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CLERK OF COURT  
MIDDLESEX COUNTY

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RUTGERS UNIVERSITY STUDENT	:	
ASSEMBLY(RUSA), Matthew	:	
Codeiro, Gabriela Agata	:	SUPERIOR COURT OF NEW JERSEY
Gryzbowski, Beth Rose Breslaw,	:	MIDDLESEX COUNTY
Edward James Vasconcellos III,	:	DOCKET NO.:
Bon-Jin Kun, Annalee Switek,	:	
Latino Leadership Alliance of	:	
New Jersey (LLANJ), New Jersey	:	
Citizen Action (NJCA), and the	:	
American Civil Liberties Union	:	CHANCERY DIVISION
of New Jersey (ACLU-NJ)	:	
	:	
Plaintiffs	:	
	:	
vs.	:	
	:	COMPLAINT FOR DECLARATORY
Middlesex County Board of	:	AND INJUNCTIVE RELIEF
Elections and Daniel Frankel,	:	
Commissioner of Registrations	:	
of Middlesex County	:	
	:	
Defendants.	:	

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## INTRODUCTION

1. The New Jersey Constitution, art. 2, § 1, ¶ 3, guarantees the right to vote to every U.S. citizen over the age of 18 who has been a resident of the State and a county for 30 days, has not been adjudicated to lack the capacity to understand the act of voting, and has not been disfranchised as a result of conviction of a crime.

2. During each election cycle, New Jersey's 21-day advance-registration requirement, embodied in N.J.S.A. 19:31-6, severely burdens the right to vote of thousands of New Jersey residents. The advance-registration requirement prevents otherwise eligible citizens from casting a ballot and having their ballot count.

3. The advance-registration requirement burdens some groups of New Jersey residents more than others. In particular, the right to vote of individuals who have recently changed their residence when relocating from out of state to New Jersey or within the State but to a new county is severely burdened by the advance-registration requirement. Moreover, advance registration has an especially harsh impact on younger adults who are typically more mobile than the rest of the population.

4. The advance-registration requirement has become particularly unreasonable in light of recent advances in computer technology, the creation of a statewide database as part of the State's implementation of the Help America Vote Act (HAVA), and the State's provisional ballot system, which obviate the

traditional administrative rationales for advance registration.

5. Plaintiffs bring this action directly under the New Jersey Constitution and, as implemented by the New Jersey Civil Rights Act, to challenge New Jersey's arbitrary and unreasonable failure to allow otherwise eligible citizens to register and cast their votes on the days of elections, and to have those ballots counted.

#### **PARTIES**

6. Defendant Daniel Frankel is the Commissioner of Registrations in Middlesex County and is sued in his official capacity. As Commissioner of Registration, Frankel is responsible for registration of voters in Middlesex County, N.J.S.A. 19:31-5, for refusing to allow voters who file a late registration form to have their votes counted in an election, N.J.S.A. 19:31-6.1, for preparing lists of eligible voters for use at the polls, N.J.S.A. 19:31-20, for generally maintaining the list of eligible voters, N.J.S.A. 19:31-32(b), and for evaluating, examining and ascertaining whether a provisional ballot that has been cast will be counted, N.J.S.A. 19:53C-13.

7. Defendant Middlesex County Board of Elections is responsible for implementing New Jersey's voter-registration laws in Middlesex County, for enforcing a 21-day advance-registration requirement, for rejecting ballots cast by late registrants, and for making the final determinations and serving as the final authority as to the number of votes cast for each candidate for

election and for each public question. N.J.S.A. 19:6-26 and N.J.S.A. 19:9-9 to -11.

8. Plaintiff Rutgers University Student Assembly (RUSA) is the elected student government body for undergraduate students of Rutgers University on the New Brunswick/Piscataway campus. All undergraduate students in New Brunswick and Piscataway are entitled to vote for, are represented by, and are the constituents of, RUSA and its members.

9. Plaintiff Matthew Cordeiro, who resides at 88 Plum Street, New Brunswick, New Jersey, is a student at Rutgers University in New Brunswick and is the Vice-President of RUSA.

10. Plaintiff Gabriela Agata Grzybowski is a student at Rutgers University who currently resides in Henderson Apartments, Apartment 59, on the Cook/Douglass Campus in New Brunswick, New Jersey. She registered to vote at a table outside of the Neilson Dining Hall on the Cook/Douglass Campus at least 21 days prior to the General Election in 2009. Plaintiff is a U.S. citizen, was at least 18 years of age on the day of that election, was a Middlesex County resident for at least 30 days before that election and has no disqualification for voting. For reasons unknown to Plaintiff, her name was not on the rolls when she went to vote, and the poll workers at Lord Sterling School refused to give her a provisional ballot despite her request for one. Prompted by increased media coverage and General Election visibility prior to the 2010 General Election, Plaintiff again

attempted registration. Plaintiff visited an election-information and registration website and discovered that she missed the deadline to register to vote for that election.

