

<p>JONATHAN M. SAMMONS, BYRON DRISCOLL and GLOUCESTER COUNTY REPUBLICAN COMMITTEE,</p> <p>Plaintiffs-Appellants, v.</p> <p>JAMES N. HOGAN, in his capacity as Clerk of the County of Gloucester; HEATHER POOLE, in her capacity as Deputy County Clerk of the County of Gloucester; STEPHANIE SALVATORE, in her capacity as Gloucester County Superintendent of Elections; and GLOUCESTER COUNTY BOARD OF ELECTIONS,</p> <p>Defendants-Respondents.</p>	<p>SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION</p> <p>Appellate Docket No.</p> <p>Civil Action</p> <p>On Appeal from Superior Court Order Entered October 3, 2025</p> <p>Superior Court of New Jersey LAW DIVISION: GLOUCESTER COUNTY DOCKET NO.: GLO-L-1286-25</p> <p>Sat Below: Hon. Benjamin C. Telsey, A.J.S.C.</p>
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**PLAINTIFFS-APPELLANTS' BRIEF IN SUPPORT OF THEIR
EMERGENT MOTION SEEKING REVERSAL OF THE LOWER
COURT'S DECISION AND GRANTING PLAINTIFFS' ORDER TO
SHOW CAUSE AND VERIFIED COMPLAINT**

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Dated: October 8, 2025

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PRELIMINARY STATEMENT

N.J.S.A. 19:14-6, 19:14-8, and 19:14-12 require each county clerk to prepare and issue ballots formatted in “column” format, listing candidates of the same political party in the same columns. The Legislature requires this format to assist voters in locating their preferred candidates easily. N.J.S.A. 19:14-12 requires each county clerk to conduct a drawing in order to determine which political party will appear in the “first column at the left of the ballot” (known as Column A), the “second column” (known as Column B), and so forth. These requirements are mandatory and non-discretionary. Accordingly, for many elections Gloucester County ballots have been formatted in columns and voters have become accustomed to locating their preferred candidates in party columns.

As required by law, on August 11, 2025, Defendant Clerk of Gloucester County held a drawing to determine each party’s ballot position in the 2025 election. The Clerk drew the Republican Party first, entitling the Republican Party candidates—including Plaintiffs—to the Column A position on the ballot.

Thereafter, in reliance on the statute, historical practice in compliance with the statute, and the Clerk’s announced intent to print ballots placing Republican Party candidates in Column A, the Gloucester County Republican Party purchased advertising urging voters to “Vote Column A,” published to thousands of voters.

At some point after the column drawing, however, the Clerk secretly

changed the ballot format, in violation of statute, to a “contest-block” format, listing candidates in separate blocks arranged by public office sought. The Clerk did not provide advance notice of his intention to change the ballot format. Beginning September 19, the Clerk mailed these “contest-block” ballots to vote-by-mail voters. They were received on or about September 22. Because the Clerk abandoned column ballots without prior notice, many Republican voters have been misled to “Vote Column A,” confused, and likely disenfranchised. Not only does the surprise “context-block” ballot format confuse voters, it also denies political parties their designated columns. For the Republican Party and its candidates, that means they have been denied the advantageous Column A.

The trial court ruled that the ballots Defendants designed and mailed to mail-in voters violate state law. The court agreed with Plaintiffs’ argument and declared in a written order that “the 2025 General Election Ballot printed by the County Clerk violates state law.” In its verbal ruling, the court stated: “The court’s finding is that the ballots as constructed are inconsistent with what the legislature wants.”

Plaintiffs-Appellants do **not** seek any change to the **mail-in ballots** at this stage of the election. But voter confusion and disenfranchisement can and must be averted going forward. The uncontroverted evidence before the Superior Court established that Gloucester County can easily and timely reformat the ballots displayed on the touchscreen voting machines to be used for **in-person voting**

which begins October 25. The uncontroverted evidence established that in-person machine ballots could be reformatted with a few keystrokes on a computer using the ES&S election software and proofread in no more than **one or two days**. Defendants presented **no evidence—none**—contradicting this evidence. The Superior Court had no evidence before it indicating that Defendants would be unable to reformat in-person ballots before October 25.

Contrary to the uncontroverted record evidence establishing that lawfully designed in-person ballots are feasible, the lower court denied Plaintiff-Appellants' request for an order requiring Defendants to format in-person touchscreen machine ballots to comply with state law. Plaintiffs-Appellants appeal the lower court's denial of injunctive and mandamus relief (paragraphs 3, 4, 6, and 7 of the Superior Court's Order dated October 7) requiring Defendants to prepare sample ballots and voting machine ballots for in-person voters that are lawful by October 25. An emergency injunction is necessary to provide voters, parties, and candidates a lawful ballot and to avert further confusion and disenfranchisement.

PROCEDURAL HISTORY

On September 26, 2025, Plaintiffs filed a verified complaint and order to show cause to correct clear violations of election laws by Defendant Gloucester County Clerk ("Clerk") and/or Defendant Deputy County Clerk ("Deputy Clerk") in an expedited manner, and to enjoin Defendant Clerk, Defendant Gloucester

County Superintendent of Elections (“Superintendent of Elections”) and Defendant Gloucester County Board of Elections (“Board of Elections”) from using illegal ballots in the 2025 general election. Pa1–Pa44.

