Compl. at ¶ 13; see Exhibit A PCRRO By-Laws, Art. IX, Sec. B.)

Pursuant to N.J.S.A. 19:23-14, March 30, 2015 is the deadline for candidates to file nomination petitions for the primary election, to be held on June 2, 2015 for the selection of legislative candidates in the 40th Legislative District (“District 40”). At the time of such filing, candidates are invited to place on their respective petitions, a slogan, not to exceed six words. N.J.S.A. 19:23-17. (See Exhibit B, attached sample Petition of Nomination for Primary Election.) Ten days later, the slogans of such candidates will be certified. N.J.S.A. 19:23-14. Under N.J.S.A. 19:23-17, each primary election candidate may request to use a slogan or designation opposite his/her name, based on an endorsement of the petition of nomination, but such candidates are only permitted to use the name of an incorporated association, in this case PCRRO, if written consent of such incorporated association has been filed with the petition of nomination. In accordance with N.J.S.A. 19:23-18, candidates for nomination to the same office can request to have their names grouped together or “bracketed” with a common designation or slogan.

County and municipal clerks will draw for ballot positions for primary election candidates on April 10, 2015, in accordance with N.J.S.A. 19:23-24. Upon information and belief, when drawing such positions, candidates that have petitioned to be “bracketed” together typically are drawn for ballot position by the Passaic County Clerk before non-bracketed candidates. Accordingly, such “bracketed” candidates receive the same “line” on the ballot. N.J.S.A. 19:23-25 provides that the name of the slogan, not to exceed six words, for each

primary election candidate will be printed next to the name of each candidate. Pursuant to N.J.S.A. 19:14-1, the deadline for the preparation of the official June 2, 2015 primary election ballot for printing is April 13, 2015.

Structure of the PCRRO Executive Committee

Article III, Section A of the PCRRO By-Laws establishes the Executive Committee, and specifies that the Executive Committee shall be comprised of the following individuals:

- a. Chairperson
- b. Vice-chairperson
- c. 2 State Committee persons
- d. Finance Chair
- e. 16 Municipal Chairpersons
- f. All Republican Elected Officials Holding County-Wide Office³
- g. All Republican Elected Officials Holding Federal or State Office and Residing in Passaic County⁴

(Compl. at ¶ 20; see Exhibit A, PCRRO By-Laws, Art. III, Sec. A.) Per the PCRRO By-Laws and upon information and belief, on February 21, 2015 there were 23 eligible ballots to be cast by the Executive Committee, representing 16 municipalities in Passaic County and 7 other elected/appointed members and “Republican elected officials” as stated above. (Compl. at ¶ 21; see Exhibit A, PCRRO By-Laws, Art. III, Sec. A.)

February 21, 2015 PCRRO Executive Committee Endorsement Meeting

On February 21, 2015, a meeting was held at the Republican Headquarters in Wayne, New Jersey, in order for the Executive Committee to determine which candidates would secure the endorsement of the PCRRO, which endorsement permits such candidates to designate the party slogan “Passaic County Regular Republicans, Inc.” in connection with the upcoming June

³ On February 21, 2015, the Passaic County Clerk, Kristin Corrado, was the only qualifying county-wide elected officeholder, per the PCRRO By-Laws.

⁴ On February 21, 2015, Assemblyman Scott Rumana was the only qualifying Federal or State elected officeholder residing in Passaic County, per the PCRRO By-Laws.

2, 2015 primary election. (Compl. at ¶ 22.) Defendant, Chairman John Traier, the Chairman of the PCRRO, called the meeting to order without a roll call vote officially establishing a quorum or otherwise. (Compl. at ¶ 23.)

A motion was made at the meeting by Joanne Pituch, who was serving as a proxy for the Municipal Chairperson/Leader of Bloomingdale, Richard DuHaime, a member of the PCRRO Executive Committee, to endorse all of the incumbent candidates for Assembly in the seven Legislative Districts embracing or situated in Passaic County. (Compl. at ¶ 24.) Debate ensued in connection with this motion, specifically with respect to District 40, as, unlike the other six districts, there was an additional candidate, John Capo (“Capo”), seeking to be endorsed by the PCRRO as its candidate for New Jersey Assembly, in addition to the two incumbent candidates, Assemblyman Scott Rumana (“Rumana”) and Assemblyman David Russo (“Russo”) (collectively, the “Incumbent Candidates”), i.e. a total of three candidates seeking the PCRRO endorsement in District 40. (Compl. at ¶ 24.) An amendment was made to amend this motion as to have the Executive Committee first consider only endorsing incumbent candidates seeking the PCRRO endorsement for Assembly in the six “uncontested” Legislative Districts, and to consider the District 40 Assembly endorsement question separately given that there were three candidates for Assembly seeking the PCRRO endorsement, and the PCRRO Executive Committee intended to endorse two Assembly candidates per Legislative District in the June 2, 2015 primary election. (Compl. at ¶ 25.)

During the debate regarding the selection of candidates to be endorsed by PCRRO for Assembly in District 40, an incumbent candidate, Scott Rumana, insisted on being considered in combination with David Russo, the other incumbent; specifically, that the two Incumbent Candidates be considered as being “bracketed” for the purpose of the vote to be taken by the

PCCRO Executive Committee to decide which Assembly candidates were to secure its endorsement in the District 40 June 2, 2015 primary election. (Compl. at ¶ 26.) This demand led to a debate over the question of whether such process was fair as there were three candidates seeking the PCRRO endorsement. (Compl. at ¶ 27.)