11. Plaintiff Beth Rose Breslaw resides at 75 Louis Street, New Brunswick, New Jersey. She is a qualified voter who was registered to vote at her mother's home in Mercer County in 2007. She moved to Middlesex County in August, 2008, and did not reregister to vote from her Middlesex County address 21 days in advance of the mid-term election on November 2, 2010. Plaintiff is a U.S. citizen, at least 18 years of age on the day of that election, was a Middlesex County resident for at least 30 days before that election and has no disqualification for voting. On Election Day, Plaintiff was on crutches and was unable to return to Mercer County to vote. She attempted to vote in New Brunswick and was given a provisional ballot. Defendants thereafter ruled the ballot ineligible, and Plaintiff was disenfranchised in that election. Specifically, her ballot was not counted because election officials were unable to confirm timely registration in Middlesex County in advance of the election. Notwithstanding, her ballot affirmation statement indicating a change of address was accepted as a reregistration for future elections.

12. Plaintiff Edward James Vasconellos III resides at 12 Hartwell Street, New Brunswick, New Jersey. He registered to vote twice from his prior Demarest Hall dormitory address in New Brunswick at least 21 days prior to both the 2007 and 2008

general elections. In both instances, he filled out and signed a registration form provided and collected by a third party registrar. Plaintiff is a U.S. citizen, was at least 18 years of age on the day of those elections, was a Middlesex County resident for at least 30 days before each election and has no disqualification for voting. For reasons unknown to Plaintiff his name was not on the rolls when he went to vote in the 2008 General Election. A poll worker directed him to vote by provisional ballot. Defendants thereafter ruled the ballot ineligible, and Plaintiff was therefore disenfranchised from that election. Specifically, election officials would not count the ballot because they were unable to confirm timely registration in advance of the election. However, Plaintiff's ballot affirmation statement was accepted as a registration for future elections.

13. Plaintiff Bon-Jin Kun resides at 10 Landing Lane, Apartment 2N, New Brunswick, New Jersey. He registered to vote from his current address at least 21 days prior to the 2009 Primary Election. Plaintiff is a U.S. citizen, was at least 18 years of age on the day of those elections, was a Middlesex County resident for at least 30 days before the elections and has no disqualification for voting. For reasons unknown to Plaintiff, his name was not on the rolls when he went to vote in the 2009 Primary Election. Election officials directed him to vote by provisional ballot. Defendants thereafter ruled the ballot ineligible, and Plaintiff was therefore disenfranchised

in that election. Specifically, election officials did not count his ballot because they were unable to confirm timely registration in advance of the election. However, Plaintiff's ballot affirmation statement was accepted as registration for future elections.

14. Plaintiff Annalee Switek currently resides at 55 Prosper Street, New Brunswick, New Jersey. She registered to vote prior to the General Election in 2008 while residing at the Demarest Hall residence in New Brunswick. Plaintiff is a U.S. citizen, was at least 18 years of age on the day of the election, was a Middlesex County resident for at least 30 days before the election and had no disqualification for voting. For reasons unknown to Plaintiff, her name was not on the rolls when she went to vote in the 2008 General Election and election officials directed her to vote by provisional ballot. Defendants thereafter ruled the ballot ineligible, and Plaintiff was therefore disenfranchised in that election. Specifically, election officials did not count her ballot because they were unable to confirm timely registration in advance of the election. However, Plaintiff's ballot affirmation statement was accepted as a registration for future election

15. Plaintiff Latino Leadership Alliance of New Jersey (hereinafter "LLANJ"), is a voluntary association whose purpose is to improve the status of Hispanic/Latino Americans in part by working to end discriminatory practices. Its office is located at

100 Jersey Avenue, New Brunswick, New Jersey. A part of its mission is the election of candidates, both Hispanic and non-Hispanic, with a demonstrated track record of support for issues that matter to Hispanics. Since its founding in 1999, LLANJ has engaged in voter registration and voter education to increase the political awareness, knowledge and participation of New Jersey Latinos.

16. Plaintiff New Jersey Citizen Action (NJCA) is the state's largest citizen watchdog coalition, with over 60,000 individual members and 100 affiliated organizations, including a range of senior, labor, religious, civil rights, civic and neighborhood groups. NJCA maintains an office in Middlesex County at 75 Raritan Avenue, Highland Park. NJCA is a nonprofit 501(c)(4) organization that was founded in 1982. Its mission is to secure economic and social justice for all, to empower and organize the unorganized, and to build a strong progressive coalition working on issues of common concern. Voter involvement is a hallmark of NJCA's work. In 2009, NJCA's canvassers knocked on 35,000 doors in five counties across the state during the gubernatorial election, and registered over 5,000 voters. In the 2008 Presidential Primary, NJCA focused its work on several communities and registered more than 5,500 voters in those communities.