On September 29, 2025, the trial court held an initial case management conference and directed Plaintiffs to provide notice to all relevant parties, including political parties and all affected candidates. Pa165. On September 30, 2025, satisfied that the requisite parties received adequate notice, the trial court granted the oral motion to intervene of the Gloucester County Democratic Committee upon consent. *See* Pa172–Pa174. The court then heard argument on and denied Plaintiffs’ motion for temporary restraints. Pa 166–171. The trial court denied temporary restraints expressing concern that ordering reformatted ballots might disrupt ongoing election administration. The trial court entered a briefing schedule and scheduled a hearing for October 3, 2025. *Id.*

On October 3, the trial court held a hearing. The evidence before the trial court consisted of: (1) Plaintiffs’ Verified Complaint; (2) Affidavit of J. Adam Wingate, Pa41–Pa44; (3) Certification of Heather Pool, Pa139–Pa141; (4) Affidavit of Mark Kozachyn, Pa151–Pa151; Plaintiffs’ Expert Certification of Cameron Quinn, Pa153–Pa161; (5) Affidavit of Stephen Pakradooni; and (6) Exhibits to Certification of Counsel, Pa23–Pa39, Pa53–Pa137, Pa147–Pa150.

After issuing a verbal ruling that Defendants violated N.J.S.A. 19:14-6,

19:14-8, and 19:14-12 by printing/distributing vote-by-mail ballots that do not conform to the format required by state law, Pa55-Pa56, the Superior Court entered a written order on October 7, 2025, declaring that “the 2025 General Election Ballot printed by the Clerk violates state law.” Pa176 ¶ 1. The court explained, state law “very clearly indicate[s] that [general election ballots] should be printed in column format.” Pa182. And the court found the ballots at issue here “were not printed in column format.” Pa183. Instead, the court found, “[t]hey were printed in block format according to the office that’s being sought.” *Id.*

By written order, the court further ordered Defendants to pay Plaintiffs \$26,007.54 that they expended on political advertising in reliance on state law, and awarded Plaintiffs their attorneys fees. Pa177. These non-substantive issues are the only open issues before the trial court, the only reason this appeal is interlocutory.

Most pertinent to the subject of this emergency appeal, the Superior Court denied Plaintiffs’ request for injunctive and mandamus relief requiring Defendants to prepare lawful machine ballots for in-person voting that comply with state law requirements notwithstanding uncontroverted evidence that Defendants could prepare lawful touchscreen machine ballots for in-person voters well in advance of October 25 when in-person voting is scheduled to begin. Pa176 ¶¶ 3, 4, 6, 7. Plaintiffs-Appellants appeal the trial court’s refusal to order the preparation and use of lawful ballots for in-person voting which begins on October 25, 2025.

STATEMENT OF FACTS

Plaintiffs Jonathan M. Sammons and Bryon Driscoll are residents and voters of Gloucester County who are candidates for the Board of County Commissioners and whose names will appear on the ballot. Pa2. Plaintiff Gloucester County Republican Committee (“GCGOP”) is the official county committee of the Republican Party in Gloucester County. *Id.* In addition to managing the Republican Party’s business at the county level, the GCGOP endorses and supports Republican candidates for public office. GCGOP spends its resources to fund advocacy in support of its nominees. *Id.* GCGOP represents its own interests and the interests of its nominees and its members, who are voters, in Gloucester County. *Id.*

Defendant James N. Hogan is the Clerk of Gloucester County who oversees election administration in the County, including the upcoming general election and the drawing for ballot position for it. Pa2–Pa3. Defendant Heather Poole is the Deputy County Clerk of Gloucester County vested with statutory duties and acts as County Clerk during a period of absence or disability, which includes conducting a drawing for ballot positions for elections held in Gloucester County. Pa3.

Defendant Superintendent of Elections of Gloucester County is vested with statutory duties, including the custody and control of the County’s voting machines. *Id.* Defendant Board of Elections is charged with, among other things, receiving, counting, investigating, curing (if necessary) and certifying vote-by-mail

(sometimes referred to as “VBM”) ballots, counting, certifying and curing (if necessary) provisional ballots, counting and certifying ballots cast using voting machines and keeping custody of Gloucester County’s voting machines. *Id.*

In the June 10, 2025, primary election, only the Democratic and Republican parties in Gloucester County nominated candidates for the offices Governor, General Assembly, County Commissioner and various local offices to run in the general election. Pa5. Plaintiffs Sammons and Driscoll were nominated in the primary election for County Commissioner. Pa. 5.

On August 11, 2025, Defendant Clerk conducted the statutorily required drawing for ballot position pursuant to N.J.S.A. 19:14-12. Pa6. Defendant Clerk verbally announced that the Republican candidates drew the first position on the ballot and Democratic candidates drew the second position. *Id.* On at least two occasions prior to the general election ballot draw, Defendant Clerk indicated that the general election ballot would be designed as statutorily required. Pa6, Pa42. Chairman Wingate confirmed with Defendant Clerk that the 2025 General election ballot would be formatted the same as the 2024 General election ballot. *Id.*

In reliance on state law and consistent historical practice, and based upon the ballot draw conducted and announced by Defendants, and representations made by the Defendant Clerk, and in the absence of any contrary notification of any kind from any election official, the GCGOP and its candidates produced and have

disseminated printed materials and other communications urging voters to “vote Column A.” Plaintiffs have expended precious and limited resources informing voters to “Vote Column A.” Pa43, Pa151–152.

