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CENTRAL JERSEY PROGRESSIVE  
DEMOCRATS, EM PHIPPS, DOREEN  
BAILEY, MARGARET D. BALL, STACI  
BERGER, QUIYANA BUTLER, REMI  
CHRISTOFFERSON, LAURA JILL  
LEIBOWITZ, ROSHANNA MALONE,  
KAMUELA N. TILLMAN

Plaintiffs,

v.

ELAINE M. FLYNN, in her capacity as Clerk of  
the County of Middlesex, MIDDLESEX  
COUNTY BOARD OF ELECTIONS, and  
TAHESHA WAY as an interested party in her  
capacity as Secretary of State.

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION:  
MERCER COUNTY

Docket No.:

**VERIFIED COMPLAINT**  
**ACCOMPANYING ORDER TO SHOW**  
**CAUSE SEEKING TEMPORARY**  
**RESTRAINTS**

Plaintiffs Central Jersey Progressive Democrats (“CJPD”), Em Phipps, Doreen Bailey, Margaret D. Ball, Staci Berger, Quiyana Butler, Remi Christofferson, Laura Jill Leibowitz, Roshanna Malone, and Kamuela N. Tillman (collectively “Plaintiffs”), bring this suit challenging sex and gender discrimination, a violation of the fundamental right to vote, and a violation of associational rights, against the Clerk of the County of Middlesex, in her official capacity (“County Clerk”), and the Middlesex County Board of Elections (“Board of Elections”), and the Secretary

of State as an interested party in her capacity as chief election official for the State of New Jersey (collectively “Defendants”).

This lawsuit is not complicated. A portion of the New Jersey Statute, N.J.S.A. 19:5-3, dates back to the middle of the last Century, and prescribes that party committee members for each election district must be comprised of one man and one woman. What was once a floor is now a ceiling for women, and an outright bar for nonbinary individuals. As a result, in reliance on the state constitution, several county clerks in the state (including Mercer County), no longer implement this outdated statute, allowing candidates to seek office independent of sex or gender. Yet, Defendants will hold committee races this June, and will continue to apply the sex quota absent further directive by the state or the judiciary. Notably, this type of sex quota is an outlier, and does not exist in the election administration of races across Middlesex County and across the state. The simple argument advanced here is perhaps further evidenced by the fact that all individual plaintiffs and defendants – candidates for office and election administrators now implementing the law – are no longer men, but are either women or nonbinary.

### **PARTIES**

1. While the Plaintiff-candidates seeking office are uniquely qualified, their stories are not unique. In the New Jersey counties that choose to implement the gender quota prescribed by N.J.S.A. § 19:5-3, women are barred from sharing a slate in the same election district, women are barred from being elected together into office in the same election district, and nonbinary candidates are barred from running altogether. The binary gender quota prevents women and nonbinary candidates across New Jersey from seeking office, and prevents political organizations across the state from recruiting candidates that best represent the interests of the voters. The quota pits women against each other in their political aspirations, and assigns unequal weight to votes on the basis of sex. For example, when the top vote getter is a woman, the statute requires a second-ranked woman’s votes to be set aside in favor of a man who received fewer votes. Such a result

would have been the case in Mercer County in 2018, however like clerks in several other counties, the Mercer County Clerk believes that the statute is unconstitutional and therefore does not implement it. (See **Exhibit A**, March 29, 2019 Letter to Central Jersey County Clerks, Exhibit 1, 2018 Mercer County Democratic Party Ballot.) See also Colleen O’Dea, Middlesex County Democrats Try to Overturn ‘Outdated’ Gender Rule, NJ SPOTLIGHT (Apr. 8, 2019), *available at*: <https://www.njspotlight.com/stories/19/04/07/middlesex-county-democrats-try-to-overturn-outdated-gender-rule/> (last accessed Apr. 4, 2019) (The Mercer County Clerk explaining, “[i]t is unconstitutional to require the seats be filled by gender. There is still a statute that says it should be one male and one female. But there is case law . . . Most of us [clerks] are relying on that. But all counties are not the same. Some do still use the statute.”).

2. Plaintiff Em Phipps is a CJPD candidate for Middlesex County Democratic Committee Member in New Brunswick’s Ward 1, District 6 in the Democratic Primary Election to be held on June 4, 2019. Em identifies as nonbinary, and seeks to run for office, but is effectively barred from doing so due to the binary gender quota at issue in this matter. Em is a sophomore on advanced track to graduation, studying Environmental Policy, Institutions, & Behavior (“EPIB”). Em is running for this position to advance an environmental agenda within the Democratic Party, and to advance environmental justice in New Brunswick specifically. Em believes that it is important for young people, including Rutgers students, to be actively engaged in politics in order to protect a robust democracy and to ensure a future for climate justice.

3. Plaintiff Doreen Bailey is a CJPD candidate for Middlesex County Democratic Committee Member in Piscataway’s Ward 3, District 4 in the Democratic Primary Election to be held on June 4, 2019. She seeks to run and share a slate with another woman from her election district. Doreen has been a resident and homeowner in Piscataway’s Ward 3 District 4 for thirty-three (33) years. Having raised 3 children and 3 grandchildren in the community, she is committed to preserving the fiber of the community which includes diversity, tolerance and accountability.

Doreen believes the residents of Piscataway deserve to have their voices heard and they should be entitled to complete transparency from their local government. Her professional background is in finance and process development. She retired in 2015 after working for 30 years for a global chemical company with pharmaceutical experience. Her role as director included people and process management, development and migration, and she maintained responsibility for the USA, Europe and South America. Her educational background includes East Orange High School, Upsala College and specialty courses at Cedep University in Fountainbleau, France. Doreen has no higher political aspirations, and simply wishes to tirelessly serve the district as a concerned citizen, homeowner, and neighbor.