17. Plaintiff American Civil Liberties Union of New Jersey (ACLU-NJ) is a private non-profit membership organization



dedicated to the principles of individual liberty embodied in the constitutions of the United States and New Jersey. ACLU-NJ has approximately 14,000 members in New Jersey, including nearly 900 in Middlesex County. Protecting and enhancing the right to vote is among the core policies pursued by ACLU-NJ. Pursuant to this policy, ACLU-NJ stations volunteer attorneys at various county courthouses, including the Middlesex County Courthouse, on General Election days to represent people who have been denied the right to vote at polling places because their voter registrations were not properly processed in time for the election. For example, ACLU-NJ's clients on election days have included voters who believed they had been registered to vote but found they were not on the voting rolls when they arrived at polling places to vote. Typical examples include persons who believed they had been registered at a motor vehicle office and Rutgers students who registered on campus. For the General Election in 2008, approximately five lawyers worked at the Middlesex Courthouse, both representing voters and observing proceedings. For the General Election in 2009, because of anticipated lower voter turnout, only one lawyer was assigned to Middlesex. That lawyer successfully represented a newly naturalized citizen whose mailed registration was rejected by Defendants. The ACLU-NJ lawyer successfully proved that the registration was mailed within the applicable period, but was not received until after the registration deadline.

18. The stories of the individual plaintiffs above are not unique. In the 2008 General Election, at least 18,773 people statewide cast provisional ballots which were not counted in that election (including 2,439 in Middlesex County); even though 16,308 (including 2,178 in Middlesex County) of those ballots contained affirmation statements which were accepted as registrations for future elections pursuant to N.J.S.A. 19:31-6(h). The handling of such provisional ballots thus demonstrates that: (1) the identifying information of those voters was processed through the relevant databases used for verifying voter registration; and (2) those persons were deprived of their right to have a ballot counted in the very election in which they otherwise participated.

19. In the 2010 General Election, 297 provisional ballots were disallowed in Middlesex County, 249 of which contained ballot affirmation statements that were accepted as registrations for future elections.

20. In the 2008 General Election, approximately 1.8 million New Jerseyans who were eligible to vote did not do so. The U.S. Census Bureau estimates that nationally, 14.7 percent of nonregistrants did not register in that election because they missed registration deadlines. See Thom File & Sarah Crissey, U.S. CENSUS DEPARTMENT, VOTING AND REGISTRATION IN THE ELECTION OF NOVEMBER 2008, P20-562 (May 2010) <<http://www.census.gov/prod/2010pubs/p20-562.pdf>> at page 14.

This study demonstrates that there are thousands of additional persons in Middlesex County and throughout New Jersey, who, although qualified to vote and desiring to vote, are thwarted in the exercise of that right as a direct result of the 21-day advance-registration requirement.

#### **THE RELEVANT PROVISIONS OF LAW**

21. The New Jersey Constitution provides an unequivocal guarantee of the right to vote to all citizens who have been residents of the State and a county for 30 days prior to an election:

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

N.J. Const. art. II, § 1, ¶ 3(a).

22 . This constitutional right, however, is contravened by State law, which imposes a 21-day deadline for voter registration. According to N.J.S.A. 19:31-6:

Any person qualified to vote in an election shall be entitled to vote in the election if the person shall have registered to vote on or before the 21st day preceding the election . . . .

23. Despite the advance-registration requirement, State law permits eligible voters to register to vote during the 20 days prior to an election, but specifically provides that those voters' ballots cannot be counted in that election. N.J.S.A.

19:31-6.1 provides:

Notwithstanding any other provisions of the Title to which this act is a supplement, any person authorized by law to accept applications for voter registration shall accept, during the 20-day period prior to any election, the application for registration of all eligible voters who shall personally appear for registration before such person, or the registration card mailed or delivered to such person, but no eligible voter so registered shall be entitled to vote in the election immediately following said 20-day period. Any person registered under the provisions of this act shall be advised that he will not be eligible to vote in the election immediately forthcoming but will be eligible to vote in elections held thereafter.

24. Existing State law further provides for continuous maintenance and accuracy verification of voter registration rolls, and requires voter registration applications to be processed on an "expedited" basis. According to N.J.S.A. 19:31-32(b):

Each county commissioner of registration shall be responsible for adding to, deleting from, amending and otherwise conducting on a regular basis maintenance for the files of every legally registered voter in that commissioner's county as contained in the statewide voter registration system, pursuant to [the Help America Vote Act] and Title 19 of the Revised Statutes. Each commissioner shall be responsible for verifying the accuracy of the name, address and other data of the registered voters in the commissioner's respective county as contained in the system. The commissioner who receives the voter registration forms of individuals who have registered to vote in the county or who are re-registering for any reason shall be responsible for entering the information on those forms into the system on an expedited basis, including but not limited to forms and information received pursuant chapter 31 of Title 19 of the Revised statutes. . . . (emphasis added)

25. Every manner and kind of voter registration application is subject to the requirements of N.J.S.A. 19:31-32(b),

including, without limitation, the voter registration application that arises as a matter of law when a person votes by provisional ballot, but that ballot is not counted for that election. As provided by N.J.S.A. 19:31-6(h):

Any person qualified to vote in an election shall be entitled to vote in the election if the person shall have registered to vote on or before the 21<sup>st</sup> day preceding the election by:

\* \* \*

(h) completing a provisional ballot affirmation statement and voting the provisional ballot in the preceding election, if the person who submitted the provisional ballot in that election is determined not to be a registered voter.