On September 22, GCGOP received reports from voters that the Clerk had substantively altered the General election ballot to separate GCGOP-nominated candidates from columns and instead placed them into “office blocks.” Pa7.

There is sufficient time to reformat the touchscreen machine ballots to be used for in-person voting. Pa153, Pa159 ¶¶ 30.b, 30.d, Pa161. The election information (precincts, contests, and candidates) has already been input into the ES&S election software. Pa159 ¶ 30.d. Reformatting that information from contest-block format to column format is as simple as a few keystrokes in the ES&S software. *Id.* The new format then must be proofread and put through a standard logic and accuracy test to ensure the computer reads voter choices accurately. Pa159 ¶ 30.b. The proofreading and logic and accuracy testing eliminate the risk of error in the preparation of ballots. The logic and accuracy testing is the same logic and accuracy test that Defendants would apply to the contest-block ballots later this week in any event—thus there is no added risk of error in the process. Pa159 ¶ 30.b., Pa160 ¶ 30.g. This reformatting process, a few keystrokes and proofreading, will take Defendants about **one to two days of additional time** to prepare the touchscreen machines (the ballots appear

electronically on the screen) for in-person voting. Pa159–Pa160, Pa161 ¶ 35.

LEGAL ARGUMENT

Plaintiffs’ Emergent Motion Seeking Reversal of the Lower Court’s Decision and Granting Plaintiffs’ Order to Show Cause and Verified Complaint Should be Granted. (Pa175-Pa177.)

I. Standard of Review.

A trial court’s interpretation of the law and the consequences that flow from the facts are reviewed *de novo* and not entitled to any special deference.

Manalapan Realty v. Twp. of Manalapan, 140 N.J. 366, 377-378 (1995) (citations omitted). Statutory construction is a purely legal issue subject to *de novo* review.

Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973). A trial court’s factual determinations are not disturbed unless manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence. *Seidman v. Clifton Sav. Bank, S.L.A.*, 205 N.J. 150, 169 (2011). “However, a judge may not rely on

his or her out-of-court personal observations or knowledge in forming an opinion unsupported by any other evidence in the record.” *160 W. Broadway Assocs., LP v. I Mem’l Drive, LLC*, 466 N.J. Super. 600, 616 (App. Div. 2021).

II. This Court should reverse the lower court’s decision and grant Plaintiffs’ order to show cause and verified complaint because the lower court found Defendants violated New Jersey’s election laws by designing, printing, and distributing vote-by-mail ballots that are in “contest-block” format instead of the “column” format required by law.

The lower court ruled, and Defendants did not seriously contest, that the

ballots designed by the Defendant Clerk are illegal.

A. The plain language of N.J.S.A. 19:14-6, N.J.S.A. 19:14-8, and N.J.S.A. 19:14-12, and controlling New Jersey caselaw, confirm that the Clerk was required to design, print, and distribute general election ballots in column format and not in office-block format.

New Jersey’s general election ballots are required to be in column format.

N.J.S.A. 19:14-6 (“each column” must include “the proper word or words to designate the column, to be known as ‘column designation’” with the “columns at the extreme left [listing] the name of each of the political parties which made nominations at the next preceding primary election[.]”); N.J.S.A. 19:14-8 (“In the columns of each of the political parties which made nominations [in the primary election] and in the personal choice column, there shall be printed the title of each office to be filled at such election” in a specified order); N.J.S.A. 19:14-12 (requiring county clerk to draw lots to determine party columns).


The Appellate Division in *Axtel* addressed an almost identical scenario when the Essex County clerk refused, after Republicans were picked second at the draw, to place Republicans in Column B. *Axtel v. Caputo*, 85 N.J. Super. 80, 83 (App. Div. 1964). The Essex County clerk instead placed Republicans in Column C and left Column B blank, arguing that this helped with voter confusion. The Appellate Division affirmed the trial court’s decision that found that “the Legislature, by

N.J.S.A. 19:14-12, gave a clear direction as to what lines^[1] were to be used and made it incumbent upon the county clerk to use the lines in the precise order in which they appeared.” *Axtell*, 85 N.J. Super. at 83. Indeed, the Appellate Division ruled that the “language of N.J.S.A. 19:14-12 is unmistakably clear and definite: ‘The name of the party first drawn shall occupy the First column at the left of the ballot, and the name of the party next drawn shall occupy the Second column, and so forth.’” *Id.* at 84.

Instead of following the specific statutory requirements for ballot design, Defendant Clerk designed a ballot in which the candidates for each office are printed in separate office blocks in random order. He had no discretion to deviate from the statutorily mandated grid design for the General election ballot. *Axtel*, 85 N.J. Super. at 83. Consistent with *Axtel*, the trial court ruled the general election ballot designed by Defendant Clerk “violates state law.” Pa176.