4. Plaintiff Margaret D. Ball is a CJPD candidate for Middlesex County Democratic Committee Member in Piscataway's Ward 3, District 10 in the Democratic Primary Election to be held on June 4, 2019. She seeks to run and share a slate with another woman from her election district. Margaret has lived in Piscataway for thirty-five (35) years, after graduating from Rutgers College. Her most recent career is as hospice case manager, for the past fourteen (14) years. She and her husband have four adult children who have gone through the Piscataway public schools. She was a Girl Scout & Cub Scout leader; CCD teacher; and swim instructor and coach in Piscataway. Margaret is running for County Committee to offer a fresh perspective and to work to ensure a representative government supporting all residents of Piscataway.

5. Plaintiff Staci Berger is a CJPD candidate for Middlesex County Democratic Committee Member in Piscataway's Ward 3, District 2 in the Democratic Primary Election to be held on June 4, 2019. She seeks to run and share a slate with another woman from her election district. Staci has spent most of her life and entire professional career working to advance social, political and economic justice for working families and seniors. After the election of Donald Trump, she helped start CJPD and the Piscataway Progressive Democratic Organization. She has been a homeowner in Ward 3 since 1999, where she lives with her husband and their two sons,

who attend Piscataway public schools. Staci has been an active volunteer in the schools, through the PTOs, Wrestling Parents Auxiliary and the Board of Education's Community Relations Committee. She worked to improve the school environment, including securing policies for smaller class sizes, food justice and protections for transgender and immigrant students. A Rutgers graduate, she worked at NJ Citizen Action, fashioning NJ's Paid Family Leave laws, reforming NJ's campaign finance system, updating NJ's open public meetings/ records laws, preventing the privatization of Social Security, increasing the minimum wage, and adopting NJ's first Millionaire's Tax. She continues to serve on NJCA's Board of Directors. A former labor organizer, she was honored by the NJ General Assembly during Women's History Month in 2016. Since 2013, she has been the president & CEO of the Housing and Community Development Network of NJ, the state association of non-profit community developers. With the help of ACLU-NJ, Staci affirmed the public's right to videotape and broadcast Piscataway Township Council meetings in 2018, and subsequently ran for Council on a progressive platform. She is running for County Committee to continue her advocacy on behalf of her community.

6. Plaintiff Quiyana Butler is a CJPD candidate for Middlesex County Democratic Committee Member in Piscataway's Ward 3, District 4 in the Democratic Primary Election to be held on June 4, 2019. She seeks to run and share a slate with another woman from her election district. Quiyana grew up in Piscataway and is now raising her family there. She is a Rutgers graduate and currently works for the University. She is married to Brian Butler, who is also a prominent member of the community, and they have two children. After the 2016 election, Quiyana knew that change was definitely needed in this country and she wanted to be the change she wanted to see. Running for County Committee will afford her the opportunity to be part of making positive changes in Piscataway. She ran in 2017 in her former neighborhood, but recently moved to Ward 3, District 4 and wants to stay involved.

7. Plaintiff Remi Christofferson is a CJPD candidate for Middlesex County Democratic Committee Member in Piscataway's Ward 1, District 1 in the Democratic Primary Election to be held on June 4, 2019. She seeks to run and share a slate with another woman from her election district.

8. Plaintiff Laura Jill Leibowitz is a CJPD candidate for Middlesex County Democratic Committee Member in Piscataway's Ward 3, District 10 in the Democratic Primary Election to be held on June 4, 2019. She seeks to run and share a slate with another woman from her election district.

9. Plaintiff Roshanna Malone is a CJPD candidate for Middlesex County Democratic Committee Member in Piscataway's Ward 1, District 1 in the Democratic Primary Election to be held on June 4, 2019. She seeks to run and share a slate with another woman from her election district.

10. Plaintiff Kamuela N. Tillman is a CJPD candidate for Middlesex County Democratic Committee Member in Piscataway's Ward 3, District 2 in the Democratic Primary Election to be held on June 4, 2019. She seeks to run and share a slate with another woman from her election district. Kamuela is a 26-year Piscataway resident, "transplanted" From the East Orange/Newark area. A single mother and a Special Education English teacher, Kamuela's involvement with grassroots policy and approach has empowered her to take back her voice in the democratic process and to encourage accountability and political transparency among local and federal elected officials. The election of Donald Trump and her ideology of being "sick and tired of being sick and tired" of the lack of regard for the voices and concerns of constituents, both locally and statewide, has prompted her to take action and join with like-minded residents to become actively, passionately, and politically involved. Kamuela is an accomplished singer and mother of three.

11. At all times relevant herein, Plaintiff CJPDP was and is the primary independent Democratic Party organization in Central New Jersey, organized as a short term Political Committee. CJPDP is comprised of progressive Democratic party voters, candidates and representatives across Central Jersey. CJPDP believes in social, political and economic justice, and supports candidates for local, county and state offices to ensure that party and elected officials reflect the values of fairness, equality, and justice for all.

12. Defendant Elaine M. Flynn is the Clerk of the County of Middlesex, who is vested with certain statutory duties and obligations including the designing and printing of sample ballots, machine ballots, and mail-in ballot materials, the issuance of mail-in ballots, and conducting a drawing for ballot positions for county elections held in Middlesex County.

13. Defendant Middlesex County Board of Elections is vested with certain statutory duties and obligations including overseeing the conduct of elections, processing vote-by-mail and other ballots, and making the final determinations and serving as the final authority as to the number of votes cast for each candidate for election.

14. Defendant Secretary of State Tahesha Way is designated the “chief State election official” pursuant to N.J.S.A. § 19:31-6a, and is listed here as an interested party.

