

JOHN BELLOCCHIO, ATTORNEY
PRO SE,

Plaintiff,

v.

TAHESHA WAY, NJ SECRETARY
OF STATE, and DONNA BARBER,
DIRECTOR OF THE DIVISION OF
ELECTION, NJ DEPARTMENT OF
STATE,

Defendants.

SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY LAW DIVISION
DOCKET NO. MER-L-001762-23

Civil Action

BRIEF IN SUPPORT OF THE MOTION TO DISMISS

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Secretary of State and Donna Barber,
erroneously pled as Director, New Jersey
Division of Elections

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TABLE OF CONTENTS

PRELIMINARY STATEMENT1

STATEMENT OF FACTS AND PROCEDURAL HISTORY3

STANDARD OF REVIEW10

ARGUMENT11

POINT I

THE CLAIMS AGAINST THE SECRETARY AND THE DIRECTOR
ARE NOT RIPE.....11

POINT II

THE LAW DIVISION OF SUPERIOR COURT LACKS SUBJECT
MATTER JURISDICTION.....14

POINT III

PLAINTIFF FAILS TO NAME DONALD TRUMP AS AN
INDISPENSABLE DEFENDANT.....18

CONCLUSION21

TABLE OF AUTHORITIES

Cases

Allen B. DuMont Laboratories, Inc. v. Marcalus Mfg. Co., 30 N.J. 290 (1959)..... 18

Cogdell v. Hosp. Ctr. at Orange, 116 N.J. 7, 17-20 (1989) 18

K. Hovanian Cos. of N. Cen. Jersey, Inc. v. N.J. Dep’t of Env’l. Prot., 379 N.J. Super. 1 (App. Div. 2005) 10

Kieffer v. High Point Ins. Co., 422 N.J. Super. 38 (App. Div. 2011) 9

Marshak v. Weser, 390 N.J. Super. 387 (App. Div. 2007) 14

Matter of Firemen’s Ass’n Oblig., 230 N.J. 258, 275 (2017) 10

Mutschler v. New Jersey Dept. of Environmental Protection, 337 N.J. Super. 1 (App. Div. 2001) 15

Nostrame v. Santiago, 213 N.J. 109 (2013) 9

Platkin v. Smith & Wesson Sales Co., 474 N.J. Super. 476 (App. Div. 2023) 10

Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739 (1989) 9

Santiago v. N.Y. & N.J. Port Auth., 429 N.J. Super. 150 (App. Div. 2012) 14

Scheidt v. DRS Techs., Inc., 424 N.J. Super. 188 (App. Div. 2012) 9

Statutes

2 U.S.C. § 7 5, 11

Minn. Stat. § 204B.44 16

N.J.S.A. 19:1-1 5, 11

N.J.S.A. 19:13-1 3, 5

N.J.S.A. 19:13-3 5, 11

N.J.S.A. 19:13-9 5, 11

N.J.S.A. 19:13-10 5, 12, 14, 19

N.J.S.A. 19:13-115, 6, 14, 15
 N.J.S.A. 19:13-15 5
 N.J.S.A. 19:23-20.1 passim
 N.J.S.A. 19:23-20.24, 5, 14, 15
 N.J.S.A. 19:23-40 4, 11
 N.J.S.A. 19:25-3 4, 11
 N.J.S.A. 19:31-6a 3
 N.J.S.A. 52:14B-2 4, 5, 14
 N.J.S.A. 52:14B-9 4, 5, 19
 N.J.S.A. 52:14B-10 4, 5, 14
 N.J.S.A. 52:16A-98 3

Rules

R. 2:2-3(a)(2)4, 13, 15
R. 4:6-2(a) 13
R. 4:6-2(e) 9
R. 4:6-2(f) 18
R. 4:28-1(a) 17
R. 4:52-1(c) 7
R. 4:67 8

Other Authorities

U.S. Const. amend. XIV, § 3..... 1

Regulations

N.J.A.C. 13:1E-1.2(k)..... 3

PRELIMINARY STATEMENT

By virtue of the actions outlined in the Complaint, Plaintiff asserts that Former President Donald Trump is ineligible to hold the office of President of the United States under section 3 of the Fourteenth Amendment.¹ Plaintiff is asking this court to prevent Trump from appearing on a primary ballot or a general election ballot in New Jersey for the 2024 Presidential Election. Specifically, Plaintiff's Claim for Relief is a prayer for this court to: 1) declare Trump ineligible for the office of President; 2) direct the Defendant Secretary of State ("Secretary") and Defendant Director of Elections² ("Director") to exclude Trump from the primary election ballot; and 3) direct the Secretary and Director to exclude Trump from the general election ballot as a candidate for president.