Upon the conclusion of the debate and after a generalized oral consensus, Chairman Traier decided that each member of the Executive Committee would be required to vote for two candidates, and consequently would be prohibited from voting for only one candidate instead of two (“bullet voting”). (Compl. at ¶ 28; see Exhibit C, attached Email, Traier to Connolly, February 22, 2015, 4:44 P.M.) Based on his approximately 48 years of experience as a member of the PCRRO, and his participation in numerous elections to select candidates for endorsement, Plaintiff Connolly recalls no instance prior to February 21, 2015 where PCRRO had ever prohibited “bullet voting”, i.e. voting for a single candidate seeking the PCRRO endorsement. (Compl. at ¶ 29.) Additionally, prior to the morning of the vote, Chairman Traier had assured another Municipal Leader that they would be permitted to bullet vote. (Compl. at ¶ 30; see Exhibit D, attached Letter from Del Sardo to Traier, Feb. 21, 2015, at p.2.)

Enforcing his decision, Chairman Traier commenced to conduct the vote to determine which candidates would be selected for endorsement by the PCRRO, and thus entitled to use the party slogan in the upcoming June 2, 2015 primary election for Assembly in District 40. (Compl. at ¶ 31.) A ballot box was situated at the front of the room close to where Chairman Traier was presiding over the meeting and conducting the election. (Compl. at ¶ 32.) Executive Committee members were directed to come up individually to obtain a ballot, fill it out, and cast it into the ballot box. (Compl. at ¶ 33.) Despite the fact that the vote was to be held by secret ballot, members voted without the benefit of privacy protections such as a curtain, a booth,

partitions, or other means to assure the privacy of the vote by paper ballot. (Compl. at ¶ 33.) Based on Plaintiff Connolly's personal experience and best recollection, representatives of candidates seeking endorsement and/or the candidates themselves had historically been permitted to be present when the ballots were cast and counted. (Compl. at ¶ 34.) Yet, on February 21, 2015, two of the candidates seeking endorsement for Assembly in District 40 were not permitted to be present. (Compl. at ¶ 34.) In addition, at the conclusion of the vote, Chairman Traier counted the ballots, recorded the number of votes, opined on the validity of ballots, and determined the outcome of the election without the presence of an independent observer. (Compl. at ¶ 34.)

City of Paterson Executive Committee Members' Vote

Each Executive Committee member cast their respective ballot before the Paterson Executive Committee members were directed to cast their ballot. (Compl. at ¶ 35.) The Paterson vote was conducted last purportedly due to the fact that it had three Municipal Leaders⁵ – William Connolly, Ramon Leon (“Leon”), and Carlos Pagan (“Pagan”) – representing the City of Paterson Republican Municipal Committee (“Paterson”), whose votes were contemplated, as per past practice, to be cast as “one” requiring their collective deliberation and consensus. (Compl. at ¶ 35.) Based on Plaintiff Connolly's personal experience of approximately 48 years participating in prior meetings for the selection of candidates to be endorsed in a primary election by the PCRRO, historically, when the Executive Committee voted which candidates to endorse, each municipality was entitled to one vote. (Compl. at ¶ 36.) This practice included

⁵ Prior to the commencement of the vote, the three Municipal Chairpersons from Paterson were temporarily removed from the meeting, and made to stand outside in order to attempt to resolve the issue of how the Paterson vote would be cast, due to the fact that it had three municipal chairpersons, but only one vote could be cast.

having only one vote for the City of Paterson, despite the fact that it had three municipal co-chairpersons who are entitled to vote as members of the Executive Committee. (Compl. at ¶ 36.)

Pagan and Plaintiff Connolly, representing a majority of the three Municipal Chairpersons from Paterson, had decided that Pagan would cast the vote on behalf of Paterson, which Plaintiff Connolly agreed to based on the understanding that one of the votes would be for Capo. (Compl. at ¶ 37.) When Pagan went to the front of the room to cast a ballot on behalf of Paterson, Rumana objected and a loud commotion, disturbance, and argument ensued. (Compl. at ¶ 38.) As the dispute over how to cast Paterson's vote could not be resolved, Chairman Traier decided to permit all three Municipal Chairpersons for Paterson (Connolly, Leon, Pagan) to vote individually, notwithstanding the fact that such procedure was unprecedented and contrary to the PCRRO By-Laws requiring one vote per Republican municipal committee situated in Passaic County. (Compl. at ¶ 38; see Exhibit A, PCRRO By-Laws, Art. VI, Sec. D(2); Art. III, Sec. A.) Accordingly, and thereupon, Leon, Pagan, and Connolly were each instructed to, and did in fact fill out their own separate ballots. (Compl. at ¶ 39.) After each filling out their own separate ballots, they were instructed to, and did in fact each individually hand their ballots to Chairman Traier, rather than placing them in the ballot box, as all of the other Executive Committee members had done. (Compl. at ¶ 39.)

Upon receiving the three ballots cast by the members of the Executive Committee from Paterson, Chairman Traier opened and read to himself each ballot. (Compl. at ¶ 40.) Chairman Traier then picked up one of the ballots and placed it into the ballot box with the ballots from the other municipalities and elected officials. (Compl. at ¶ 40.) With respect to the other two ballots that he did not place into the ballot box, Chairman Traier claimed that: (a) one of the ballots contained votes for the same two candidates as the ballot that he had placed into the ballot box,

and (b) the other ballot indicated a vote for only one candidate instead of two, and therefore such ballot would be rejected and not be counted. (Compl. at ¶ 41.)

Plaintiff Connolly's Vote

Plaintiff Connolly desired to vote for candidate John Capo, and did not want to vote for or otherwise associate himself with the Incumbent Assembly Candidates (Rumana and Russo) who also sought the PCRRO endorsement and were on the ballot. (Compl. at ¶ 43.) Plaintiff Connolly voted only for Capo and did not vote for either of the Incumbent Assembly Candidates. (Compl. at ¶ 44.) While counting the ballots for Paterson, the ballot cast by Plaintiff Connolly was rejected by Chairman Traier because Plaintiff Connolly only voted for one person, "Capo", as he chose to not support the Incumbent Assembly Candidates, Russo and Rumana, also seeking the PCRRO's endorsement. (Compl. at ¶ 45.) Plaintiff Connolly thereafter contested and challenged the vote. (Compl. at ¶ 47; see Exhibit C, attached Email, Connolly to Traier, February 23, 2015, 10:02 A.M.; Exhibit D, attached Letter from Del Sardo to Traier, Feb. 21, 2015, at p.2.; Exhibit E, attached Email, Sent by Connolly, Feb. 22, 2015, 10:58 A.M. ("My Account of the P.C.R.R.O. Rigging the District 40 Vote".))