### **JURISDICTION AND VENUE**

15. The Superior Court has jurisdiction over this election matter pertaining to ballots with respect to the Democratic Primary Election to be held on June 4, 2019.

16. Venue is proper in Mercer County under R. 4:3-2(a)(2) because the law at issue was adopted in Mercer County and is overseen statewide by the Secretary of State as chief election official pursuant to N.J.S.A. § 19:31-6a, from offices in Mercer County.

### **BACKGROUND**

17. Primary elections for the Democratic and Republican parties are scheduled to take place throughout the State on June 4, 2019 to determine, among other things, the composition of county party committee membership.

18. County clerks, in carrying out their duties, are subject to certain restrictions and obligations, as set forth in N.J.S.A. 19:49-2, for the ballot placement of candidates.

19. For example, N.J.S.A. 19:49-2 sets forth that “all candidates who shall file a joint petition with the county clerk of their respective county and who shall choose the same designation or slogan shall be drawn for position on the ballot as a unit and shall have their names placed on the same line of the voting machine.”

20. N.J.S.A. 19:49-2 further provides that for other candidates, such as those for municipal and statewide office, that file a petition

bearing the same designation or slogan as that of the candidates filing a joint petition with the county clerk as aforesaid, [such candidates] may request that his or her name be placed on the same line of the voting machine with the candidates who have filed a joint petition with the county clerk as aforesaid by so notifying the county clerk of said county in writing within two days after the last day for filing nominating petitions and thereupon the county clerk shall forthwith notify the campaign manager of such candidates filing a joint petition as aforesaid of said request, and if the said campaign manager shall file his consent in writing that the said county clerk within two days after the receipt of said notification from said county clerk, the clerk of said county shall place the name of such candidate on the same line of the voting machine on which appears the name of the candidates who have filed the joint petition as aforesaid. . . .

21. In February 2019, CJPD invited nominations for party committee candidates from its membership, allied organizations, and the public. CJPD encouraged individuals who support a progressive agenda for social, economic and political justice to run for County Committee in a variety of ways, including: inviting candidates who had previously run for office to run again, posting registration on Facebook pages and groups that share a commitment to a progressive agenda, one-on-one outreach among neighbors, families and friends, and attendance at other like-

mindful organizations. CJPDP candidates in Piscataway were able to choose from seven candidate information sessions to attend, and candidates in New Brunswick had multiple sessions to choose from.

22. CJPDP-supported petitions for County Committee were individually and jointly collected and filed from March 20 through April 2, 2019 pursuant to N.J.S.A. 19:23-14, and in accordance with the direction of the County Clerk.

23. The form for nomination by petition for the Primary Election county committee offices pursuant to N.J.S.A. 19:23-5, 19:23-17, does not request that candidates self-designate their gender or sex. (See **Exhibit B**.)

24. On March 29, 2019, counsel for CJPDP, Yael Bromberg Eq., requested an immediate response from the Middlesex County Clerk regarding the Clerk's intended application of unconstitutional County Committee gender requirements. (See **Exhibit C**.)

25. On April 3, 2019, within two days after the last day for filing nominating petitions, pursuant to N.J.S.A. 19:49-2, CJPDP sent a Bracketing Request Letter to the Middlesex County Clerk's Office. (See **Exhibit D**.) The Bracketing Request Letter proposed the listing of Democratic Party candidates for County Committee, independent of sex and gender.

26. The CJPDP Bracketing Request Letter further reserves the "right to preview a copy of the printer's proof of the ballot in accordance with the established timeline." (Id.)

27. The same day, on April 3, 2019, the Middlesex County Clerk's office confirmed receipt of the CJPDP Bracketing Request Letter.

28. One week after receiving counsel's March 29, 2019 letter, Middlesex County counsel first corresponded with CJPDP, through counsel by telephone, on April 5, representing that absent further instruction by the judiciary or the State, the County Clerk is bound to the one-man and one-woman rule outlined by N.J.S.A. 19:5-3, and therefore cannot comply with the relief requested. (Certification of Yael Bromberg, Esq.)

29. As N.J.S.A. 19:49-2 provides that candidates bracketed together should be drawn as a unit and featured on the same line of the ballot with the same slogan, the ballot should feature all of the committee-member candidates in the same column or row of the ballot.

30. However, on information and belief, the County Clerk’s anticipated ballot draw and arrangement will not feature CPJD candidates in the same column or row of the ballot.

31. If the ballot features the candidates in keeping with their request to be bracketed together independent of sex and gender discrimination, and their request for the ballot to be drawn independent of sex and gender discrimination, with the applicable slogan next to each candidate’s name in compliance with N.J.S.A. 19:49-2, the ballot will resemble something akin to the following:

OFFICE TITLE	Column A Democratic	Column B Democratic	Column C Democratic
Members of County Committee (Vote for Two)	Name  <i>Middlesex County Party Organization</i>	Name  <i>Central Jersey Progressive Democrats</i>	[Non-bracketed candidates]
	Name  <i>Middlesex County Party Organization</i>	Name  <i>Central Jersey Progressive Democrats</i>	

32. The above example resembles the ballot as bracketed, drawn, and designed by Mercer County in the 2018 Democratic Party race. (See **Exhibit C.**)

33. In the above example, all candidates that request and received permission to be featured on the same line of the ballot and with the same slogan, are in fact featured on the same line of the ballot and with the same slogan as provided for by the statute.

34. In the above example, candidates are not excluded from running for and obtaining office on the basis of sex or gender, in keeping with the federal and state constitution and applicable laws.

35. In the above example, the votes for the candidates are provided equal weight, as women and men are not forced to compete against each other for the same position on the basis of sex.

36. In the above example, voters can vote for the candidates of their choosing independent of sex or gender, free of voter confusion, and their votes will be assigned equal weight independent of sex or gender.