26. Prior to the acceptance of a voter registration application, the application must be processed in several ways:

a. First, each commissioner is responsible for determining the accuracy of the voter's name, address and other data provided. N.J.S.A. 19:31-32(b). Specifically, if the voter provides a driver's license or Social Security number, such numbers must be checked against the relevant databases to determine the accuracy of such identifying information.

b. Second, every application must be checked against the existing voter registration database to ensure it is not a duplicate of an existing registration in that or another county. N.J.S.A. 19:31-6.5(a)(4) and 19:31-11;

c. Third, every application must be checked against existing databases of the Motor Vehicle Commission, the Department of Health and Senior Services, the Department of

Corrections, the Administrative Office of the Courts, and the Parole Board, to verify the accuracy of the information in that voter registration application. N.J.S.A. 19:31-32(e).

27. In addition, all voters who register or re-register by mail must produce, prior to the election or at the time they cast a ballot, certain forms of identification. N.J.S.A. 19:31-6.4(I) and 19:15-17(b). This "identification" requirement was enacted in order to bring the state into compliance with Section 303(b)(2) of HAVA, 42 U.S.C. § 15483(b)(2). In accordance with State policy, New Jersey election officials are required to accept the following forms of identification: driver's license, student or job ID, military or other government ID, store membership ID, United States passport, bank statement, car registration, government check or document, non-photo driver's license, rent receipt, sample ballot, utility bill, or any other official document. See STATE OF NEW JERSEY, DEPARTMENT OF STATE, VOTER I.D. REQUIREMENTS

<[http://www.state.nj.us/state/elections/vote\\_id\\_req.html](http://www.state.nj.us/state/elections/vote_id_req.html)>. In the event a voter who is required to produce identification at the polls does not do so, such voter may cast a provisional ballot and is given the opportunity to produce such identifying documents up to 48 hours after an election in order to render his/her provisional ballot valid. N.J.S.A. 19:53C-3(I).

#### **FACTUAL ALLEGATIONS**

28. Pursuant to N.J.S.A. 19:31-6, an eligible voter is

required to register 21 days prior to an election in order to cast a valid ballot at that election.

29. In each General Election, thousands of New Jersey residents who would like to exercise their constitutional right to vote are unable to do so because they fail to register in their county of residence before the advance registration deadline has passed. Many, including Plaintiff Breslaw, are properly registered in another county in New Jersey, yet their votes are not counted.

30. In 2008, the voting eligible population (VEP) in New Jersey (adult citizens less people on probation or parole) was approximately 5,847,000. In that year, 3,910,220 or approximately 66.9 percent of the VEP cast ballots.

31. On information and belief, of the nearly two million eligible voters who did not cast a ballot in the presidential election, tens of thousands of eligible voters did not do so because they had failed to register 21 days before the election. This estimate of the number of disenfranchised voters caused by the 21-day registration requirement is based on at least two relevant facts:

(a) First, there were 74,002 provisional ballots cast in the 2008 presidential election. Of those, 18,773 were rejected. Of those, 16,308 were rejected for the sole reason that the applicant was not registered to vote in the jurisdiction at least 21 days before the election. Those 16,308 rejected ballots

contained ballot affirmation statements which were accepted as voter registrations for all future elections;

(b) Second, the U.S. Census reports that nationally, 14.7 percent of nonregistrants did not register because they missed registration deadlines, and 6.0 percent of nonvoters did not vote because of registration-related problems. While the precise number of people who did not vote in that election due to New Jersey's 21-day advance registration requirement is unknown - and probably unknowable - it numbers at least in the thousands.

#### **The Specific Burdens Imposed by Advance Registration**

32. Defendants' (and the State's) failure to allow Election Day Registration ("EDR") imposes a severe burden on thousands of Middlesex (and New Jersey) citizens who are not permitted to cast a valid ballot in an upcoming election once the advance-registration deadline passes.



33. Based solely on a computation of the provisional ballots and affirmation statements filed therewith that were accepted as registration forms, but were not counted as ballots in the 2008 General Election, it is clear that the failure of Defendants to offer EDR disenfranchised thousands of voters in Middlesex County:

JURISDICTION	TOTAL PROVISIONAL BALLOTS CAST	TOTAL PROVISIONAL BALLOTS REJECTED AS BALLOTS	TOTAL PROVISIONAL BALLOTS REJECTED AS BALLOTS, BUT ACCEPTED AS REGISTRATIONS
Statewide	74,002	18,773	16,308
Middlesex Co.	6,357	2,439	2,178
Atlantic Co.	2,689	780	710
Bergen Co.	4,622	1,453	1,434
Burlington Co.	3,864	1,090	1,002
Camden Co.	4,786	713	296
Cape May Co.	407	76	23
Cumberland Co.	824	125	106
Essex Co.	16,575	5,284	5,006
Gloucester Co.	1,099	238	190
Hudson Co.	4,780	98	75
Hunterdon Co.	511	196	60
Mercer Co.	1,859	515	143
Monmouth Co.	3,732	1,417	1,311
Morris Co.	3,828	745	648
Ocean Co.	2,687	875	756
Passaic Co.	3,460	170	50
Salem Co.	211	49	28
Somerset Co.	7,155	648	574
Sussex Co.	597	262	250
Union Co.	3,607	1,442	1,314
Warren Co.	352	158	154

34. In the 2009 General Election, an additional 278 eligible Middlesex County voters were disenfranchised due to the Defendants' failure to provide EDR. A total of 2,033 voters were disenfranchised statewide:

JURISDICTION	TOTAL PROVISIONAL BALLOTS CAST	TOTAL PROVISIONAL BALLOTS REJECTED AS BALLOTS	TOTAL PROVISIONAL BALLOTS REJECTED AS BALLOTS, BUT ACCEPTED AS REGISTRATIONS
Statewide	16,932	2,649	2,033
Middlesex Co.	1,378	339	278
Atlantic Co.	691	62	42
Bergen Co.	1,523	276	238
Burlington Co.	644	182	152
Camden Co.	1,688	170	43
Cape May Co.	161	22	18
Cumberland Co.	220	13	11
Essex Co.	2,277	366	366
Gloucester Co.	469	61	40
Hudson Co.	1,806	273	165
Hunterdon Co.	154	44	36
Mercer Co.	584	10	5
Monmouth Co.	1,306	266	221
Morris Co.	563	26	4
Ocean Co.	738	189	161
Passaic Co.	979	38	10
Salem Co.	102	1	1
Somerset Co.	579	116	97
Sussex Co.	127	1	1
Union Co.	851	192	142
Warren Co.	92	2	2

35. Such effects were just as pronounced in the 2010 General Election. In that election, 249 eligible voters were disenfranchised in Middlesex County, while 1,819 voters were disenfranchised statewide:

JURISDICTION	TOTAL PROVISIONAL BALLOTS CASE	TOTAL NUMBER OF PROVISIONAL BALLOTS REJECTED AS VOTES	TOTAL PROVISIONAL BALLOTS REJECTED AS BALLOTS, BUT ACCEPTED AS REGISTRATIONS
Statewide	15,490	2,725	1,819
Middlesex Co.	1210	297	249
Atlantic Co.	533	25	7
Bergen Co.	1836	339	271
Burlington Co.	826	271	254
Camden Co.	2623	379	75
Cape May Co.	174	22	7
Cumberland Co.	490	16	7
Essex Co.	1722	211	147
Gloucester Co.	576	105	66
Hudson Co.	838	129	106
Hunterdon Co.	114	20	11
Mercer Co.	618	76	24
Monmouth Co.	1012	243	147
Morris Co.	391	4	1
Ocean Co.	720	186	144
Passaic Co.	77	52	2
Salem Co.	145	5	2
Somerset Co.	385	83	71
Sussex Co.	81	3	1
Union Co.	1053	249	219
Warren Co.	66	10	8

36. The advance-registration requirement prevents otherwise qualified voters from casting a ballot that will be counted at the election when their voter registration forms, although timely filed, are not processed properly due to an administrative error caused by a person or entity other than the putative registrant. See generally Associated Press, N.J. Voting Officials Scramble to

Process Record Number of Registrations, New Jersey Real-Time News, October 21, 2008

<[http://www.nj.com/news/index.ssf/2008/10/nj\\_voting\\_officials\\_scramble\\_t.html](http://www.nj.com/news/index.ssf/2008/10/nj_voting_officials_scramble_t.html)> and STATE OF NEW JERSEY, DEPARTMENT OF THE PUBLIC ADVOCATE, Report on Voting Rights Project, November 2008  
<[http://www.state.nj.us/publicadvocate/public/pdf/voting\\_after\\_action\\_nov08.pdf](http://www.state.nj.us/publicadvocate/public/pdf/voting_after_action_nov08.pdf)>.

37. The advance-registration requirement prevents otherwise qualified New Jersey residents who decide to participate within 20 days prior to an election from casting ballots that will be counted at that election. Those twenty final days before an election are just the time when voter interest and campaign activity peaks.

38. The advance-registration requirement also imposes unequal burdens on the right to vote of otherwise qualified individuals on the basis of whether they recently moved to a new residence in another county within the State or recently moved into the State. Moreover, because of their greater mobility as a group, young adults, especially college students such as those represented by Plaintiff RUSA, are particularly burdened.

39. The advance-registration requirement also burdens people who become naturalized citizens less than 21 days before Election Day or who complete parole/probation less than 21 days before an election.

(a) The disenfranchisement of certain people who voted a provisional ballot.

40. The advance-registration requirement disenfranchises voters whose timely registration applications are not processed due to administrative processing complications beyond the voter's control, such as Plaintiffs Grzybowski, Vasconellos, Switek and Kun. These disenfranchised voters must cast a provisional ballot that is not counted.

41. An article in the Daily Targum, the Rutgers student newspaper, on Nov. 3, 2004, reported that numerous students who had been registered in a campus registration drive showed up at the polls on Election Day to discover that their names were not on the rolls. Lauren Michaels, identified in the story as head of the Public Interest Research Group at the New Brunswick campus, said her group had registered "roughly 4,000 students this semester" and that "the county was not prepared for the sheer volume of registrations." A nationwide study of provisional balloting was conducted by the Eagleton Institute of Rutgers University after the 2004 General Election. Eagleton reported that many college students in Essex and Middlesex counties in New Jersey complained of being disfranchised by the process. The Eagleton report noted: "Students argued that their registrations, completed in recent campus drives had not been processed by election officials in a timely manner, shunting many students to provisional ballots" that were ultimately not counted. EAGLETON INSTITUTE FOR POLITICS, RUTGERS, THE STATE UNIVERSITY OF NEW

JERSEY, Report to the U.S. Election Assistance Commission on Best Practices to Improve Provision Voting Pursuant to the HELP AMERICA VOTE ACT OF 2002,

<[http://www.eagleton.rutgers.edu/research/documents/AppendE\\_State\\_Summaries.pdf](http://www.eagleton.rutgers.edu/research/documents/AppendE_State_Summaries.pdf)>.