As recently as the November 2024 election, voters were presented the following column ballot:

OFFICE TITLE	REPUBLICAN COLUMN A	DEMOCRATIC COLUMN B	NOMINATION BY PETITION COLUMN C
PRESIDENTIAL ELECTORS VOTE FOR ONE	DONALD J. TRUMP J.D. VANCE REPUBLICAN	KAMALA D. HARRIS TIM WALZ DEMOCRATIC	ROBERT F. KENNEDY JR. NICOLE SHANAHAN INDEPENDENT
UNITED STATES SENATE VOTE FOR ONE	CURTIS BASHAW REPUBLICAN	ANDY KIM DEMOCRATIC	
MEMBER OF HOUSE OF REPRESENTATIVES VOTE FOR ONE	THEODORE "TODD" LIDDELL REPUBLICAN	DONALD D. NORCROSS DEMOCRATIC	
SHERIFF VOTE FOR ONE	JONATHAN M. SAMMONS REPUBLICAN	CARROLL MORINA DEMOCRATIC	
COUNTY COMMISSIONER VOTE FOR TWO	NICHOLAS DESILVIO REPUBLICAN	TOM BLANCO DEMOCRATIC	CHRISTOPHER KONAWEL INDEPENDENT
		DON HEVERLY DEMOCRATIC	

IMPORTANT INSTRUCTIONS TO VOTER
 1. Use ONLY a black or blue ball pen to mark your ballot. CORRECT MARK 
 2. Completely fill in the oval to the right of your selections. Do not vote for more candidates.

¹ Lines = columns. *Axtel v. Caputo*, 85 N.J. Super. at 84.

But in late September 2025, without any public notice, Defendants sprung the following ballot format on the public:

OFFICIAL MAIL-IN BALLOT GENERAL ELECTION TUESDAY, NOVEMBER 4, 2025 TOWNSHIP OF DEPTFORD DISTRICT 11		GOVERNOR AND LIEUTENANT GOVERNOR VOTE FOR ONE SLATE		COUNTY COMMISSIONER VOTE FOR TWO		
 JAMES N. HOGAN GLOUCESTER COUNTY CLERK		JACK CIATTARELLI JAMES GANNON REPUBLICAN	<input type="radio"/>	JONATHAN M. SAMMONS REPUBLICAN	<input type="radio"/>	
		MIKIE SHERRILL DALE G. CALDWELL DEMOCRATIC	<input type="radio"/>	BYRON DRISCOLL REPUBLICAN	<input type="radio"/>	
		JOANNE S. KUNIAWSKY CRAG HONTS SOCIALIST WORKERS PARTY	<input type="radio"/>	FRANK J. DIMARCO DEMOCRATIC	<input type="radio"/>	
		VIC KAPLAN BRUNO PEREIRA LIBERTARIAN PARTY	<input type="radio"/>	TOM BIANCO DEMOCRATIC	<input type="radio"/>	
		WRITE-IN (Must Fill In Box)	<input type="radio"/>	WRITE-IN (Must Fill In Box)	<input type="radio"/>	
IMPORTANT INSTRUCTIONS TO VOTER 1. Use ONLY a black or blue ink pen to mark your ballot. CORRECT MARK:  2. Completely fill in the oval to the right of your selections. Do not vote for more candidates than are to be elected to any office. 3. Write-in candidate box is for anyone wishing to vote for any person whose name is not printed on the ballot. Write the name of the person you wish to vote for in the appropriate (write-in) box and fill in the oval to the right. 4. If you tear, soil, deface or incorrectly mark this ballot, return it to James N. Hogan, County Clerk and obtain another ballot.		GENERAL ASSEMBLY VOTE FOR TWO				
		CONSTANCE DITZEL REPUBLICAN		<input type="radio"/>		
		NILSA GONZALEZ REPUBLICAN		<input type="radio"/>		
		WILLIAM F. MOEN JR. DEMOCRATIC		<input type="radio"/>		
		WILLIAM W. SPEARMAN DEMOCRATIC		<input type="radio"/>		
ROBIN BROWNFIELD LIBERTARIAN		<input type="radio"/>				
WRITE-IN (Must Fill In Box)		<input type="radio"/>				
WRITE-IN (Must Fill In Box)		<input type="radio"/>				
To protect your vote: IT IS AGAINST THE LAW FOR ANYONE EXCEPT YOU THE VOTER TO MARK OR INSPECT THIS BALLOT. However, a family member may assist you in doing so.						

This ballot design is inherently confusing to voters who are accustomed to voting column-style ballots. And it violates Title 19's clear directive to print all candidates from a single party in the same column for purposes of party identification and party association, as well as to print candidates from the Democratic and Republican parties each together in the same column. *See* N.J.S.A. 19:14-6. Defendants have flouted the legislature's judgment and, in the process, made the ballot confusing. The confusion inherent in the unlawful ballot design is compounded by the Defendants' secretive efforts to mislead the public and spring a new ballot design at the last moment while Plaintiffs expended limited resources to educate thousands of voters to "Vote Column A."

Defendants' illegal ballot design not only undermines election integrity and voter trust in the legitimacy of elections, and has caused irreparable and ongoing

harm, but also damages Plaintiffs directly. N.J.S.A. 19:14-12 requires county clerks to “draw lots” to “determine which columns the political parties” will get. This Court has noted that “the very notion of drawing for ballot position suggests that some candidates will have an advantage over others.” *Schundler v. Donovan*, 377 N.J. Super. 339, 349 (App. Div.), *aff’d*, 183 N.J. 383 (2005). In other words, the political party first chosen obtains an advantage from the ““luck of the draw.”” *Id.*; *see also Kim v. Hanlon*, 99 F.4th 140, 156 (3d Cir. 2024) (crediting evidence that ““all candidates on party-column ballots performed better when listed in the leftmost available position, with these benefits ranging from 3.9 percentage points to 27.8 percentage points across candidates.”” (citation omitted)).