37. Notwithstanding this permissible, non-confusing manner by which to arrange the ballot in compliance with the clear constitutional precepts and directives of N.J.S.A. 19:49-2, on information and belief, the County Clerk intends to bracket and draw the ballots in manner akin to the following:

OFFICE TITLE	Column A Democratic	Column B Democratic	Column C Democratic
Member for County Committeeman (Vote for One)	Name <i>Middlesex County Party Organization</i>	Name <i>Central Jersey Progressive Democrats</i>	[Non-bracketed candidates]
Member for County Committeewoman (Vote for One)	Name <i>Middlesex County Party Organization</i>	Name <i>Central Jersey Progressive Democrats</i>	

38. In the above example, nonbinary candidates such as Plaintiff Em Phipps are outright barred from seeking a county committee-member office on the basis of sex and gender.

39. In the above example, candidates who seek to run together in the same election district and share a slogan and line, such as Plaintiffs Doreen Bailey, Margaret D. Ball, Staci Berger, Quiyana Butler, Remi Christofferson, Laura Jill Leibowitz, Roshanna Malone, and Kamuela N. Tillman, are barred from doing so on the basis of sex and gender.

40. In the above example, candidates are forced to compete with each other on the basis of sex and gender. Specifically, candidates for committeewoman run against each other on the basis of sex and gender, and do not run against committeemen on the basis of sex and gender.

41. In the above example, where the two highest vote-getters are one sex, the votes for the lesser-ranked committee-person of the opposite sex will be given increased weight and priority, on the basis of sex, in violation of fundamental constitutional precepts and N.J.S.A. 19:3-4 regarding the election of the highest vote-getters.

42. Should the County Clerk attempt to maintain the general format of the above example, but add extraneous persons to some impossible third rail because candidates do not meet the one-man-and-one-woman requirement in N.J.S.A. 19:5-3, this will present a clear violation of N.J.S.A. 19:49-2 and constitutional precepts, would foster voter confusion as to the association of the candidates and how the ballots will ultimately be counted, and cause the ballots to be assigned unequal weight on the basis of sex and gender.

43. On April 5, 2019, Middlesex County Clerk represented, through counsel, that further guidance has been requested from the State of New Jersey. (Certification of Yael Bromberg, Esq.)

44. On information and belief, no guidance as to the constitutionality of N.J.S.A. 19:5-3 has been provided by the State.

45. The solution to this problem is already in practice in at least Mercer, Hunterdon, Cumberland, Livingston, and Passaic Counties. (See **Exhibit C**, Mercer County 2018 Primary Ballot; **Exhibit F**, Passaic County 2016 Primary Ballot; **Exhibit G**, Cumberland County 2018

Republican Primary Ballot.) See also Hunterdon County, Official 2018 Primary Election Sample Ballot, *available at*: <http://www.co.hunterdon.nj.us/election/2018/Primary/Ballots/lambertville.pdf> (last accessed Apr. 10, 2019); Livingston County 2018-2020 Democratic County Committee List, *available at*: <https://www.livingstondems.org/> (last accessed Apr. 10, 2019); Colleen O’Dea, Middlesex County Democrats Try to Overturn ‘Outdated’ Gender Rule, NJ SPOTLIGHT (Apr. 8, 2019), *available at*: <https://www.njspotlight.com/stories/19/04/07/middlesex-county-democrats-try-to-overturn-outdated-gender-rule/> (last accessed Apr. 4, 2019) (The Mercer County Clerk explaining, “[i]t is unconstitutional to require the seats be filled by gender. There is still a statute that says it should be one male and one female. But there is case law . . . Most of us [clerks] are relying on that. But all counties are not the same. Some do still use the statute.”).

46. On information and believe, no claim has been made that this change has harmed voters or the parties in these places.

47. Indeed, the lists of electeds resulting from these committee-member races show multiple sets of same-sex district representative serving in their communities. See e.g., Hunterdon County Committee Member 2019 List, *available at*: <http://www.co.hunterdon.nj.us/pdf/countyclerk/DEPCC.pdf> (last accessed Apr. 4, 2019); Cumberland County Committee Member List, *available at*: <https://ccclerknj.com/wp-content/uploads/2018/03/County-Committee-DEM-3.20.2018.pdf> (last accessed Apr. 10, 2019); Livingston County 2018-2020 Democratic County Committee List, *available at*: <https://www.livingstondems.org/> (last accessed Apr. 10, 2019).

48. The proposal is that which is already in effect across the state, and in Middlesex County, where the candidacy, run, ballot position, ballot draw, and ballot design of bracketed candidates is accomplished – independent of sex or gender identity – such as in the elections of City Council, Sheriff, County Freeholders, State Assembly, among others, and such as in County

Committee Members in the aforementioned counties. The sex and gender classification assigned to county committee members in N.J.S.A. 19:5-3 is therefore an outlier.

49. The New Jersey Law Against Discrimination (LAD) has been expanded to prohibit, in addition to sex-based discrimination, discrimination based on gender identity or expression. See N.J.S.A. 10:5-12. Moreover, a new state law recently went into effect on February 1, 2019 to allow transgender persons to amend their birth certificate with a corrected name and sex without undergoing surgery or any medical procedures. N.J.S.A. 26:8-40.12; N.J.A.C. Exec. Order No. 54 (2019).

50. On April 12, 2019, the Municipal and County Clerk will draw for ballot positions for the primary election candidates, pursuant to N.J.S.A. 19:23-24.

51. April 15, 2019 is the deadline for filing in Superior Court to protect a primary election candidate's rights. N.J.S.A. 19:13-12.

52. April 15, 2019 also coincides with the deadline for preparation of the official primary election ballot for printing, pursuant to N.J.S.A. 19:14-1.