Tally of the Ballots

At the February 21, 2015 Executive Committee meeting, Defendant Chairman Traier initially announced that 21 ballots had been recorded as received. (Compl. at ¶ 48.) However, after PCRRO Secretary, Dawn Cody, informed Chairman Traier that 23 ballots should have been accounted for, Chairman Traier recounted the ballots and announced that 23 ballots had been cast. (Compl. at ¶ 48.) Thereupon, the 23 ballots were counted with Chairman Traier announcing the vote total as follows.

Rumana: 23 votes
Russo: 12 votes
Capo: 11 votes

(Compl. at ¶ 49.) Chairman Traier announced that the Incumbent Candidates, Rumana and Russo, had secured the endorsement and authorization to use the slogan of the PCRRO. (Compl. at ¶ 49; see Exhibit C, attached Email, Traier to Connolly, February 22, 2015, 4:44 P.M.)

Pagan's Vote and Improper Rejection of Plaintiff Connolly's Vote

Despite Plaintiff Connolly's vote for Capo, and despite the fact that Carlos Pagan voted for Rumana and Capo, Chairman Traier recorded the vote cast by the Paterson Republican Municipal Committee as having been cast for Rumana and Russo, (Compl. at ¶¶ 50-51.) Had Connolly's vote for Capo been properly included in the vote total, and Pagan's vote properly recorded as having been cast for Rumana and Capo, and not for Russo, Capo would have received 2 votes out of 3 from the members of the Executive Committee from Paterson (Pagan and Connolly). (Compl. at ¶ 52.) Thus, Capo would have received a majority of votes from the Paterson delegation, entitling him to one additional vote. (Compl. at ¶ 52.) In turn, Russo should have received one less vote, as he would not have received a majority of votes from the Paterson delegation. (Compl. at ¶ 52.) Therefore, the vote totals would have been as follows:

Rumana: 23 votes
Capo: 12 votes
Russo: 11 votes

(Compl. at ¶ 52.) As such, Rumana and Capo, but not Russo, would have secured the endorsement and been entitled to use the PCRRO slogan. (Compl. at ¶ 52.)

Even without counting Plaintiff Connolly's vote, Russo would not have been entitled to receive a vote from the Paterson delegation, as he would not have received a majority of votes. (Compl. at ¶ 53.) Rather, based on Pagan's vote for Capo, Russo could not have received more than 1 vote, which would have been the same number of votes received by Capo. (Compl. at ¶

53.) As neither Russo nor Capo would have received a majority under this scenario, neither would have received a vote from Paterson, and the vote totals would have been as follows:

Rumana:	23 votes
Russo:	11 votes
Capo:	11 votes

(Compl. at ¶ 53.)

LEGAL ARGUMENT

POINT I

PLAINTIFF IS ENTITLED TO TEMPORARY AND PRELIMINARY RESTRAINTS PENDING A HEARING AND FINAL RESOLUTION OF THIS MATTER.

Under New Jersey law, a party seeking injunctive relief must show that the harm is irreparable and imminent. Crowe v. De Gioia, 90 N.J. 126, 132 (1982); J.H. Renarde, Inc. v. Sims, 312 N.J. Super. 195, 203 (Law Div. 1998). In Crowe, the New Jersey Supreme Court established the elements to be considered in determining whether to grant preliminary or interlocutory relief. Such relief will be granted when: (1) there exists a reasonable probability of success on the merits of the underlying legal claims; (2) such relief is necessary to prevent immediate and irreparable harm; (3) the legal right underlying the moving party's claim is settled; and (4) a balancing of relative hardships in granting or denying relief favors the grant of relief to maintain the status quo pending final determination. Crowe, 90 N.J. at 132-36; Ispahani v. Allied Domecq USA, 320 N.J. Super. 494, 498 (App. Div. 1999). When these factors are applied to the present dispute, it becomes readily apparent that this is a case where exercise of the Court's discretionary injunctive powers is appropriate.

A. Plaintiffs Can Establish A Reasonable Probability Of Success On The Merits Of Their Underlying Legal Claims.

1. The procedures and conduct of Defendants in adopting a rule that requires members to vote for two candidates and prohibits bullet voting, and in rejecting Plaintiff Connolly's ballot violate the spirit and intent of N.J.S.A. 19:5-3.2.

Courts will intervene in intraparty controversies where the actions of a party organization are taken contrary to a controlling statute. See *O'Neill v. Lerner*, 154 N.J. Super. 317, 322-24 (App. Div. 1977) (dealing with actions of a county political party committee). N.J.S.A. 19:5-3.2 states in relevant part that “members of the county committee of a political party shall adopt a constitution and bylaws, *ensuring fundamental fairness and the rights of the members of the county committee in the governance of the county party.*” (Emphasis added.)⁶ Here, the adoption of the rule to require members to vote for two candidates and to prohibit bullet voting contravened the procedures that PCRRO was required to follow under its own By-Laws, and in doing so, disrupted the fairness and integrity of the vote by secret ballot. Moreover, the decision to throw out Connolly's ballot and other circumstances surrounding the meeting held on February 21, 2015 concerning the vote to endorse Republican candidates for New Jersey Assembly in District 40 violates fundamental principles of fairness and contravened the rights of members of the PCRRO.