42. On information and belief, each of the voters described in this Complaint whose provisional ballots were rejected at the election would have been able to cast valid ballots had New Jersey implemented EDR at the time.

43. Upon information and belief, voters whose provisional ballots were accepted as registrations under N.J.S.A. 19:31-6(h) but rejected as ballots pursuant to N.J.S.A. 19:53C-13 during the last three election cycles were from persons who had: (a) completed voter registration applications prior to the registration deadline, but whose forms were not processed by election officials in time to be placed on the voter rolls, such as Plaintiffs Grzybowski, Vasconellos, Switek and Kun; (b) completed voter registration applications prior to the registration deadline, but whose forms were mishandled by the Postal Service or others involved in the registration process other than election officials; (c) completed voter registration forms during the period between Election Day and the registration deadline; (d) were registered in another New Jersey County or another State and did not re-register, such as Plaintiff Breslaw; or (e) decided to participate in the election just prior to the

election but did not have the opportunity to submit a voter registration form, such as Plaintiff Grzybowski in 2010.

44. Whatever the cause, the result was the same: these voters - adult citizens, residents of the county for 30 days, possessing no disqualification for voting - cast provisional ballots on Election Day and Defendants rejected those votes. Such rejection occurred despite the fact that the administrative election systems currently in place in Middlesex County (and other New Jersey counties) had the capacity to check and verify the voter information of each of those eligible voters against other databases, on an expedited basis, thus justifying the counting of their ballots for the election in which they cast the provisional ballots.

**(b) The disenfranchisement of people who did not vote by provisional ballots**

45. On information and belief, Defendants' poll workers turned away other voters, such as Plaintiff Grzybowski in 2009, who thought they were registered and went to the polls to vote. Defendants' poll workers did not offer these voters the opportunity to vote by provisional ballot.

46. On information and belief, many other persons who were eligible to vote but who had not registered to vote 21 days before the election did not go to the polls to vote, believing that they would not be permitted to cast a ballot and/or knowing that if they were to cast a ballot, such ballot would not be counted.

47. Ordinarily, political campaigns markedly intensify and voter interest peaks in the days immediately before Election Day. As campaign activity peaks, more citizens become interested in the candidates and in election issues and make a decision to vote. The advance-registration deadline prevents New Jersey residents from registering to vote for that election at just the time when voter interest and campaign activity peaks:

(a) National election polls demonstrate such a trend. A national Gallup Poll reports that in the 2010 midterm election, those surveyed who gave "quite a lot" of attention to the election increased from 44 percent three weeks before the election to 55 percent in the days immediately before the election. Similarly, the same Gallup Poll reported that in the 2008 Presidential elections, those surveyed who gave "quite a lot" of attention to the election increased from 80% about two months prior to the election to 86 percent in the week before the election and remained at 81 percent in the three days before the election.

(b) Political advertisements are more frequent in the last days before an election. American voters are typically exposed to 100,000 political advertisements during a regular calendar month, but in October, right before an election, politicians run 650,000 political advertisements. See Danny King, "October Breaks Record for Political Television Ads, Nielsen Says" November 5, 2010,



<<http://www.dailyfinance.com/story/media/october-breaks-for-political-television-ads-nielsen-says/19705567/>>

(c) Candidates and organizations expend a disproportionate amount of their time and resources to mobilize voters, including direct mailings, pamphlet distribution, phone banking, and door-to-door campaigning, during the 13 days prior to an election, as compared to the earlier part of the campaign.

(d) Independent organizations and political party committees that run political advertisements are even more likely than candidates themselves to focus their advertising during the last 13 days before an election.

(e) Media coverage of political campaigns surges in the week before an election. For the week October 25-31, the midterm election accounted for 42 percent of the newshole, up from 38 percent the week before. Jesse Holcomb, PEW CENTER'S PROJECT FOR EXCELLENCE IN JOURNALISM "The Media Roar in the Midterms"  
<<http://www.journalism.org/print/22707>>.

48. As a result of the increased campaign activity, voters become more aware of the pending election and become more interested in election issues in the days immediately prior to an election. After the registration cut-off, unregistered persons cannot make use of this information to express their preferences by voting.

(c). The people disenfranchised by advance registration requirements are disproportionately younger and with higher mobility rates

49. All would-be voters are severely burdened by the advance-registration requirement regardless of their reasons for not appearing on a given county's registration rolls. In New Jersey, however, the advance-registration requirement disproportionately impacts some groups.

50. According to the U.S. Census Bureau's migration data, in 2009 an estimated 156,032 adults moved from one county to another within New Jersey. Approximately 37,031 of those voters were college-age (18-24 years). In 2008, an estimated 171,993 moved from a county in New Jersey to another New Jersey county. 41,187 of those people were college-age.