But this Complaint runs into a series of procedural problems that prevent this Court and the Secretary from addressing the merits at this time. Relying on what appears to be Minnesota law, Plaintiff believes that it is procedurally proper to file the instant suit to preemptively challenge whether the Secretary may approve as-of-

¹ "No person shall . . . hold any office, civil or military, under the United States, . . . who, having previously taken an oath, . . . as an officer of the United States, . . . to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof." U.S. Const. amend. XIV, § 3.

² The Complaint erroneously identifies Donna Barber as the Director of the New Jersey Division of Elections.

yet unfiled petitions or certificates of nomination by an announced candidate for office.³ But Title 19 establishes a distinct process under New Jersey law. For both primary and general elections, all candidates are provided a deadline by which to file their petitions; any objections to those petitions may be filed by a date certain afterwards; the Secretary must resolve such objections to filed petitions, including after referring the contested case to the Office of Administrative Law when appropriate; and challenges to the Secretary's final decision to accept or reject petitions lie in the Appellate Division. None of that statutorily authorized process has yet begun, let alone concluded.

As a result, this Court should dismiss the Complaint on three independently sufficient procedural grounds. First, the question presented to this Court is not ripe. No petition requesting Trump be placed on the 2024 Primary or General Election ballots has been filed with the Secretary. And therefore, under New Jersey law's clear statutory scheme, consideration of her authority to accept or reject the petitions are also unripe. Second, this Court lacks jurisdiction: the Legislature has vested the Secretary with authority to review petitions and determine the validity of objections thereto, and Court Rules empower the Appellate Division to review any decision the

³ As will be discussed below, there are multiple methods that may lead to a Presidential candidate's or elector's appearance on a primary or general election ballot in New Jersey, not all of which are petitions as Plaintiff's Complaint implies. However, for the convenience of this discussion, Defendants use the term "petition" to encompass all these methods.

Secretary ultimately makes. Third, this case should be dismissed for failure to name all necessary parties. Because Plaintiff's Complaint seeks an order barring Trump from filing a petition to run for that office and/or barring the Secretary from accepting such a hypothetical future petition from Trump, this court cannot grant Plaintiff's requested relief without affecting Trump's interest. As such, Trump is an indispensable party to such an action.

Plaintiff's Complaint must be dismissed as the case is not ripe, the court lacks jurisdiction, and Plaintiff failed to join indispensable parties.

STATEMENT OF FACTS AND PROCEDURAL HISTORY⁴

In New Jersey, the Secretary of State is the chief election official. N.J.S.A. 19:31-6a. Within the Department of State is the Division of Elections, which "is the filing office for nomination petitions for Federal and State elective offices and certifies all such candidates to the 21 county clerks for placement on the primary and general election ballots." N.J.S.A. 52:16A-98; N.J.A.C. 13:1E-1.2(k). New Jersey law provides two methods by which a candidate to be voted for at a general election may be nominated for public office: a primary election petition or direct nomination petition. N.J.S.A. 19:13-1.

⁴ Because the Procedural History and Statement of Facts are closely intertwined, they are being combined and summarized to avoid repetition and for the convenience of the court.

For the primary election, petitions requesting an individual's name be printed on the ballot of a political party as a candidate of such party for the office of the President of the United States must be filed with the Secretary sixty-four days before the primary election. N.J.S.A. 19:25-3. Objections to that petition must be filed with the Secretary by 4:00 p.m. of the fourth day after the deadline for filing such petitions. N.J.S.A. 19:23-20.1. In the event of an objection, the Secretary will mail notice of the objection to the candidate whose petition is being challenged. N.J.S.A. 19:23-20.1. A hearing will then proceed in the Office of Administrative Law for an administrative law judge to recommend findings of fact and conclusions of law that the Secretary may either accept, reject or modify as her final determination. N.J.S.A. 19:23-20.2, N.J.S.A. 52:14B-2, N.J.S.A. 52:14B-9 to -10. The Secretary must render a final determination by the ninth day after the deadline for filing petitions, N.J.S.A. 19:23-20.2, and her determination may be appealed directly to the Appellate Division of the Superior Court, R. 2:2-3(a)(2).