⁶ The Governor's Message dated October 2, 2009, included with the legislative history of P.L. 2009, c. 135 (which contains N.J.S.A. 19:5-3.2) recognized that this legislation was passed to increase transparency. It was passed to “ensure that there is an even playing field within party organizations with openness and due process,” to “make politics more accessible and accountable to the people,” and to have a fair and open political process . . . to level the playing field for candidates that aren't part of the good ol' boys club.” *Id.* The legislation will further “ensure that county party committee people know the rules of the game . . . for the grassroots of the parties to decide who gets endorsed for major offices and to set the political parties' priorities on issues.” *Id.*

a. **The rule adopted by Defendants and the decision to reject Plaintiff Connolly's ballot violates the very procedures Defendants were required to follow under its own By-Laws.**

To ensure fundamental fairness and rights of members as required by N.J.S.A. 19:5-3.2, that statute requires the adoption of bylaws to which members are subjected. Thus, a failure to comply with such bylaws would impermissibly circumvent and violate the spirit and intent of the statute.

Here, the PCRRO By-Laws set forth various rules of governance and require members to adhere to certain procedural rules. In particular, with respect to the determination as to which candidates will receive the party endorsement and be able to use the PCRRO party slogan at the primary election, Article VI, Section E of the PCRRO By-Laws states that for candidates for state office, such determination "shall be made by the Executive Committee in accordance with the same procedure specified above for candidates for countywide office." In turn, Article VI, Section D of the PCRRO By-Laws provides that for candidates for county-wide office, the Executive Committee "shall determine their selection for each office by majority vote of those present." The By-Laws are otherwise silent as to how the vote shall be conducted.

However, Article IX, Section B of the PCRRO By-Laws states in relevant part that "[i]n the event these bylaws are silent as to procedure and or conduct, Robert's Rules of Order shall control."⁷ Robert's Rules instruct that "voting by *ballot* (slips of paper on which the voter marks his vote) is used when secrecy of the members' vote is desired." Robert's Rules of Order (11th ed.), Ch. XIII, § 45, p.412:13-15. Thus, "when a vote is to be taken, or has been taken, by ballot, whether or not the bylaws require that form of voting, no motion is in order that would force the

⁷ Courts have not been reluctant to apply procedural rules referenced in the governing documents of the organization. See, e.g., Zimmer v. Castellano, 432 N.J. Super. 412, 419 (App. Div. 2013) (Applying Robert's Rules in the absence of specific provisions addressing abstentions and tie votes for purposes of filling a vacancy in the Hoboken Council).

disclosure of a member's vote or views on the matter . . . unless that motion is also voted on by ballot." Id. at p.413:1-6. In other words, if, by objecting to the motion, the objector risks revealing his/her intent on voting on the underlying matter, then the motion is out of order and any vote, even where the motion was passed unanimously, is null and void. See id.

Here, these provisions of Robert's Rules, and by reference to and incorporation therein, the By-Laws, were violated. When the first motion was made to endorse all of the incumbent candidates for New Jersey Assembly in all seven legislative districts in Passaic County, such motion was out of order in that, in order to object, a member would essentially have to reveal his/her intent not to vote for one of the incumbents. See id. After that motion failed, it was amended to endorse the incumbent candidates in six of the legislative districts, and to treat District 40 separately. Then, a subsequent discussion and debate ensued over whether the two incumbent candidates should be bracketed. This again led to a situation where, in order to object, a member might have to expose his/her intent to not vote for the incumbent candidates together, in violation of Robert's Rules, see id., particularly where a suggestion had already been made that the two incumbents were likely to be voted for together as package.

Most egregiously, Chairman Traier proposed, obtained a generalized oral consensus, and then adopted a rule to affirmatively require members to vote for two candidates for Assembly, and to prohibit members from bullet voting. Thus, in order to object to such proposal, a member would be giving away a desire and intent not to vote for two candidates, or to only vote for one candidate, which by itself violates the above provisions of Robert's Rules. See id. Furthermore, the extent to which the member's intent with respect to voting is revealed is further exacerbated by the fact that suggestions had previously been made to treat the two Incumbent Candidates together, and Capo separately. Therefore, the proposal and adoption of this rule directly violated

Robert's Rules of Order, and thus contravened the very By-Laws under which the PCRRO is governed. Moreover, such violation was not merely technical, but compromised the very integrity of the election to the extent that it jeopardized the secrecy of the ballot vote process.

In addition, Robert's Rules also provides that, when counting ballot votes, “[a]ll votes that indicate a preference—provided that they have been cast by persons entitled to vote—are taken into account in determining the number of votes cast for purposes of computing the majority.” Robert's Rules of Order, Ch. XIII, § 45, p.415:32-35. Moreover, “[e]ach such ballot is credited to the voter’s preferred candidate or choice if the meaning of the ballot is clear and the choice is valid.” Id. at p.415:35-416:2. Furthermore, Robert's Rules provides specific instances when votes should not be counted, including the following: unintelligible ballots, ballots cast for an unidentifiable candidate, or ballots cast for too many candidates. See id. at p.416:1-9.

Here, the vote cast by Plaintiff Connolly, clearly indicated his preference for a candidate and should have been counted. Plaintiff Connolly’s ballot was not unintelligible, illegible, or cast for too many candidates; his ballot was not deficient in any manner proscribed under the By-Laws or Robert's Rules. Rather, it was a vote containing the name of a particular candidate for the applicable office, and as such, should have been counted. As a member of the Executive Committee entitled to vote on this issue, Plaintiff Connolly’s rights were violated when his ballot was rejected, rendering him the only member whose vote did not count. Contrast Deamer v. Jones, 42 N.J. 516, 521 (1964) (court refrained from deciding intraparty conflict where there was no “indication that the plaintiffs were treated unfairly or deprived of their legal rights in any way”). Thus, this violation of Robert's Rules demonstrates that the PCRRO By-Laws were not followed, thereby violating the spirit and intent of N.J.S.A. 19:5-3.2.