51. In 2009, 5,693 people of college voting age (18-23 years old) moved into Middlesex County from another county in New Jersey, and 1,730 people of college voting age moved from another state into Middlesex County. In 2008, 3,985 people of college voting age (18-23 years old) moved into Middlesex County from another county in New Jersey, while 1,130 people of college voting age moved into Middlesex County from other states.

52. On information and belief, the advance-registration requirement, in effect, prevents many individuals from casting valid ballots who have moved to a New Jersey county either from another county or another state more than 21 days prior to an election, but who do not register in their new district by the

registration deadline. A possible reason that those who move do not register or re-register to vote is that the responsibilities of relocation distract them from registering to vote until it is too late.

53. The age group most likely to register to vote and then actually vote is the elderly, age 65 and over. Census Bureau statistics show that about 75-80 percent of people 65 and over registered between 1980 and 2008, while about 60-70 percent of that age bracket actually voted.

54. On the other hand, youth are consistently the least likely to vote. About 40-50 percent of 18 to 24 year-olds registered to vote between 1980 and 2008, while 15-40 percent actually voted. Although voter turnout among young United States citizens has been steadily increasing, it remains lower than turnout among other age groups. Only an estimated 22.8 percent of eligible young people (aged 18-29) voted in the 2010 midterm elections. CIRCLE, YOUNG VOTERS IN THE 2010 ELECTIONS, Nov. 17, 2010 <<http://www.civicyouth.org/wp-content/uploads/2010/11/2010-Exit-Poll-FS-Nov-17-Update.pdf>>.

55. One of the main reasons that age is so influential in determining voter registration and turnout is because as a whole, youth are a very mobile group, especially while attending college.

56. Registration, the second most reported reason for people not voting, is often more time-consuming and complicated for

young people. In the 2008 presidential election, 21 percent of 18 to 29 year-olds who did not register to vote stated that they did not register because they failed to meet registration deadlines.

**Election Day Registration May Determine The Outcome In  
Close Elections**

57. Every year, there are dozens of elections in the State where the outcome of the election is determined by just a few votes. If the State had an Election Day Registration System, the outcome of at least some of those elections could have been different.

58. Setting aside potential voters who do not even attempt to cast a provisional ballot, the evidence demonstrates that there were elections in Middlesex County and elsewhere where the number of provisional ballots accepted as voter registrations under N.J.S.A. 19:31-6(h) but rejected as valid ballots under N.J.S.A. 19:53C-13 equaled or exceeded the margin of victory for that election:

COUNTY	MUNICIPALITY/ OFFICE SOUGHT	ELECTION	MARGIN OF VICTORY	PROVISIONAL BALLOTS REJECTED AS BALLOTS BUT ACCEPTED AS REGISTRATIONS
Middlesex	So. Amboy Borough Council	November 2010	2	2
Middlesex	Metuchen Borough Council	November 2008	16	19
Camden	Merchantville Borough Council	November 2008	1	19 (ballots rejected; unknown how many accepted as registrations)
Salem	County Freeholder	November 2008	7	39
Sussex	Ogdensburg Borough Common Council	November 2008	3	3

**States Which Allow Election Day Registration Use  
Similar Administrative Procedures As New Jersey,  
But Have, on the Average, Substantially  
Higher Registration and Voter Turnout Rates**

59. Eight states: Maine, Minnesota, Wisconsin, Idaho, New Hampshire, Wyoming, North Carolina, Montana, and Iowa; and the District of Columbia allow eligible voters to register and vote on Election Day. North Carolina allows for simultaneous registration and voting from 19 days before an election until the Saturday before an election.

60. In the 2008 General Election, the top five states with the highest voter turnout were all EDR states. New Jersey ranked nineteenth in the nation with 66.9 percent voter turnout. The median turnout in the nine EDR states during the 2008 General Election was 70.3 percent.

61. With over 5.5 million eligible voters in New Jersey, even a three percent difference translates into over 170,000 additional votes.

62. Most EDR states follow a similar process for registration on Election Day. When an applicant arrives at the poll, proof of identity and residence is required. If one does not have a valid ID, Iowa permits an attester to verify the applicant's identity and address. Most of the EDR states provide a provisional ballot where the applicant cannot satisfactorily prove identity and/or residence.

63. States with EDR have adopted several measures to deter and safeguard against people voting who are otherwise not eligible to vote, including severe criminal penalties.

64. On June 2, 2005, the Minneapolis Star-Tribune printed an editorial praising EDR in Minnesota, and said as follows:

"Election Day Registration works. ... Election-day registration has been permitted in Minnesota for more than 30 years. It is a well-exercised option. ... The practice has produced no discernible surge in fraudulent voting and has spared the state problems others have experienced with inaccurate lists."

65. Election administrators in states with EDR report that, with appropriate poll worker training, advanced planning, and public education, EDR is easy and efficient to administer.