53. April 20, 2019 marks the commencement of the mailing of mail-in ballots for the Primary Election, pursuant to N.J.S.A. 19:63-5, 19:63-9.

54. June 4, 2019 is the Primary Election Day, pursuant to N.J.S.A. 19:2-1, 19:23-40.

55. June 12, 2019 is the deadline for Municipal Clerks to certify to the County Clerk and the County Board of Elections the names of duly elected county committee members, pursuant to N.J.S.A. 19:23-54.

56. June 24, 2019 is the deadline for the County Clerk to transmit official primary election results to the Secretary of State, pursuant to N.J.S.A. 19:19-13.

### **FIRST COUNT**

**(Violation of Equal Protection of the Laws)**

57. Plaintiffs repeat and reassert all the allegations set forth in the foregoing paragraphs as if set forth herein at length.

58. The binary gender quota established in N.J.S.A. 19:5-3, and the Defendants' insistence on following this statute so as to preclude the equal right of nonbinary candidates to run for committee member office, and so as to preclude the rights of candidates to run for office independent of sex or gender, and so as to preclude the rights of candidates to be elected for office independent of sex or gender, is a violation of the right to equal protection of the laws as enshrined in the New Jersey Constitution art. I, ¶ 1 and the Fourteenth Amendment of the U.S. Constitution, and as implemented by N.J.S.A. 10:6-2(c) of the New Jersey Civil Rights Act, and the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

59. These constitutional and statutory provisions are intended to protect Plaintiffs' rights and place clear obligations on the part of Defendants with respect to the ability of eligible candidates to run for and obtain office independent of sex or gender, and the ability for the electors to select the candidates of their choosing independent of the candidate's sex or gender.

60. The constitutional and statutory provisions set forth above are intended to protect Plaintiffs' equal rights and place clear obligations on the part of Defendants with respect to the design of the ballot and the ability to bracket with other candidates as prescribed by N.J.S.A. 19:49-2.

61. The constitutional and statutory provisions set forth above are intended to protect Plaintiffs' equal rights and place clear obligations on the part of Defendants to assign equal weight to all votes independent of sex or gender within the county, and intrastate among the counties.

62. Defendants deprived Plaintiffs of their substantive rights.

63. Defendants' deprivation of Plaintiffs' rights occurred "under color of law," as they were acting in their official capacities.

64. Plaintiffs are entitled to damages and to reasonable attorney's fees and costs pursuant to N.J.S.A. 10:6-2(f) and N.J.S.A. 10:5-27.1.

**WHEREFORE**, Plaintiffs demand judgment as follows:

A. On a temporary, preliminary, and permanent basis, compelling the County Clerk of Middlesex County to prepare ballots with respect to the June 4, 2019 Primary Election that permits bracketing and otherwise complies with the right of equal protection under the Federal and State Constitutions, the NJ Law Against Discrimination and the NJ Civil Rights Act, and with Title 19's mandates for ballot design and bracketing, such that all candidates who properly requested and received permission to use the same slogan and to be featured on the same line (column or row) shall be listed irrespective of sex or gender, and such that the ballot draw be conducted so as not to distinguish between the election for one committeeman and one committeewoman, but rather for the election of two committeepersons, independent of sex or gender;

B. Compelling the County Clerk to prepare ballots with respect to all primary elections in Middlesex moving forward that feature on the same line (column or row) of the ballot all such candidates who properly requested and received permission to use the same slogan and to be featured on the same line of the ballot, to be listed irrespective of sex or gender, and such that the ballot draw be conducted so as not to distinguish between the election for one committeeman and one committeewoman, but rather for the election of two committeepersons, independent of sex or gender;

C. On a temporary, preliminary, and permanent basis, compelling the Board of Elections for Middlesex County to assign equal weight to the votes for committee members independent of sex and gender with respect to the June 4, 2019 Primary Election, in keeping with the right of equal protection under the Federal and State Constitutions and applicable laws.

D. Compelling the Board of Elections for Middlesex County to assign equal weight to the votes for committee members independent of sex and gender moving forward, in keeping with the right of equal protection under the Federal and State Constitutions and applicable laws.

E. Awarding Plaintiffs damages and all reasonable attorney's fees and costs in connection with this matter, pursuant to N.J.S.A. 10:6-2(f) and N.J.S.A. 10:5-27.1.

F. Granting such other relief as it may deem right and just upon the determination of this matter.

## **SECOND COUNT**

### **(Violation of the Fundamental Right to Vote)**

65. Plaintiffs repeat and reassert all of the allegations set forth in the foregoing paragraphs as if set forth herein at length.

66. The binary gender quota established in N.J.S.A. 19:5-3, and the Defendants' insistence on following this statute so as to preclude the right of nonbinary candidates to run for committee member office, and so as to preclude the rights of candidates to run for office independent of sex or gender, and so as to preclude the rights of candidates to be elected for office independent of sex or gender, imposes severe burdens on the fundamental right to vote for a candidate for elective office of one's choosing as guaranteed by the New Jersey Constitution art. 2, § 1, ¶ 3 and the Fourteenth Amendment, and as implemented by N.J.S.A.10:6-2(c) of the New Jersey Civil Rights Act and the New Jersey Law Against Discrimination (NJLAD), N.J.S.A. 10:5-1 et seq.

67. Specifically, the binary gender quota assigns unequal treatment to votes by ranking votes on the basis of sex, therefore abridging the fundamental right to vote secured by the state and federal constitutions.

68. By way of illustration, where the top two vote-getters in a district are of the same sex, the votes of the lesser-ranked opposite-sex candidate are prioritized over the votes of the

second-ranked candidate, on the basis of sex and gender. (See **Exhibit C**, March 29, 2019 Letter to Central Jersey County Clerks, containing therein as Exhibit 1, 2018 Mercer County Democratic Party Ballot with Description.) This is a clear violation of N.J.S.A. 19:3-4, which states in relevant part, that qualified office-seekers “for whom the greatest number of votes shall be given . . . shall be deemed and taken to be elected for such office.”