Thus, the rule prohibiting bullet voting and the rejection of Plaintiff Connolly's ballot were contrary to the proper procedures required under the PCRRO By-Laws. Defendants should not be permitted to circumvent the fundamental fairness and rights of members requirements of the statute by failing to follow its own By-Laws.

b. Chairman Traier's conduct of the meeting and act of rejecting Plaintiff Connolly's ballot violated the requirement of fundamental fairness and violated the rights of members of the county committee.

As stated above, the passage of N.J.S.A. 19:5-3.2 in 2009 and its accompanying legislative history reaffirmed the importance of the bylaws in governing the actions of the parties. Such bylaws are essential to ensure fundamental fairness and the rights of members. Here, the actions taken by Defendants, which are inconsistent with the requirements of fundamental fairness and rights of members, indicate that the PCRRO By-Laws were applied in such manner as to violate the spirit and intent of the statute.

That the PCRRO By-Laws failed to ensure fundamental fairness is clear from the myriad of examples of procedural deficiencies at the meeting and in the voting process. In particular, the procedural deficiencies at the February 21, 2015 meeting began right from the start as the meeting began approximately twenty minutes late and was called to order by Chairman Traier without a roll call vote, thereby failing to officially establish a quorum. Furthermore, and critical to the issues herein, Defendants engaged in numerous objectionable actions regarding the voting procedure and process. After argument and discussion on bracketing incumbent Assembly candidates together in District 40, Chairman Traier decided that Executive Committee members would be required to vote for two candidates and prohibited bullet voting, decisions which were improper and out of order. In addition, the secret ballot vote failed to provide sufficient privacy protections to protect the identity of the voters, and no independent observer was permitted to

witness the opening of all of the ballots cast. The members of the Paterson delegation were also removed from the meeting and made to stand outside to resolve the issue of how to cast their vote.

Furthermore, contrary to precedent and despite the fact that a two-out-of-three majority Executive Committee members from the Paterson delegation, Connolly and Pagan, had agreed to allow Pagan to cast the vote on behalf of Paterson, Chairman Traier unilaterally ruled that all three members were to cast ballots, which were given to him personally, rather than placed in the ballot box. Upon receiving and reading the three ballots from the Paterson delegation, Chairman Traier selected only one of the ballots and placed it in the ballot box, and awarded the Paterson vote to candidates Rumana and Russo. Moreover, he did so despite the fact that Pagan and Connolly (two out of three members from Paterson) voted for Rumana and Capo. Equally egregious, Chairman Traier then rejected Plaintiff Connolly's vote because he only voted for one candidate (Capo), the candidate of his choice, and did not vote for either of the two Incumbent Assembly Candidates, with whom he did not want to associate.

Calling further question into the integrity of the vote process, Chairman Traier announced an initial count of 21 ballots cast; it was not until the Secretary, Dawn Cody, suggested that there should be 23 ballots cast that Chairman Traier "recounted" and announced the vote totals based on 23 ballots cast. Moreover, such totals indicated that Russo received 12 votes, and Capo received 11 votes. In other words, had Paterson's vote been properly cast for Rumana and Capo, rather than for Rumana and Russo, then the endorsement would have been awarded to Rumana and Capo. Thus, the outcome of the vote was a direct product of the Defendants' egregious conduct.

In sum, requiring Plaintiff Connolly to affirmatively vote for two candidates is fundamentally unfair, particularly where he had no desire to vote for, and did not wish to associate with two of the three candidates. Forcing Plaintiff Connolly to vote for a candidate he does not wish to endorse also violates his rights as a member of the county committee, and derivatively violates the rights of those he represents as a member of the Executive Committee and a member of the City of Paterson Republican Municipal Committee, including the rights of the other plaintiffs in this matter. See Deamer, 42 N.J. at 520 (“Political parties function through their county committees, and the members and chairmen of these committees are in a sense trustees of the party interests for the registered voters of the party in the county.”); Bontempo v. Carey, 64 N.J. Super. 51, 57 (Law Div. 1960) (same).

Most blatantly, nothing could be more fundamentally unfair than the fact that Chairman Traier awarded the Paterson vote to Russo, despite the fact that both Plaintiff Connolly and Pagan voted for Capo. In fact, based on the votes of Plaintiff Connolly and Pagan, it is clear that Capo, and not Russo, received a majority of votes from the Paterson delegation and, in turn, a majority of votes of the Executive Committee, and therefore should have secured the endorsement. That the candidate selected should be the candidate with the majority of votes is not just required in the PCRRO By-Laws, but also self-evident in any democratic system and inherent in the concept of fundamental fairness.

The entire meeting and voting process was fraught with uncertainty, questionable tactics, and wrongdoing which both compromised the integrity of the election and changed its outcome. For all these reasons, Defendants violated the fundamental fairness and rights of members requirements, which are statutorily required to be ensured by the PCRRO By-Laws, and thus acted in clear contravention of the spirit and intent of N.J.S.A. 19:5-3.2.