Here, the Republicans won the draw and were therefore entitled to the leftmost available position on the ballot. Pursuant to N.J.S.A. 19:14-8, Plaintiffs, as candidates for county commissioner, were entitled to be listed with the other Republican candidates (other than school board and fire commission), and thus were entitled to the “advantage” of being on the leftmost column (Column A).

The court found Plaintiffs were also damaged over \$26,007.54 by having expended resources educating voters to “Vote Column A.” Pa177 ¶ 9. More critically than those financial damages, however, Plaintiffs face the risk of losing votes from voters who, due to the unlawful ballot design, are now confused or misled, despite Plaintiffs education efforts. That injury, the loss of votes, is

irreparable and incalculable, even if Defendants compensate Plaintiffs \$26,007.54.

B. Defendant Clerk did not have discretion to use general election ballots in office-block format instead of the statutorily mandated column format and therefore mandamus relief is appropriate.

The ballot requirements set forth in the statute, N.J.S.A. 19:14-6, 19:14-8, 19:14-12, are mandatory and non-discretionary. *Axtell*, 85 N.J. Super. at 83; *Millman v. Kelly*, 171 N.J. Super. 589 (Law Div. 1979). Nothing in Title 19 provides the Clerk discretion to alter the column format mandated by statute.

N.J.S.A. 19:14-8 expressly states that “there shall be printed the title of each office” in “the **columns** of each of the political parties” except as otherwise provided. *Id.* (emphasis added). The statute then lists how the various offices should be arranged **in the parties’ columns**, all the way from President (in a federal election year) at the top to “any other titles of office” at the bottom. *Id.* N.J.S.A. 19:14-8 offers the clerk no discretion on this.

Where N.J.S.A. 19:14-8 *does* offer the clerk discretion is with school board and fire commissioner elections. This shows that the Legislature knows how to write an election ballot law that provides the clerk discretion. But it did so in N.J.S.A. 19:14-8 only as to two discrete offices: school board and fire commission. The clerk has no discretion with respect to other offices—they must be presented in party columns. Defendants’ “discretion” argument was so weak that it led the trial court to “appreciate the defense counsel hasn’t harped on” it during oral

argument, noting that “sometimes silence says a lot.” Pa232.

Despite the clear statutory language, Defendants contended below that the decision to “utilize the block ballot for the November election [was made] in order to not confuse a voter and maintain consistency in the ballot design and layout between June and November.” Pa140 ¶ 3. What the Clerk conveniently fails to acknowledge is that only 23% of registered voters in Gloucester County participated in the 2025 Primary. Pa148. By contrast, turnout in the 2024 General Election was 74%. Pa150. These statistics refute the claim that the change was necessary to avoid voter confusion, because few voters have used the block ballot.

Even if those statistics had been flipped, though, Defendant Clerk would **still have no discretion** to design anything other than column ballots on which, for this election, Republicans get Column A and Democrats Column B. The Appellate Division in *Axtel* reiterated this point: Title 19 gives county clerks **no discretion** for ballot format of the political parties and offices applicable in this matter. There, the county clerk—like the Clerk here—stated he did not place the Republicans in the mandated column because he wanted to avoid voter confusion. *Axtel*, 85 N.J. Super. at 85. There, in *Axtell*, unlike here, there was actually some data to support that claim. *Id.* Nevertheless, the Appellate Division said that “it is not for the county clerk to seek a solution to the problem of possible confusion or mistake in the use of the voting machine. It is for the Legislature, and for that body alone.” *Id.*

Because Defendant Clerk had no discretion to vary from column ballots, Plaintiffs are entitled to mandamus relief. *Twp. of Neptune v. N.J. Dep't of Envtl Prot.*, 425 N.J. Super. 422, 434 (App. Div. 2012) (cleaned up) (stating that mandamus relief is “appropriate where the party seeks to compel a governmental agency to perform a duty [that] is ministerial and wholly free from doubt”).

III. This Court should reverse the lower court’s decision and grant Plaintiffs’ order to show cause and verified complaint because all evidence before the lower court established that sufficient time remains to revise the in-person touchscreen machines to present ballots that conform to the format required by state law, and there was no evidence before the court that there will be voter confusion if ballots used for in-person voting comply with New Jersey’s election law.

A. There is sufficient time for the Court to order Defendant Clerk to redesign the general election ballot for in-person voting that starts on October 25, 2025.

The court contradicted a long line of precedents holding that ballots must be re-printed to be lawful and/or accurate if possible prior to an election. *See New Jersey Democratic Party, Inc. v. Samson*, 175 N.J. 178 (2002); *Axtel v. Caputo*, 85 N.J. Super. 80 (App. Div. 1964); *Perry v. Giuliano*, 46 N.J. Super. 550 (App. Div. 1957); *Millman v. Kelly*, 171 N.J. Super. 589 (Law Div. 1979); *Introcaso v. Burke*, 3 N.J. Super. 276 (Law Div. 1949); *Kim*, 99 F.4th at 140.