Primary elections for the 2024 General Election will be held in New Jersey on June 4, 2024. See N.J.S.A. 19:23-40 (primary elections must be held for all political parties on the Tuesday after the first Monday in June). As such, the deadline for filing a petition requesting an individual's name be placed on the primary election ballot is April 1, 2024, see N.J.S.A. 19:25-3, and the deadline for objecting to such

is April 5, 2024, see N.J.S.A. 19:23-20.1. The Secretary's determination on that objections is due by April 10, 2024, see N.J.S.A. 19:23-20.2.

For the general election, petitions directly nominating candidates for president who have not been nominated at a convention of a political party shall be filed with the Secretary by 4:00 p.m. on the ninety-ninth day preceding the general election. N.J.S.A. 19:13-3; N.J.S.A. 19:13-9. Political parties that do have conventions must submit a certificate of nomination to the Secretary of State within a week of electors' nominations. N.J.S.A. 19:13-15. Objections to direct nomination petitions must be filed with the Secretary by 4:00 p.m. on the fourth day after the deadline for filing such petitions. N.J.S.A. 19:13-10. The process for hearing objections to direct nomination petitions and certifications follows the same procedural process as objections to petitions for primary election nomination. N.J.S.A. 19:13-10, 19:13-11, 19:13-15, 52:14B-2, 52:14B-9 to -10. The Secretary must decide the validity of an objection to a direct nomination petition by the sixth day after the deadline for filing petitions. N.J.S.A. 19:13-11.

In 2024, the General Election will be held on November 5, 2024. See 2 U.S.C. § 7; N.J.S.A. 19:1-1. As such, the deadline for filing a direct nomination petition for the office of president of the United States is July 29, 2024. See N.J.S.A. 19:13-3; N.J.S.A. 19:13-9. The deadline for objecting to any such petition is to be filed with the Secretary by August 2, 2024. See N.J.S.A. 19:13-10. And, the deadline for the

Secretary to decide such an objection is August 4, 2024⁵. See N.J.S.A. 19:13-11.

The Division of Elections' website provides specific guidelines and deadlines related to challenging candidates' petitions. New Jersey Voter Information Portal, Department of State, Division of Elections, <https://nj.gov/state/elections/candidate-petition-challenge.shtml> (last visited October 8, 2023). The current information posted on the website is for 2023, and users are advised to return in 2024 for petitions and supportive documents. (Ibid.). To date, neither the primary election nor the general election nomination petition has been released for the 2024 election. Ex. A, ¶¶ 3, 6. The Division anticipates releasing primary and general election petitions in the first week of 2024. Id. at ¶¶ 4, 7. Further, to date, no petition requesting Trump be placed on the 2024 Primary or General Election ballots as a candidate for office of president of the United States has been filed with the Secretary. Id. at ¶¶ 5, 8.

Plaintiff's Complaint was filed on September 13, 2023, in New Jersey Superior Court, Chancery Division – Civil Part of Mercer County and sought an Order from the court: 1) declaring Trump ineligible for the office of president; 2) directing the Secretary and Director to exclude Trump from the primary election ballot; and 3) directing the Secretary and Director to exclude Trump from the general election ballot as a candidate for president. See Plaintiff's Complaint (Pl. Compl.),

⁵ August 4, 2024 is a Sunday, as such, the Secretary's deadline is August 5, 2024. See N.J.S.A. 19:11-1.

generally. The Complaint was received by defendants on September 18, 2023. With the Complaint, Plaintiff filed undated letters addressed to the Secretary and the Director demanding that Trump not appear “on any New Jersey Ballot.” Pl. Compl. at Letter Attachment. The same day Plaintiff’s Complaint was filed, the court entered an Order transferring the matter from the Chancery Division of Mercer County to the Law Division, Civil Part of Mercer County. Transaction ID LCV20232771521.