2. **The procedures and conduct of PCRRO in adopting a rule that requires members to vote for two candidates and prohibits bullet voting, and in rejecting Plaintiff Connolly's ballot violate the right to vote for the candidate of one's choice, the right of free speech, and the right of freedom of association under the First and Fourteenth Amendments of the United States Constitution and Article I, Paragraph 6 of the New Jersey Constitution.**

Courts will intervene in intraparty controversies where there is an infringement of a clear legal right. Deamer, 42 N.J. at 521. Here, Defendants' adoption of a rule requiring Plaintiff Connolly to vote for a candidate for whom he does not want to vote, and the subsequent rejection of his ballot containing his preferred candidate, unconstitutionally infringes upon the right to vote for the candidate of one's choice and the freedom of association under the First and Fourteenth Amendments, as well as the New Jersey Constitution.

a. **The action of the PCRRO in providing endorsements to Republican candidates for a primary election constitutes state action and is otherwise subject to review by this Court.**

The action of a political party in the conduct of its primary election constitutes state action where the primary election process is regulated by the state, which collaborates in the conduct of the primary, adopts the primary as a part of the public election machinery, and enforces the exclusions of voters made by the party's primary rules. See Gray v. Sanders, 372 U.S. 368, 374-75 (1963); see also Smith v. Allwright, 321 U.S. 649, 664 (1944); Lynch v. Torquato, 343 F.2d 370, 372 (3d Cir. 1965) ("The people, when engaged in primary and general elections for the selection of their representatives in their government, may rationally be viewed as the 'state' in action, with the consequence that the organization and regulation of these enterprises must be such as accord each elector equal protection of the laws. In contrast, the normal role of party leaders in conducting internal affairs of their party, *other than primary or general elections*, does not make their party offices governmental offices or the filling of these

offices state action which must satisfy the requirement of *Gray v. Sanders.*”) (emphasis added). In *Gray*, the Supreme Court agreed that the actions of the Georgia State Democratic Executive Committee, in excluding voters under primary rules, became exclusions enforced by the state, and therefore constituted state action within the meaning of the Fourteenth Amendment. *Id.* at 374-75.

The dispute at issue here involves the actions of the PCRRO, specifically, the organization’s endorsements of candidates for a primary election. The PCRRO adopted bylaws pursuant to state statute, requiring them to ensure fundamental fairness and the rights of members. *See N.J.S.A.* 19:5-3.2. PCRRO then ignored and violated the procedures they adopted in their By-Laws pursuant to state law, and adopted a rule requiring members to affirmatively vote for two candidates and prohibiting bullet voting, and depriving Plaintiff Connolly of his right to vote by rejecting his ballot to nominate a candidate for the primary election. Such deprivations of Plaintiffs’ rights constitute state action under the Fourteenth Amendment in the context of an endorsement for the *primary election*. *See Lynch*, 343 F.2d at 372.

Furthermore, activity by an organization which constitutes state action within the purview of the Fourteenth Amendment satisfies the “state action” requirement under the First Amendment as noted by the Supreme Court of New Jersey. *See State v. Schmid*, 84 N.J. 535, 543 (1980) (“[T]he guarantees of the First Amendment are effectuated against potential state interference through the Fourteenth Amendment by limiting the extent to which states can restrict individuals in the exercise of rights of speech and assembly.”). Thus, because the actions of the PCRRO implicate the conduct of the primary election, the actions of the PCRRO fall within the meaning of “state action” as defined in the First and Fourteenth Amendments.

Moreover, even to the extent that the distinction announced in Gray and Lynch for primary and general elections in the context of state action under the First and Fourteenth Amendments may have been applied more narrowly in Valenti v. Pennsylvania Democratic State Committee, 844 F. Supp. 1015 (M.D. Pa. 1994), at absolute bare minimum, any such holding would not disturb claims made under the New Jersey Constitution. See Committee for a Better Twin Rivers v. Twin Rivers Homeowners' Association, 192 N.J. 344, 364 (2007) (“We concluded in *Schmid*, . . . that the rights of free speech and assembly under our [New Jersey] constitution are not only secure from interference by governmental bodies, but under certain circumstances from the interference by the owner of private property as well. Simply stated, we have not followed the approach of other jurisdictions to require some state action before the free speech and assembly clauses under our constitution may be invoked.”) (internal citation omitted); see generally State v. Schmid, 84 N.J. 535 (1980). In fact, the New Jersey Constitution’s “free speech provision is broader than practically all others in the nation,” and New Jersey courts “havenot [sic] followed the approach of other jurisdictions to require some state action before the free speech and assembly clauses under our constitution may be invoked.” Twin Rivers, 192 N.J. at 364-65 (internal quotation marks and citation omitted); see also Dublirer v. 2000 Linwood Avenue Owners, Inc., 220 N.J. 71, 78-79 (2014) (stating that the “New Jersey Constitution guarantees a broad affirmative right to free speech” which “is one of the broadest in the nation” and “affords greater protection than the First Amendment” and does not require state action).

Having found that the state actor requirement was inapplicable, the Court in Dublirer stated that “the New Jersey Constitution bars the government from abridging free speech and also protects ‘against unreasonably restrictive or oppressive conduct on the part of private

entities' in certain circumstances." Dublirer, 220 N.J. at 79 (quoting Schmid, 84 N.J. at 560). The Court further noted that in prior cases, the state actor requirement did not apply, and violations of free speech were found, with respect to private entities such as homeowners' associations, and even commercial entities like shopping centers and malls. Id. at 80-81. Moreover, that meeting a strict state actor requirement is not necessary in this case is even further supported by the fact that "political speech 'occupies a preferred position in [New Jersey's] constitutionally-protected interests.'" Id. at 85-86 (citing State v. Miller, 83 N.J. 402, 411 (1980)).

b. The PCRRO's adoption of a rule requiring Plaintiff Connolly to vote for two candidates, and prohibiting bullet voting, violated his constitutionally protected right to vote and freedom of association.

The right to vote, including the right to vote for the candidate of one's choice is of fundamental importance, and of constitutional dimension. See New Jersey Democratic Party, Inc. v. Samson, 175 N.J. 178, 186-88 (2002). "The right to vote is the constitutional engine that powers our democracy. The expression of free will for the populace to choose candidates is not to be disregarded." Clemency v. Beech, 306 N.J. Super. 244, 246 (Law. Div. 1997). In fact, "the right to vote would be empty indeed if it did not include the right of choice for whom to vote . . . [as] the right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." Gangemi v. Rosengard, 44 N.J. 166, 170 (1965) (citations omitted).