The trial court did so despite the absence of any evidence supporting a divergence from regular jurisprudence. Defendants did not present any evidence—**none**—demonstrating that correcting the ballot design to conform with New

Jersey's statute cannot be accomplished timely and efficiently before in-person voting begins October 25. Likewise, they offered no evidence that a lawful ballot for in-person voting would confuse voters or delay in-person machine preparations.

The uncontroverted record evidence established that there is sufficient time to reformat the touchscreen machine ballots to be used for in-person voting. Plaintiffs introduced the expert Certification of Cameron Quinn, who has overseen election administration for over 30 years, has detailed knowledge of ES&S voting machines, and has programmed ES&S touchscreen machines and prepared ballots. Her Certification pursuant to Rule 1:4-4(b) was wholly uncontroverted.² She opines that "that Gloucester County election officials can re-program the layout (no re-entering the candidates, contests, etc. is required), proofread, test, and secure approximately 350 ES&S election machines for use in plenty of time for early voting beginning October 25, for the 2025 election." Pa161 ¶ 35.

Quinn explained that the election information (precincts, contests, and candidates) has already been input into the ES&S election software. Pa159 ¶ 30.d.

² An Expert Certification submitted pursuant to Rule 1:4-4(b) is admissible as evidence at the preliminary injunction stage and may be considered as evidence by the court in lieu of live testimony. R. 1:4-4(b); *Lopez v. N.J. Bell Telephone Co.*, 54 N.J. 129, 131 (1969); *State v. Parmigiani*, 65 N.J. 154, 157 (1974). The trial court recognized that only Plaintiffs obtained an Expert Certification and referenced the Quinn Certification at the hearing. Defendants stated desperate objections to the consideration of the Quinn Certification at the hearing, but the trial court did not sustain their objections and referenced the Quinn Certification in its ruling. Pa234.

It does not have to be input a second time in order to reformat the ballot.

Reformatting that information from contest-block format to column format is as simple as a few keystrokes in the ES&S software. *Id.* The new format then must be proofread, which will take “a few hours,” and put through a standard Logic and Accuracy test to ensure the computer reads voter choices accurately. Pa159 ¶¶ 30.b., 30.d. The proofreading and logic and accuracy testing eliminate the risk of error in the preparation of ballots. The logic and accuracy testing is the same Logic and Accuracy test that Defendants would apply to the contest-block ballots later this week or next week in any event – thus there is **no added risk of error** in the process. Pa159 ¶¶ 30.b., 30.d., Pa160 ¶ 30.g. This reformatting process, a few keystrokes and proofreading, will take Defendants about **one to two days of additional time** to the process of preparing the touchscreen machines (the ballots appear electronically on the screen) for in-person voting. Pa159 ¶¶ 30.b., 30.d.

Based on information provided by Gloucester County election officials, which as an expert she can rely upon, Quinn understands that “that Gloucester County election officials do not have ES&S vendors scheduled before October 9, 2025 to assist with the uploading of the Ballot Definition File and Logic and Accuracy testing and securing of the voting equipment.” Pa161 ¶ 34. This will take one to two days of work. Pa159 ¶¶ 30.b., 30.d. Therefore, if the court orders Defendants to revise the layout of the touchscreen machine ballot, this gives

Defendants four days from the date of this brief to reformat its already-programmed Ballot Definition File (*i.e.*, the pertinent election information) re-formatted and proofed and tested for accuracy. From that point forward, all of the preparatory steps must be conducted in any event, using any ballot format.

For their part, Defendant Superintendent and Defendant Board—*i.e.*, the parties responsible for overseeing the election process in Gloucester County—stated that they “take no position on the design of the 2025 General Election Ballot and leaves that decision to the Court,” and confirm that they would not need the Clerk to deliver a lawfully redesigned ballot until **October 15** in order to prepare the voting machines. Pa143–Pa144. The Superintendent and Board represent that receiving the redesigned ballot by October 15 would “ensure that the Superintendent and the Board have the necessary time needed to complete the extensive and detailed preparation of the voting equipment and sample ballots in accordance with Title 19.” *Id.* Thus, according to the New Jersey Department of Attorney General’s filing in the trial court, the County only needs the reformatted ballot by October 15, which suggests there is plenty of time for everything to be accomplished without putting at risk the ability of Gloucester County officials to have voting equipment prepared in time for in-person voting to begin on October 25. Pa161; *see also Kim v. Hanlon*, 99 F.4th 151 (noting that “voting machines used in New Jersey can readily accommodate office-block ballots and that

changing a ballot's layout [from column to office-block] **would take a day at most**") (emphasis added). The reverse is also true. Quinn. Pa159 ¶ 30.d.

Defendants submitted no evidence indicating that in-person machines cannot be programmed in time with lawful ballots in time for in-person voting.

Defendants submitted an uncertified statement by Deputy Clerk Heather Pool speculating that "any change in the election ballot or the process can *probably* not be accomplished without *affecting* the election and the voters adversely." Pa141 ¶ 12. Non-specific speculation, of course, is not evidence. *See State v. Lodzinski*, 249 N.J. 116, 144-45 (2021) ("Speculation, moreover, cannot be disguised as a rational inference."). In addition, she said nothing about how long it would take her office to simply reformat the election information already programmed in the ES&S software. Moreover, Defendant Clerk relied on attorney argument—nothing in writing—certainly no certified statements—as to the steps required to reformat the ballot. Pa193-Pa196, Pa224-Pa224. Attorney argument is *not* evidence.