Plaintiff subsequently filed an Order to Show Cause on September 15, 2023 seeking the Secretary and Director to show cause as to why an order should not be issued preliminarily in the matter enjoining and restraining the Secretary and Director from placing Trump or any intentional surrogate representing Trump on the ballot in any primary or general election in New Jersey. Transaction ID LCV20232849706. The court denied Plaintiff’s Order to Show Cause without prejudice that same day on the basis that R. 4:52-1(c) requires a party seeking interlocutory relief to submit a brief in support of that application. Transaction ID LCV20232855266.

Plaintiff filed a second Order to Show Cause on September 21, 2023 seeking the Secretary and Director to show cause as to why an order should not be entered ordering: (1) the Secretary and Director to fulfill their oaths and legal obligations under New Jersey state law, the New Jersey Constitution, and the Constitution of the

United States and refuse to accept any nominating petitions submitted by or on behalf of Trump as a candidate for the office of president of the United States; (2) the acts of Trump on January 6, 2021 amounted to an insurrection for the purposes of the Fourteenth Amendment to the United States Constitution thereby rendering Trump ineligible for a ballot position in New Jersey; (3) the Secretary and Director not to accept any nominating petition of Trump for the office of president of the United States and not to place Trump's name on any ballots in the state; and (4) any other such relief deemed equitable and just by the court. Transaction ID LCV20232910317.

Plaintiff filed general correspondence with the court on September 25, 2023 requesting the court consider a news article providing an overview of similar challenges to Trump's candidacy for the office of president of the United States filed in other states premised upon the Fourteenth Amendment to the United States Constitution. Transaction ID LCV20232938130 Additionally, Plaintiff's September 25, 2023 correspondence appended the oath of allegiance and oath of office used for public officials in New Jersey and requested the court consider same in rendering any decision. Ibid.

On September 26, 2023, the court denied without prejudice Plaintiff's September 21, 2023 Order to Show Cause for the failure to submit a brief. Transaction No. LCV20232945051. Additionally, to the extent that Plaintiff's Order

to Show Cause was an application to proceed summarily under R. 4:67, the court also denied such an application without prejudice for Plaintiff's failure to identify any basis established by rule or statute to proceed in a summary manner. Ibid.

This motion to dismiss Plaintiff's Complaint on behalf of the Secretary and Director follows.

STANDARD OF REVIEW

A court may dismiss a complaint where Plaintiff has failed to state a claim upon which relief can be granted. R. 4:6-2(e). In reviewing a motion to dismiss under R. 4:6-2(e), the court must examine the legal sufficiency of the facts alleged on the face of the complaint. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989); Nostrame v. Santiago, 213 N.J. 109, 126-27 (2013). Dismissal is appropriate where the plaintiff's complaint fails to articulate a legal basis for relief and further discovery would not provide one. Kieffer v. High Point Ins. Co., 422 N.J. Super. 38, 49 (App. Div. 2011) . While courts should afford plaintiffs "every reasonable inference of fact" and should "search[] the Complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim," Printing Mart, 116 N.J. at 746 (internal quotation omitted), a claim must be supported by sufficient facts and not just conclusory allegations. Scheidt v. DRS Techs., Inc., 424 N.J. Super. 188, 193 (App. Div. 2012).

ARGUMENT

This case has three procedural flaws, each of which require dismissal without addressing the merits. First, the suit is unripe—the Secretary has not yet received any petitions from Trump. Second, even were the case ripe, this court would lack jurisdiction over the subject matter—as future challenges to any decision by the Secretary on such a petition belong in the Appellate Division. Third, the Complaint should be dismissed without prejudice for failure to name an indispensable party.