69. Moreover, the gender quota pits candidates to compete for office on the basis of sex alone, and is an outright exclusion on the right of nonbinary candidates to run for and obtain office.

70. In addition to treating ballots unequally within the same county, the current electoral scheme treats ballots unequally intrastate by allowing voters in some counties such as Mercer County to vote for candidates of their choosing independent of sex or gender, and by disallowing voters in Middlesex County from doing so.

71. The constitutional and statutory provisions set forth above are intended to protect the fundamental right to vote and place clear obligations on the part of Defendants with respect to the design of the ballot and the ability to bracket with other candidates as prescribed by N.J.S.A. 19:49-2, so as to avoid the likelihood of voter confusion.

72. The State does not prescribe this type of gender quota in any other portion of the election code.

73. The State has no legitimate interest in maintaining a binary gender quota. What was once progressive in the 1950s and the 1960s is regressive today. The quota is no longer a cap, but a ceiling to representation and an outright bar to the right of nonbinary candidates to run.

74. For the foregoing reasons, Defendants cannot show any legitimate state interest in continuing to implement the binary gender quota that unduly burdens the right to vote for an elector of one’s choosing, independent of sex or gender.

75. Plaintiffs are entitled to damages and to reasonable attorney's fees and costs pursuant to N.J.S.A. 10:6-2(f) and N.J.S.A. 10:5-27.1.

**WHEREFORE**, Plaintiffs demand judgment as follows:

A. On a temporary, preliminary, and permanent basis, compelling the County Clerk of Middlesex to prepare ballots with respect to the June 4, 2019 Primary Election that permits bracketing and otherwise complies with the fundamental right to vote under the Federal and State Constitutions, the NJ Law Against Discrimination and the NJ Civil Rights Act, and with Title 19's mandates for ballot design and bracketing, such that all candidates who properly requested and received permission to use the same slogan and to be featured on the same line (column or row) shall be listed irrespective of sex or gender, and such that the ballot draw be conducted so as not to distinguish between the election for one committeeman and one committeewoman, but rather for the election of two committeepersons, independent of sex or gender;

B. Compelling the County Clerk to prepare ballots with respect to all primary elections in Middlesex moving forward that feature on the same line (column or row) of the ballot all such candidates who properly requested and received permission to use the same slogan and to be featured on the same line of the ballot, to be listed irrespective of sex or gender, and such that the ballot draw be conducted so as not to distinguish between the election for one committeeman and one committeewoman, but rather for the election of two committeepersons, independent of sex or gender;

C. On a temporary, preliminary, and permanent basis, compelling the Board of Elections for Middlesex County to assign equal weight to the votes for committee members independent of sex and gender with respect to the June 4, 2019 Primary Election, in keeping with the fundamental right to vote under the Federal and State Constitutions and applicable laws.

D. Compelling the Board of Elections for Middlesex to assign equal weight to the votes for committee members independent of sex and gender moving forward, in keeping with the fundamental right to vote under the Federal and State Constitutions and applicable laws.

E. Awarding Plaintiffs damages and all reasonable attorney's fees and costs in connection with this matter, pursuant to N.J.S.A. 10:6-2(f) and N.J.S.A. 10:5-27.1.

F. Granting such other relief as it may deem right and just upon the determination of this matter.

### **THIRD COUNT**

#### **(Violation of the Right of Association)**

76. Plaintiffs repeat and reassert all of the allegations set forth in the foregoing paragraphs as if set forth herein at length.

77. Article I, Section 6 of the New Jersey Constitution and the First Amendment to the United States Constitution protect the right of free speech and association, and the state constitutional right has been found to be even more broad in its protections.

78. Courts, at both the federal and state level, have recognized the right to "bracket," or run as a "slate," under both freedom of speech and freedom of expression frameworks.

79. Courts, at both the federal and state level, have recognized that the state should not be dictating the composition of the membership of the parties.

80. This constitutional right encompasses both the right to associate, and the right not to associate with other candidates.

81. The constitutional rights of free speech and association are afforded particular importance in the context of political speech and association.

82. Each of the Plaintiffs invoked their constitutional rights through requesting not only that they be featured under the same Slogan, but also that they be drawn as a unit and appear on the same line of the ballot as one another.

83. The CJPDP invoked its constitutional rights through first nominating each of the candidates, and then granting permission to each such candidate to be featured under its Slogan, and be drawn as a unit and appear on the same line of the ballot as one another.

84. Based on information and belief, the County Clerks' ballot arrangement will not honor these associational rights as it will fail to feature all of the candidates on the CJPDP Line in the same column or row of the ballot.

85. Plaintiffs are entitled to damages and to reasonable attorney's fees and costs pursuant to N.J.S.A. 10:6-2(f) and N.J.S.A. 10:5-27.1.

**WHEREFORE**, Plaintiffs demand judgment as follows:

A. On a temporary, preliminary, and permanent basis, compelling the County Clerk to prepare ballots with respect to the June 4, 2019 Primary Election that permits bracketing and otherwise complies with the right of association under the federal and state constitutions and with Title 19's mandates for ballot design and bracketing, such that all candidates who properly requested and received permission to use the same slogan and to be featured on the same line (column or row) shall be listed irrespective of sex or gender, and such that the ballot draw be conducted so as not to distinguish between the election for one committeeman and one committeewoman, but rather for the election of two committeepersons, independent of sex or gender;

B. Compelling the County Clerk to prepare ballots with respect to all primary elections in Middlesex County moving forward that feature on the same line (column or row) of the ballot all such candidates who properly requested and received permission to use the same slogan and to be featured on the same line of the ballot, to be listed irrespective of sex or gender, and such that the ballot draw be conducted so as not to distinguish between the election for one committeeman and one committeewoman, but rather for the election of two committeepersons, independent of sex or gender;

C. Awarding Plaintiffs damages and all reasonable attorney's fees and costs in connection with this matter, pursuant to N.J.S.A. 10:6-2(f) and N.J.S.A. 10:5-27.1.