In sum, all evidence before the trial court confirmed that lawfully redesigning the ballot is a routine process that can be done in sufficient time for in-person voting. The trial court abused its discretion in relying on unsworn attorney argument and unsworn attorney speculation that Defendant Clerk might commit "an error" when redesigning the general election ballots. Pa37, Pa59.

B. There was no evidence of voter confusion presented to the trial court.

Nor do claims of frustrating the integrity of the electoral process hold water. Sample ballots have **not** been mailed and are not required to be mailed until October 22. N.J.S.A. 19:14-25. The only voters who have received the unlawful ballot are vote-by-mail voters who have voted or will vote on the unlawful ballots. The outcome of this case will have no impact on those vote-by-mail voters. In-person voters will receive a lawfully redesigned sample ballot, negating any theoretical possibility of confusion.

The trial court credited unsworn attorney argument as facts. Defense counsel speculated that confusion might occur at in-person voting if an in-person voter presented a lawful ballot had previously seen an unlawful ballot. Pa237. That lawyer's speculation was the sole basis on which the trial court based its denial of injunctive relief for in-person voting. It was the only new information presented during the hearing that began with the trial judge stating that "there's no argument here that if the ballots were changed in the machines on Election Day, that there would be any confusion, because there would be the same ballot. Everyone would be going to the polls and casting the same ballot. No one suggested anything otherwise." Pa185-Pa186. The trial court abused its discretion in relying on attorney speculation to speculate itself about far-fetched voter confusion scenarios.

Finally, the trial court's stated reason for denying injunctive relief—that

reformatting a lawful in-person ballot might result in voter confusion or error—defies common sense. Error in the process is improbable because ballots are proofread and tested for accuracy. Voter confusion is less likely using the traditional column ballot because voters are accustomed to it, educational advocacy has already been communicated to “vote columns,” voters are able to read the ballot presented, and Defendants could simply provide a notice at each in-person voting location explaining that the ballot has been reformatted and differs from mail ballots. Moreover, mail ballots and in-person ballot displays already differ in New Jersey (paper ballot vs touchscreen ballot) and throughout the country. The trial court’s uninformed speculation cannot override the Legislature’s judgments. For all these reasons, the trial court’s denial of injunctive and mandamus relief requiring lawful column ballots for in-person voting must be reversed.

IV. This Court should reverse the lower court’s decision and grant Plaintiffs’ order to show cause and verified complaint because any defenses Defendants offered to justify the illegal ballots did not persuade the lower court and should not persuade this Court, either.

A. Defendant Clerk’s decision to use illegal ballots is not afforded a presumption of reasonableness.

Unable to counter the plain language of the statute and controlling case law, Defendants argued below for a “presumption of reasonableness” of the Clerk’s actions. Pa183. But the cases Defendants cite analyze whether officials act **within their legal authority**. *E.g., Roth v. Bd. of Trs.*, 49 N.J. Super. 309, 316 (App. Div.

1958) (recognizing that “courts in the exercise of their judicial power are permitted to review the ultimate application of the law which has been entrusted to the administrative officer” (cleaned up)); *Ward v. Scott*, 16 N.J. 16, 23 (1954) (affirming zoning board’s action “in strict conformity with the procedural and substantive terms of the statute”); *New Jersey Highway Auth. v. Currie*, 35 N.J. Super. 525, 533 (App. Div. 1955) (finding no abuse of discretion in Highway Authority’s land taking “for purposes authorized by the statute”). Defendant Clerk is not afforded a presumption of reasonableness here.

B. Laches is no bar to Plaintiffs’ lawsuit because Plaintiffs brought suit within four days of actual notice of the illegal ballots, and Plaintiffs reasonably expected the County Clerk to follow the law.

Plaintiffs brought this lawsuit within days of actual notice of the unlawful ballot design. Plaintiffs had actual notice of the unlawful ballot design on Monday, September 22, 2025, when voters first received vote by mail ballots. Plaintiffs filed this lawsuit just four days later, on September 26. Had Plaintiffs received earlier notice—such as at the ballot draw, where there is often a sample ballot, but no such sample ballot presented this year—Plaintiffs would have instituted this action sooner. Indeed, from August 12 through September 18, the only ballot posted on the Clerk’s website was the 2025 Primary Election ballot. Pa162-Pa164.³ The trial

³ A GCGOP representative checked the Clerk’s website for a posted ballot every day between August 11 and September 18, and there was no ballot posted.

court recognized that Plaintiffs were not obligated to continually monitor Defendant Clerk to ensure he was following the law. It was fair for Plaintiffs to believe Defendant County *would* follow the law. Pa235.

And the timing of Plaintiffs' lawsuit does not prejudice the relief sought. New Jersey courts have previously permitted the reprinting of ballots under similar time frames, and that same should apply here. *Samson*, 175 N.J. at 184-85, 196-97 (finding sufficient time to order twenty-one county clerks to substitute the new candidate's name on all ballots (including some that had already been voted), whether absentee, military, provisional, emergency, voting machine, ballot card, or otherwise in a lawsuit brought by the Democratic Party 35 days before election); *Introcaso*, 3 N.J. Super. at 280 (ordering removal of candidates name from the ballot based on lawsuit brought by plaintiff-candidate 28 days before election).