POINT I

THE CLAIMS AGAINST THE SECRETARY AND THE DIRECTOR ARE NOT RIPE

Plaintiff’s Complaint should be dismissed as the issues raised in same are not ripe for judicial review. “[C]laims are ripe for adjudication ‘only when there is an actual controversy, meaning the facts present concrete contested issues conclusively affecting the parties’ adverse interests.’” Platkin v. Smith & Wesson Sales Co., 474 N.J. Super. 476, 496 (App. Div. 2023) (quoting Matter of Firemen’s Ass’n Oblig., 230 N.J. 258, 275 (2017)). To determine whether claims are ripe for adjudication, New Jersey courts analyze two factors: “(1) the fitness of issues for judicial review; and (2) the hardship to the parties if judicial review is withheld at this time.” Ibid. (quoting K. Hovanian Cos. of N. Cen. Jersey, Inc. v. N.J. Dep’t of Env’l. Prot., 379 N.J. Super. 1, 9-10 (App. Div. 2005)). In this matter, Plaintiff’s Complaint is not

ripe for judicial review for the simple reason that no petition requesting Trump be placed on the primary or general election ballot as a candidate for the office of president of the United States has been filed with the Secretary. Ex. A, ¶¶ 5, 8.

In New Jersey, petitions requesting the name of an individual be placed on the primary election ballot for the office of president of the United States must be filed on or before the 64th day before a primary election with the Secretary. N.J.S.A. 19:25-3. Primary elections for the 2024 general election will be held in New Jersey on June 4, 2024. See N.J.S.A. 19:23-40 (primary elections must be held for all political parties on the Tuesday after the first Monday in June). Based on this, petitions for the primary election are not due until April 1, 2024. An individual may object to a petition nominating a candidate to be voted for by the voters of a political party during a primary election no later than 4:00 p.m. on the fourth day after the last day for filing petitions. N.J.S.A. 19:23-20.1.

Petitions requesting the name of an individual be placed on the general election ballot for president of the United States who has not been nominated at the convention of a political party must be filed on or before 4:00 p.m. of the ninety-ninth day before the general election. N.J.S.A. 19:13-3; N.J.S.A. 19:13-9. The general election will be held on November 5, 2024. 2 U.S.C. § 7; N.J.S.A. 19:1-1. Based on this, petitions by candidates not nominated at a political convention are not due until July 29, 2024. An individual may object to a direct petition nominating a

candidate to be placed on a general election ballot for president no later than 4:00 p.m. on the fourth day after the last day for filing petitions, or August 2, 2024. N.J.S.A. 19:13-10.

Plaintiff's Complaint must be dismissed as no petition requesting Trump be placed on the 2024 Primary or General Election ballots has been filed with the Secretary. Ex. A, ¶¶ 5, 8. Indeed, such petitions have not even been made available. Ex. A, ¶¶ 3, 6. Therefore, Plaintiff's Complaint is based upon the possibility of future injury, which in turn, is based upon actions and decisions of third parties – primarily Trump – which may not occur. Plaintiff states in Paragraph 1 of the Complaint that Trump filed paperwork with the Federal Election Commission as a candidate for the office of president of the United States and publicly announced his candidacy for same on November 15, 2022. Pl. Compl. at ¶1. However, unless and until a petition is filed with the Secretary requesting Trump be placed on the primary or general election ballot for the office of president of the United States in New Jersey, there is no question before the Secretary in this State as to whether to approve it. As such, due to the speculative nature of the Complaint, Plaintiff is unable to show that the issue of whether the Secretary should accept a petition on behalf of Trump for the office of the president of the United States is fit for judicial review.

Additionally, Plaintiff would suffer no hardship if this court were to withhold judicial review of a not yet filed petition and the Secretary's review thereof. Should

such a petition be filed requesting Trump be placed on either the primary or general election ballot for the office of president of the United States, Plaintiff would be able to file an objection with the Secretary in accordance with the framework provided by Title 19. The lack of hardship to Plaintiff is further supported by the fact that once a final decision has been made by the Secretary as to any objection filed by Plaintiff, Plaintiff would have a right to appeal that decision to the Appellate Division as of right if dissatisfied. R. 2:2-3(a)(2). As such, dismissal of this Complaint against the Secretary and Director would not prevent a determination made by the Secretary on any objection filed in response to any petition that may be filed on behalf of Trump from receiving judicial review.

Based on the foregoing, the Plaintiff's Complaint against the Secretary and the Director claiming that neither should accept a petition filed on behalf of Trump for the office of president of the United States, which has yet to be filed with the Secretary, is not ripe for judicial review at this time.