D. Granting such other relief as it may deem right and just upon the determination of this matter.

#### **FOURTH COUNT**

##### **(Violation of N.J.S.A. 19:49-2, Position of Candidates' Names on Ballot)**

86. Plaintiffs repeat and reassert all of the allegations set forth in the foregoing paragraphs as if set forth herein at length.

87. N.J.S.A. 19:49-2 requires that candidates choosing the same slogan and properly requesting and receiving permission to bracket with a county slate of candidates "shall be placed on the same line of the voting machine with the candidates who have filed a joint petition . . . ."

88. The above language of the statute is clear and unambiguous, and speaks in the imperative as to the obligations of the County Clerk.

89. The Plaintiff candidates did appropriately request and receive from the CJPD, permission to use the Slogan and to be featured on the same line of the ballot.

90. The County Clerk therefore does not have discretion to feature such candidates on separate lines of the ballot.

91. Based on information and belief, the County Clerk's ballot arrangement will not feature all of the CJPD candidates in the same column or row of the ballot, in violation of the statute.

**WHEREFORE**, Plaintiffs demand judgment as follows:

A. On a temporary, preliminary, and permanent basis, compelling the County Clerk to prepare ballots with respect to the June 4, 2019 Primary Election in Middlesex County that permits bracketing and otherwise complies with the right of association, the right of equal protection of the laws, and the fundamental right to vote under the Federal and State Constitutions, the NJ Civil

Rights Act and the NJ Law Against Discrimination, and Title 19's mandates for ballot design and bracketing, such that all candidates who properly requested and received permission to use the same slogan and to be featured on the same line (column or row) shall be listed irrespective of sex or gender, and such that the ballot draw be conducted so as not to distinguish between the election for one committeeman and one committeewoman, but rather for the election of two committeepersons, independent of sex or gender;

B. Compelling the County Clerk to prepare ballots with respect to all primary elections in Middlesex County moving forward that feature on the same line (column or row) of the ballot all such candidates who properly requested and received permission to use the same slogan and to be featured on the same line of the ballot, to be listed irrespective of sex or gender, and such that the ballot draw be conducted so as not to distinguish between the election for one committeeman and one committeewoman, but rather for the election of two committeepersons, independent of sex or gender.

C. Awarding Plaintiffs damages and all reasonable attorney's fees and costs in connection with this matter, pursuant to N.J.S.A. 10:6-2(f) and N.J.S.A. 10:5-27.1.

D. Granting such other relief as it may deem right and just upon the determination of this matter.

**FIFTH COUNT**  
**(Violation of the New Jersey Law Against Discrimination)**

92. Plaintiffs repeat and reassert all of the allegations set forth in the foregoing paragraphs as if set forth herein at length.

93. The New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 to -42 prohibits discrimination on account of sex, and discrimination on account of gender identity or expression.

94. Plaintiffs seek unfettered access to the ballot, to run and support candidates for office, independent of sex or gender.

95. However, Plaintiffs are directly impacted by the Defendants' application one-woman-and-one-man rule which limits access to the ballot on account of sex and gender identity.

96. Specifically, Plaintiff Emm Phipps is barred from running for this office altogether based on their nonbinary gender identity.

97. Specifically, Plaintiffs Doreen Bailey, Maggie Doyle Ball, Staci Berger, Quiyana Butler, Remi Christofferson, Laura Jill Leibowitz, Roshanna Malone, and Kamuela N. Tillman are being barred from running on the same slogan and line on the basis of their sex.

98. Defendant County Clerk deprived or interfered with Plaintiffs' right not to be discriminated against on account of sex or gender, as protected by the state and federal constitution, and the laws of New Jersey as herebefore defined, in refusing Plaintiffs' ability to run for and obtain office, and to be bracketed together in such a manner that permits a fair ballot draw and design.

99. Defendant Board of Elections deprived or interfered with Plaintiffs' right not to be discriminated against on account of sex or gender, as protected by the state and federal constitution, and the laws of New Jersey as herebefore defined, in refusing to assign equal weight to the votes as they are casted.

**WHEREFORE**, Plaintiffs demand judgment as follows:

A. On a temporary, preliminary, and permanent basis, compelling the County Clerk to prepare ballots with respect to the June 4, 2019 Primary Election in Middlesex County that permits bracketing and otherwise complies with the right of association, the right of equal protection of the laws, and the fundamental right to vote under the Federal and State Constitutions, the NJ Civil Rights Act and the NJ Law Against Discrimination, and Title 19's mandates for ballot design and bracketing, such that all candidates who properly requested and received permission to use the same slogan and to be featured on the same line (column or row) shall be listed irrespective of sex or gender, and such that the ballot draw be conducted so as not to distinguish between the election

for one committeeman and one committeewoman, but rather for the election of two committeepersons, independent of sex or gender;

B. Compelling the County Clerk to prepare ballots with respect to all primary elections in Middlesex County moving forward that feature on the same line (column or row) of the ballot all such candidates who properly requested and received permission to use the same slogan and to be featured on the same line of the ballot, to be listed irrespective of sex or gender, and such that the ballot draw be conducted so as not to distinguish between the election for one committeeman and one committeewoman, but rather for the election of two committeepersons, independent of sex or gender;

C. On a temporary, preliminary, and permanent basis, compelling the Board of Elections for Middlesex County to assign equal weight to the votes for committee members independent of sex and gender with respect to the June 4, 2019 Primary Election, in keeping with the right of equal protection under the Federal and State Constitutions and applicable laws.