Plaintiffs acted promptly after receiving notice of the unlawful ballots. The Court can order the relief Plaintiffs seek without delaying the in-person voting. Because Plaintiffs did not sit on their rights, and precedent requires ballot redesign in cases closer to election day than here, laches is no bar to Plaintiffs' lawsuit.

C. Neither the *Purcell* doctrine nor New Jersey's judicial reluctance theory apply to this matter.

Although raised in briefing, neither Defendants nor Intervenor relied on

Pa162-Pa164. Defendants state VBM ballots were sent on September 19. Plaintiffs did not have actual notice until those ballots hit mailboxes on September 22. Pa43.

either the *Purcell* doctrine or New Jersey’s judicial reluctance theory at oral argument. It is not surprising that Defendants would abandon this argument because *Purcell* prevents courts from granting a litigant’s request to *change* existing election laws too close to an election; it does not prevent a court from ensuring the parties *comply* with existing election laws close to or even on election day. *See Democratic Nat’l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring) (noting that it is inappropriate for a court to “alter carefully considered and democratically enacted state election rules when an election is imminent”). Here, Defendants and Intervenor ask the Court to disregard New Jersey’s carefully considered and democratically enacted state election laws mandating column general election ballots. Any argument invoking *Purcell* and the similar judicial reluctance theories should be readily rejected.

CONCLUSION

For the reasons set forth above, this Court should reverse the lower court’s denial of injunctive and mandamus relief set forth in paragraphs 3, 4, 6, and 7 of the Order dated October 7 with respect to sample ballots and in-person ballots, and grant the Plaintiff-Appellants’ order to show cause and verified complaint.

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Dated: October 8, 2025

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<p>JONATHAN M. SAMMONS, BYRON DRISCOLL and GLOUCESTER COUNTY REPUBLICAN COMMITTEE,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>JAMES N. HOGAN, in his capacity as Clerk of the County of Gloucester; HEATHER POOLE, in her capacity as Deputy County Clerk of the County of Gloucester; STEPHANIE SALVATORE, in her capacity as Gloucester County Superintendent of Elections; and GLOUCESTER COUNTY BOARD OF ELECTIONS,</p> <p style="text-align: center;">Defendants.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: GLOUCESTER COUNTY</p> <p>DOCKET NO.: GLO- L -1286-25</p> <p style="text-align: center;">CIVIL ACTION</p> <p style="text-align: center;">FINAL ORDER</p> <p style="text-align: center;">Pursuant R. 4:42-(c)</p>
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THIS MATTER being brought before the Court ON THIS 3RD day of October 2025 as an Order to Show Cause, with Josiah Contarino, Esq., and Marla M. DeMarcantonio, Esq., appearing for the Plaintiffs, and John M. Carbone, Esq., appearing virtually, Eric M. Campo, Esq., Pauline DeAaujo, Esq., and William M. Tambussi, Esq., appearing for the Defendants.

IT IS on this 7 day of October 2025 **ORDERED** as follows, as per Plaintiff's requested relief:

1. **DECLARING** that the 2025 General Election Ballot printed by the County Clerk violates state law is **GRANTED**.
2. Plaintiffs request to determine that the printed ballots are null and void, and enjoining the County Clerk, Superintendent of Elections, and Board of Elections from printing or mailing any additional unlawful vote-by-mail ballots effective as of the date of this Order is **DENIED**;
3. **ENJOINING AND RESTRAINING** the Superintendent of Elections and Board of Elections from programming any election software or voting machines for either Early Voting or Election Day voting based upon the unlawful ballot design is **DENIED**;
4. **COMPELLING** the County Clerk to re-design the General Election Ballot to conform with the August 11, 2025 ballot drawing, placing Republican candidates in Column A and Democratic candidates in Column B, and to comply with all applicable and mandatory statutory provisions within three (3) business days of the date of this Order is **DENIED**;
5. **DIRECTING** that any Vote-by-Mail ballot applications received on or after the date of this Order shall be held until the re-designed ballot with the necessary statutory requirements has been completed and that version of the vote by mail ballot shall be mailed moving forward is **DENIED**;
6. **DIRECTING** the Clerk that all sample ballots to be mailed on October 22, 2025 shall reflect the re-designed ballot that conforms with state law is **DENIED**;
7. **DIRECTING** the Board of Elections and Superintendent Election that all voting machines and tabulators to be used for Early Voting and Election Day voting shall

be programmed to conform to the corrected, re-designed ballot uploaded and utilized is **DENIED**;

8. **COMPELLING** the Superintendent of Elections and the Board of Elections to implement two (2) separate tabulation systems for Vote-by-Mail ballots: one for ballots already returned or to be returned on the unlawful ballot design, and one for ballots cast on the corrected, re-designed ballot is **DENIED**;
9. **AWARDING** reasonable attorneys' fees is GRANTED against the County Clerk without prejudice subject to future application after 2025 General Election; however, costs are awarded to Plaintiffs in the amount of \$26,007.54 to be paid by the County Clerk within 10 days of entry of the within order or October 13, 2025; and
10. **SUCH OTHER**, relief as the Court may deem equitable and just is **DENIED**.
11. **ORDERED** that a copy of this Order shall be deemed served upon all parties of record upon filing on eCourts.


HON. BENJAMIN C. TELSEY, A.J.S.C.

OPPOSED XXX

UNOPPOSED _____