Furthermore, the right to vote, and in particular, the right to vote for the person of one's choice, protected by the First Amendment, falls hand in hand with the right of association protected by the First Amendment. The Supreme Court emphasized that the First Amendment protects "the ability of like-minded individuals to associate for the purpose of expressing

commonly held views.” Knox v. SEIU, Local 1000, 132 S. Ct. 2277, 2288 (2012). The Supreme Court has repeatedly emphasized this point: “It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.” See, e.g., NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 460 (1958); NAACP v. Button, 371 U.S. 415, 430 (1963); Bates v. Little Rock, 361 U.S. 516, 522-23 (1960). The freedom of association protected by the First and Fourteenth Amendments includes partisan political organizations. Elrod v. Burns, 427 U.S. 347, 357 (1976) (plurality opinion); Buckley v. Valeo, 424 U.S. 1, 15 (1976). “The right to associate with the political party of one’s choice is an integral part of this basic constitutional freedom.” Kusper v. Pontikes, 414 U.S. 51, 57 (1973).

The principle also follows that the freedom to associate, guaranteed by the First and Fourteenth Amendments, also “plainly presupposes a freedom not to associate.” Roberts v. United States Jaycees, 468 U.S. 609, 623 (1984). In the election context, this principle against forced associations has been applied even to defeat other important rights. For example, in Cal. Democratic Party v. Jones, 530 U.S. 567, 583 (2000), the Supreme Court held that the desire of a non-party member to participate in the primary nomination process could not trump the party’s right to determine its own membership. See id.; see also Tashjian v. Republican Party of Conn., 479 U.S. 208, 215-16 n.6 (1986) (citation omitted). In describing the rights at stake in Jones, the Court explained that a non-party member who was not allowed to vote in a party’s primary did not suffer a state-imposed restriction upon his freedom of association, “whereas compelling party members to accept his selection of their nominee is a state-imposed restriction upon theirs.” Id. at 584.

Here, Plaintiff Connolly attempted to exercise his fundamental right to vote for the candidate of his choice, by casting a ballot for Capo, but instead his ballot was rejected. In order to have his vote for the candidate of his choice count, he would have been forced to vote for a candidate for whom he had no desire to vote. Such conditions placed on the right to vote for the candidate of one's choice violate Plaintiff Connolly's rights. See Gangemi, 44 N.J. at 170 (citations omitted); cf. Gonzalez v. State Apportionment Commission, Docket No. MER-L-1173-11, 2011 N.J. Super. Unpub. LEXIS 2366, at *45 (Law Div. Aug. 31, 2011) (suggesting violation of constitutional rights should be found where one is forced to vote for a candidate he/she does not support or where one's right to vote is interfered with or eliminated).

Moreover, Plaintiff Connolly was deprived of his freedom to associate with Capo when his ballot was rejected, and again deprived of his freedom not to associate with the Incumbent Candidates when the new rule was implemented, requiring him to affirmatively vote for two candidates for Assembly. Thus, Plaintiff Connolly was compelled to associate with a candidate with whom he had no desire to associate, and subsequently punished for associating with the candidate for whom he voted. Such actions fly in the face of the fundamental right to vote and freedom to associate protected by the First and Fourteenth Amendments, and the more expansive free speech provisions of N.J. Const., Art. I, Para. 6.

B. Preliminary Injunctive Relief is Warranted to Prevent Immediate, Irreparable Harm.

The harm to Plaintiff Connolly in this matter, if the relief sought were not granted, is both immediate and irreparable. See Crowe, 90 N.J. at 132 (requiring immediate and irreparable harm); J.H. Renarde, Inc. v. Sims, 312 N.J. Super. 195, 203 (Law Div. 1998).

The injury Connolly will suffer is immediate. To begin with, if the ballots cast at the vote concerning District 40 are not preserved, there will be no record of the votes to be recounted

in the event that this Court grants the relief Plaintiff Connolly seeks. Moreover, if the relief sought is not granted, and the matter is not resolved in an expedited fashion, various election deadlines would be compromised. For example, March 30, 2015 is the deadline for candidates to file nomination petitions for the primary election, and ten days later, the slogans of such candidates will be certified. See N.J.S.A. 19:23-14. Additionally, on April 10, 2015, the county and municipal clerks will draw for ballot positions for primary election candidates. See N.J.S.A. 19:23-24. In drawing such positions, candidates that have petitioned to be bracketed together will receive the same line on the ballot. Id. Furthermore, the deadline for the preparation of official primary election ballots for printing is April 13, 2015. See N.J.S.A. 19:14-1. Such ballots will contain the name of the slogan next to each primary election candidate. See N.J.S.A. 19:23-25. These deadlines demonstrate that the injury to associational rights that Plaintiffs will suffer with respect to use of the PCRRO slogan and ballot position is immediate.

In addition, the harm Plaintiffs will suffer in the absence of relief by this Court is irreparable. Courts lend consideration to whether the injury suffered implicates monetary damages, and whether monetary damages are an adequate or available remedy. Injury is traditionally considered irreparable if monetary damages are an inadequate and/or an unavailable remedy. Crowe, 90 N.J. at 133. In an election matter, monetary damages are considered inadequate because the rights sought to be vindicated are rights to the expression of free will of citizens, voter choice and participatory democracy. “The right to vote is the constitutional engine that powers our democracy [and t]he expression of free will for the populace to choose candidates is not to be disregarded.” Clemency v. Beech, 306 N.J. Super. 244, 246 (Law Div. 1997). Furthermore, here the injury is irreparable as the harm that will occur will deprive Plaintiff Connolly of his right to vote and First Amendments rights of free speech and

association, and to vote for the candidate of his choice and not be compelled to endorse a candidate he does not support. In comparable situations, Courts have held that “when a plaintiff can establish a reasonable probability of success on the merits in a case limiting a person’s First Amendment rights, the **irreparable harm prong** is almost certain to be satisfied. This is because “irreparable injury normally arises out of deprivation of speech rights.” Empower our Neighborhoods v. Guadagno, Docket No. MER-L-3148-11, 2012 N.J. Super Unpub. Lexis 2275, *34-35 (Law Div. Oct. 3, 2012) (citing Child Evangelism Fellowship of N.J. v. Stafford Township Sch. Dist., 233 F. Supp. 2d 647 (D.N.J. 2002)).