D. Compelling the Board of Elections for Middlesex County to assign equal weight to the votes for committee members independent of sex and gender moving forward, in keeping with the right of equal protection under the Federal and State Constitutions and applicable laws.

E. Awarding Plaintiffs damages and all reasonable attorney's fees and costs in connection with this matter, pursuant to N.J.S.A. 10:6-2(f) and N.J.S.A. 10:5-27.1.

F. Granting such other relief as it may deem right and just upon the determination of this matter.

**SIXTH COUNT**  
**(Violation of the New Jersey Civil Rights Act)**

100. Plaintiffs repeat and reassert all of the allegations set forth in the foregoing paragraphs as if set forth herein at length.

101. The New Jersey Civil Rights Act provides relief to any person who has been deprived or interfered with the enjoyment of any substantive due process or equal protection rights, privileges or immunities secured by the federal and state constitutions or implementing laws.

102. Defendants deprived or interfered Plaintiffs with the exercise of a substantive right as protected by the state and federal constitution, and the laws of New Jersey as herebefore defined.

103. Defendant County Clerk acted under the color of state law when she denied Plaintiffs access to the ballot on account of their sex and gender.

104. Defendant County Board of Elections will act under the color of state law in counting said ballots in a manner that assigns unequal weight to the votes on account of sex and gender.

**WHEREFORE**, Plaintiffs demand judgment as follows:

A. On a temporary, preliminary, and permanent basis, compelling the County Clerk to prepare ballots with respect to the June 4, 2019 Primary Election in Middlesex County that permits bracketing and otherwise complies with the right of association, the right of equal protection of the laws, and the fundamental right to vote under the Federal and State Constitutions, the NJ Civil Rights Act and the NJ Law Against Discrimination, and Title 19's mandates for ballot design and bracketing, such that all candidates who properly requested and received permission to use the same slogan and to be featured on the same line (column or row) shall be listed irrespective of sex or gender, and such that the ballot draw be conducted so as not to distinguish between the election for one committeeman and one committeewoman, but rather for the election of two committeepersons, independent of sex or gender;

B. Compelling the County Clerk to prepare ballots with respect to all primary elections in Middlesex County moving forward that feature on the same line (column or row) of the ballot

all such candidates who properly requested and received permission to use the same slogan and to be featured on the same line of the ballot, to be listed irrespective of sex or gender, and such that the ballot draw be conducted so as not to distinguish between the election for one committeeman and one committeewoman, but rather for the election of two committeepersons, independent of sex or gender;

C. On a temporary, preliminary, and permanent basis, compelling the Board of Elections for Middlesex County to assign equal weight to the votes for committee members independent of sex and gender with respect to the June 4, 2019 Primary Election, in keeping with the right of equal protection under the Federal and State Constitutions and applicable laws.

D. Compelling the Board of Elections for Middlesex County to assign equal weight to the votes for committee members independent of sex and gender moving forward, in keeping with the right of equal protection under the Federal and State Constitutions and applicable laws.

C. Awarding Plaintiffs damages and all reasonable attorney's fees and costs in connection with this matter, pursuant to N.J.S.A. 10:6-2(f) and N.J.S.A. 10:5-27.1.

D. Granting such other relief as it may deem right and just upon the determination of this matter.

Respectfully submitted,

**BROMBERG LAW LLC**  
*Attorney for Plaintiffs*

By: /s/ Yael Bromberg  
Yael Bromberg, Esq.

Date: April 11, 2019

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to the provisions of R. 4:25-4 and R. 4:4-1(c), Yael Bromberg, Esq. is hereby designated as trial counsel on behalf of Plaintiffs in the within matter.

**BROMBERG LAW LLC**  
*Attorney for Plaintiffs*

By: /s/ Yael Bromberg  
Yael Bromberg, Esq.

Date: April 11, 2019

**RULE 4:5-1 CERTIFICATION**

Pursuant to Rule 4:5-1, I certify that the within matter in controversy is subject to no other action pending in any Court or arbitration proceeding and that the names of all parties who should be joined in this action are set forth in the Complaint and joined in the action. I am aware that if any of the foregoing statements are willfully false, I may be subject to punishment.

**BROMBERG LAW LLC**  
*Attorney for Plaintiffs*

By: /s/ Yael Bromberg  
Yael Bromberg, Esq.

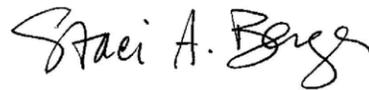
Date: April 11, 2019

**VERIFICATION**

I, Staci Berger, hereby certify as follows:

1. I am the Chair of the Central Jersey Progressive Democrats, an entity plaintiff in the foregoing Verified Complaint accompanying an Order to Show Cause for Temporary Restraints.
2. I am additionally an individually listed plaintiff herein.
3. I have read the foregoing Verified Complaint and state the facts contained therein are true to my own knowledge, and the allegations set forth on information and believe, I believe to be true.

I am aware that should any of the foregoing be willfully false, I am subject to punishment



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Staci Berger

Dated: April 10, 2019

**CERTIFICATION OF FACSIMILE SIGNATURE**  
**PURSUANT TO RULE 1:4-4(c)**

I hereby certify that the electronic scan/facsimile signature of Staci Berger contained within this Verified Complaint is a genuine signature, that the affiant acknowledged the genuineness of the signature, and that the document or a copy thereof, with the original signature affixed, will be filed with the Court if requested by the Court or a party.

**BROMBERG LAW LLC**  
*Attorney for Plaintiffs*

By: /s/ Yael Bromberg  
Yael Bromberg, Esq.

Date: April 10, 2019