**New Jersey's Statewide Voter Registration System (SVRS)  
Makes Election Day Registration Easily Administrable  
and Would Prevent Duplicate and Fraudulent Voting**

66. The creation of the statewide computerized registration database (SVRS) obviates the traditional rationales for advance registration - i.e., that it is necessary to process voter registration applications, vet identifying information and prevent the unintentional or fraudulent voting of ineligible persons.

67. SVRS allows the state to quickly verify the eligibility of EDR voters by vetting the identifying information submitted. It provides a less restrictive alternative to the advance-registration requirement.

68. New Jersey's SVRS system allows overnight checks with Motor Vehicle and Social Security databases to verify registrants' identification and with criminal data files to verify that registrants are not on parole or probation. It also verifies that the registrant did not vote in more than one location. If the overnight check reveals an ineligible voter and the person voted by provisional ballot, the ballot will be discarded. If the person was allowed to vote on a voting machine, the person will be criminally prosecuted unless the act was inadvertent or the result of administrative error.

69. States that allow people to register to vote on Election Day report no increased incidents of voter fraud or the unintentional voting of ineligible persons in connection with Election Day Registration.

70. In addition to the administrative election processes already employed, New Jersey has criminal penalties in place to deter fraudulent registration. Under N.J.S.A. 39:34-1, "Any member of the district board who refuses to enter in the canvassing books or upon the registers the name of any person legally entitled to vote, or shall register the name of any person contrary to the provisions of this title is guilty of a crime in the third degree." The same section provides: "Any person who shall cause or procure his name to be registered in more than one election district, or shall cause or procure his name or that of any other person to be registered, knowing that

he or such other person is not entitled to vote in the election district wherein such registry is made at the next election to be held therein is guilty of a crime in the third degree."

#### CLAIM FOR RELIEF

##### Denial of the Right to Vote

71. Plaintiffs repeat and re-allege each and every allegation contained in paragraphs 1-70 as if set forth herein at length

72. The requirement that residents register to vote 21 days prior to a general election, established in N.J.S.A. 19:31.6, and the Defendant's failure to allow them to register on Election Day for that election and have their vote counted, imposes severe burdens on the fundamental right to vote as guaranteed by the New Jersey Constitution art. 2, § 1, ¶ 3, and as implemented by N.J.S.A. 10:6-2(c) of the New Jersey Civil Rights Act.

73. Specifically, because the registration deadline bars persons who desire to participate in an election from registering during the three weeks prior to an election and on election day, when voter interest and campaign activity peaks, Plaintiffs and those they represent are deprived of their right to vote and have their ballots counted.

74. Furthermore, because the registration deadline places significant and undue burdens on those persons who attempted to register in good faith with a government entity or a third party and whose registration was not processed for reasons unbeknownst



to them, Plaintiffs and those they represent were deprived of their right to vote and have their ballots counted.

75. The State has no legitimate interest in advance registration. The creation of a statewide computerized database, the use of provisional ballots and the affirmation statements filed therewith as registration forms, and the acceptance of several different types of documents as appropriate identification together create an administrative infrastructure that obviates the traditional rationales for advance registration.

76. For the foregoing reasons, Defendant cannot show any legitimate state interest in continuing to implement the advance-registration requirement that unduly burdens Plaintiffs' constitutional right to vote.

#### PRAYER FOR RELIEF

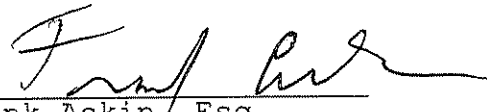
Wherefore, Plaintiffs respectfully ask this Court:

(1) To issue a Declaratory Judgment that N.J.S.A. 19:31-6 and other applicable laws that require persons who wish to vote to register 21 days in advance of an election in order to have a ballot cast at that election counted, places an unconstitutional burden on the right to vote guaranteed by the New Jersey Constitution art. II, § 1, ¶ 3; and

(2) Task the Defendants, in consultation with other State and local election officials and the Plaintiffs herein, to present a plan for the implementation of Election Day Registration in New Jersey;

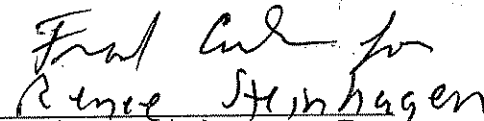
(3) Award such other relief as the Court deems appropriate, including reasonable attorneys fees, pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(f).

Respectfully submitted,



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Dated: April 19, 2011

Counsel for Plaintiffs gratefully acknowledge the assistance of students enrolled in the Rutgers Law School Constitutional litigation Clinic for their assistance in the preparation of this Complaint.

RULE 4:5-1 CERTIFICATION

The undersigned certifies the matter in controversy is not the subject of any other pending or contemplated matter pending in any court or pending or contemplated arbitration proceeding.

Frank Aske

Dated: April 19, 2011

RULE 4:28-4(a)(1) CERTIFICATION

The undersigned certifies that because this action questions the validity of a state statute, notice of the pendency of this action has been simultaneously provided to the Attorney General.

Frank Aske

Dated: April 19, 2011

Rule 1:38-7(b) CERTIFICATION

The undersigned certifies that all confidential personal identifier have been redacted and that subsequent papers submitted to the court will not contain confidential personal identifiers in accordance with the provisions of this rule.

Frank Aske

Dated: April 19, 2011