POINT II

THE LAW DIVISION OF SUPERIOR COURT LACKS SUBJECT MATTER JURISDICTION

A complaint may also be dismissed when a court does not have subject matter jurisdiction: "Pursuant to Rule 4:6-2(a), a party may raise the defense of 'lack of jurisdiction over the subject matter' by motion prior to filing any pleading. Whether

subject matter jurisdiction exists presents a purely legal issue” Santiago v. N.Y. & N.J. Port Auth., 429 N.J. Super. 150, 156 (App. Div. 2012) (quoting Marshak v. Weser, 390 N.J. Super. 387, 390 (App. Div. 2007)).

The Legislature has vested the Secretary with the authority to determine the validity of an objection to a petition for placement of the primary election ballot or the general election ballot. See N.J.S.A. 19:23-20.1 and -20.2; N.J.S.A. 19:13-10 and -11. Under New Jersey law, anyone seeking to challenge a petition must file a written objection with the Secretary no later than 4:00 p.m. on the fourth day after the deadline for filing such a petition. N.J.S.A. 19:23-20.1 and N.J.S.A. 19:13-10. Once an objection has been filed, the Secretary must determine the validity of the objection. N.J.S.A. 19:23-20.2 and N.J.S.A. 19:13-11. The procedure for arriving at this determination is considered a “contested case” and, as such, is referred to the Office of Administrative Law for a hearing before an administrative law judge who receives evidence, hears testimony, and makes findings of fact and conclusions of law. N.J.S.A. 52:14B-2 & 52:14B-10(c). Following the hearing, the ALJ prepares a recommended report and decision, which is then reviewed by the Secretary and either adopted, rejected, or modified by Secretary’s determination. N.J.S.A. 52:14B-10(c). The Secretary will issue the determination by the ninth day after the deadline for filing petitions for a primary election and by the sixth day after the deadline for

filing for petitions for general election directly nominating candidates for president. N.J.S.A. 19:23-20.2 and N.J.S.A. 19:13-11.

Once the Secretary has issued the final agency decision, the matter would proceed to the Appellate Division. The Appellate Division has exclusive jurisdiction to “review final decisions or actions of any state administrative agency or officer.” R. 2:2-3(a)(2). See also Mutschler v. New Jersey Dept. of Environmental Protection, 337 N.J. Super. 1, 9 (App. Div. 2001). The Appellate Division’s jurisdiction does not depend on the theory of the challenging party’s claim or the nature of the relief sought. Ibid. If and when the Secretary issues a decision as to any objection that may be filed to the potential nominating petition for either the 2024 Primary or General Elections on behalf of Trump, including an objection by Plaintiff himself, the Appellate Division will have exclusive jurisdiction to review.

Plaintiff’s Complaint misstates the law applicable to this matter and advances the incorrect proposition that this court has the ability to provide the relief requested. Paragraph 25 of Plaintiff’s Complaint asserts that Title 19 allows “[a]ny individual’ to file a petition directly with the Superior Court asking it to correct ‘an error . . . in the placement or printing of the name . . . of any candidate . . . on any official ballot, including the placement of a candidate on the official ballot who is not eligible to hold the office for which the candidate has filed,’ or any wrongful act, omission, or error by the Secretary of State (or any other individual charged with any duty

concerning an election), that is ‘about to occur.’” Pl. Compl. at ¶25, p. 6. This quoted language does not appear in Title 19 and rather appears to quote Minnesota state statute, Minn. Stat. § 204B.44.⁶ Instead, as explained in detail above, under Title 19, this question goes to the Secretary once there is a petition and an objection, and review of her decision is ultimately in the Appellate Division.

The facts of this case, and the statutory authority vested with the Secretary as outlined in Title 19, support dismissal of this Complaint filed against the Secretary and the Director. Although courts have significant experience addressing questions surrounding elections and qualifications for candidates, the Secretary, as the chief elections official charged by the Legislature with organizing and conducting orderly and lawful elections, is vested by the Legislature with the authority to review petitions and determine the validity of objections thereto.

Therefore, Plaintiff’s Complaint against the Secretary and the Director as to their review of a potential nominating petition for either the 2024 Primary or General

⁶ Under Minn. Stat. § 204B.44(a), “[a]ny individual may file a petition in the manner provided in this section for the correction of any of the following errors, omissions, or wrongful acts which have occurred or are about to occur: (1) an error or omission in the placement or printing of the name or description of any candidate or any question on any official ballot, including the placement of a candidate on the official ballot who is not eligible to hold the office for which the candidate has filed.” Under 204B.44(b), petitions pertaining to elections for federal office must be filed with any judge of the supreme court.