If Plaintiffs’ request for a preliminary injunction is not granted, the results of the vote by the PCRRO will be validated and candidates Scott Rumana and David Russo will receive the endorsement of the PCRRO, be able to use the PCRRO slogan, and be entitled to the party line on the ballot without consideration of the procedural deficiencies surrounding the vote, including the endorsement of a candidate who did not receive a majority of votes, and without consideration of the vote of Plaintiff Connolly and by association, the party members represented by him.

C. The Legal Rights Underlying The Plaintiffs’ Claims Are Settled.

Additionally, based on the facts as set forth in the Complaint and restated above, preliminary injunctive relief is appropriate because the legal rights underlying Plaintiffs’ claims are settled. Such claims are based on violations of a state statute and corresponding violation of a political organization’s bylaws, and constitutional claims under the First and Fourteenth Amendment and the New Jersey Constitution including the right to vote, freedom of speech, and freedom of association.

Given the claims brought pursuant to these clear authorities, Plaintiffs are entitled to the relief and remedies requested for the violations complained of in this case. Thus, Plaintiffs

respectfully contend that there is no impediment to a grant of preliminary injunctive relief in this case on the grounds that the legal rights underlying their claims are unsettled.

D. Preliminary Injunctive Relief Is Appropriate In This Case Because The Balance Of Harms Favors Granting Preliminary Relief To The Plaintiffs.

Finally, preliminary injunctive relief is appropriate in this case because the balance of harms as to each party favors the granting of preliminary relief in favor of the Plaintiffs. Here, the hardship to the PCRRO is not “undue” when balanced against Plaintiffs’ legitimate interests in obtaining the requested temporary relief. See Coskey’s Television & Radio Sales & Serv., Inc. v. Foti, 253 N.J. Super. 626, 636 (App. Div. 1992).

The purpose of preliminary injunctive relief is to maintain the status quo pending final resolution of an action. Crowe, 90 N.J. at 134 (quoting Peters v. Public Service Corp. of N.J., 132 N.J. Eq. 500 (Ch.1942), aff’d o.b., 133 N.J. Eq. 283 (E. & A. 1943) (“Indeed, the point of temporary relief is to maintain the parties in substantially the same condition ‘when the final decree is entered as they were when the litigation began.’”)). Moreover, in determining whether the grant of temporary relief is appropriate, Courts have determined that “the relief granted should be no broader than necessary to preserve the status quo pending a plenary hearing on the merits.” Crowe, 90 N.J. at 132-134. Here, the balance of harms clearly weighs in favor of the Plaintiffs as the relief sought would maintain the status quo until such time as a revote could take place with respect to the endorsement of Assembly candidates in District 40, and/or a recount could be held to ensure that votes were properly recorded and counted. Preventing destruction of the ballots is necessary to prevent further injury to Plaintiffs pending an ultimate decision on their application. In doing so, the PCRRO would not suffer any hardship, or the hardship suffered would be merely *de minimis* in comparison with the destruction of ballots and affirmation of the conduct of the PCRRO, which would further abridge Plaintiffs’ rights.

Furthermore, any premature endorsement of candidates by the PCRRO prior to this matter being resolved will further prejudice Plaintiff's rights and is likely to result in voter confusion.

Moreover, as the Co-Chairman of the City of Paterson Republican Municipal Committee, and as a member of the Executive Committee of the PCRRO, Plaintiff Connolly represents the members of the Paterson Republican Municipal Committee and more broadly represents the rights of members of the Republican Party in Passaic County. As an elected member of the PCRRO, he acts as a trustee on behalf of Republican voters in Passaic County in casting votes for endorsements by the PCRRO in primary elections. The voting and associational rights of the Plaintiffs (and the voting public represented by Plaintiff Connolly) would be deprived if Plaintiff Connolly were prohibited from participating and having his vote counted, or if he were compelled to cast a ballot for a candidate whom he does not support. Any trivial harm to PCRRO from granting the requested relief pales in comparison to the abridgement of such rights. Moreover, the denial of the relief sought will further injure Plaintiffs and the members of the Paterson Republican Municipal Committee represented by Plaintiff Connolly. Therefore, the balance of the hardships plainly favors the Plaintiffs.

CONCLUSION

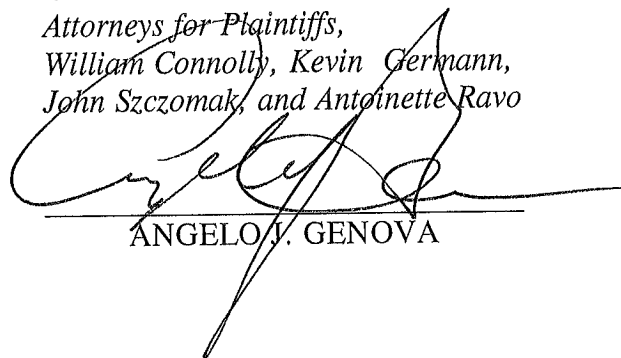
For the foregoing reasons, Plaintiffs, William Connolly, Kevin Germann, John Szczomak, and Antoinette Ravo respectfully request that this Court grant the preliminary injunctive relief sought in Plaintiffs' Order to Show Cause.

Respectfully submitted,

GENOVA BURNS LLC

*Attorneys for Plaintiffs,
William Connolly, Kevin Germann,
John Szczomak, and Antoinette Ravo*

By



ANGELO J. GENOVA

Dated: March 12, 2015