Elections on behalf of Trump should be dismissed with prejudice for lack of subject matter jurisdiction.

POINT III

PLAINTIFF FAILS TO NAME DONALD TRUMP AS AN INDISPENSABLE DEFENDANT

To the extent that the court nonetheless finds this matter is ripe and finds it has jurisdiction, the Complaint should be dismissed for failing to name an indispensable party.

A party is indispensable to a lawsuit if that party “claims an interest in the subject of the action and is so situated that the disposition of the action in the [party’s] absence may . . . (i) as a practical matter impair or impede the [party’s] ability to protect that interest” R. 4:28-1(a). This rule is intended to ensure courts operate justly, fairly, and efficiently:

The policy behind the party-joinder Rule generally encompasses both fairness to parties and judicial efficiency and economy. Thus, the Rule tries foremost to protect an absent person from an adjudication of his or her interests; it also protects all of society from repetitious, abortive, and wasteful litigation.” (citations omitted)

The party-joinder rule is concerned with the completeness, soundness, and finality of the ultimate determination of a legal controversy. It has long been recognized that joinder is designed “to make perfectly certain that no injustice is done, either to the parties before it, or to others, which might otherwise be grounded upon a partial view only of

the real merits.” J. Story, Commentaries on Equity Proceedings 74 (19th ed. 1892).

[Cogdell v. Hosp. Ctr. at Orange, 116 N.J. 7, 17-20 (1989).]

Ultimately, in order to determine whether a party is indispensable to a case, a court must examine “the circumstances of the particular case,” including whether that party “has an interest inevitably involved in the subject matter before the court” and where “and a judgment cannot justly be made between the litigants without either adjudging or necessarily affecting the absentee’s interest.” Allen B. DuMont Laboratories, Inc. v. Marcalus Mfg. Co., 30 N.J. 290, 298 (1959).

Although filed against the State’s two top election officials, Plaintiff seeks an order preventing Trump may be placed on a New Jersey ballot as a candidate for president. That is, under the circumstances of this particular case, it could hardly be clearer that Trump has an interest inevitably involved in the subject matter before the court: whether he may be placed on the ballot in New Jersey, if he ultimately files otherwise conforming petitions. A judgment granting Plaintiff’s requested relief cannot be made between Plaintiff and New Jersey’s election officials without adjudging or at least affecting Trump’s interests—that is, determining whether he is eligible to be a candidate for President. As such, Trump is an indispensable party without whom this litigation cannot move forward, and Plaintiff’s failure to name him as a defendant should require dismissal under R. 4:6-2(f) without prejudice.

Indeed, the normal process established by Title 19's provisions governing the filing of petitions and the review of objections thereto confirms that candidates have an interest in whether they may be placed on the ballot. The petition process has specific requirements to give notice to the challenged candidate that an objection has been filed and to provide the candidate with an opportunity to be heard. Upon receipt of an objection, "notice thereof signed by [the Secretary] shall forthwith be mailed to the candidate who may be affected thereby, addressed to the candidate at the candidate's place of residence." N.J.S.A. 19:13-10 and N.J.S.A. 19:23-20.1. As a party to a contested case, it is the candidate who will defend his or her position during the hearing in the Office of Administrative Law. The candidate is provided notice of the hearing and is afforded the opportunity to "respond, appear, and present evidence and argument on all issues involved," N.J.S.A. 52:14B-9(a), (c). This process makes clear that, from the time an objection is filed until the Secretary makes a final decision, the candidate is on notice and empowered to participate and defend their petition to appear on the ballot. By contrast in this case, Plaintiff's failure to name Trump as a defendant has circumvented his participation as a party on the very same question.

Therefore, even if this matter were not otherwise subject to dismissal on ripeness or jurisdictional grounds, the fact that Trump has not been named is another independently sufficient basis to dismiss this case without prejudice.

CONCLUSION

This Court should grant Defendants' motion to dismiss.

Respectfully submitted,

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