

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
NEWARK DIVISION

EUGENE MAZO,

and

LISA McCORMICK,

Plaintiffs,

v.

TAHESHA WAY, in her official capacity as
New Jersey Secretary of State, et al.,

Defendants.

Civil Action No. 20-CV-08174

Judge Susan D. Wigenton

AMENDED
VERIFIED COMPLAINT

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STREET AND POST OFFICE ADDRESSES

1. Plaintiff Eugene Mazo: 625 Broad St., Ste. 240, Newark, NJ 07102;

Plaintiff Lisa McCormick: 118 Skillman St., Lambertville, New Jersey 08530;

Defendant Tahesha Way: 20 W. State St., 4th Floor, Trenton, NJ 08625; Mailing Address: P.O. Box 300, Trenton, NJ 08625;

Defendant Christopher Durkin: 465 Martin Luther King Blvd., Room 247, Newark, NJ 07102-0690;

Defendant E. Junior Maldonado: 257 Cornelison Avenue, 4th Floor, Jersey City NJ 07302;

Defendant Joanne Rajoppi: Union County Courthouse, 2 Broad St., Elizabeth, NJ 07207;

Defendant Paula Sollami Covello: Mercer County Administration Building, 640 S. Broad St., Trenton, NJ 08650; Mailing Address: P.O. Box 8068 Trenton, NJ 08650-0068;

Defendant Elaine Flynn: Middlesex County Administration Building, 4th floor, 75 Bayard St., New Brunswick, NJ 08901;

Defendant Steve Peter: 20 Grove Street, Somerville, NJ 08876; Mailing Address: P.O. Box 3000, Somerville, NJ 08876.

PROCEDURAL POSTURE

2. Plaintiffs filed their Verified Complaint on July 2, 2020 to initiate this lawsuit. (See V. Compl., DN1).
3. On October 12, 2020, Defendant New Jersey Secretary of State Tahesha Way served her motion under F. R. Civ. P. 12(b) in response to the Plaintiffs' Verified Complaint. (See Mot. to Dismiss, DN 43).
4. Pursuant to F. R. Civ. P. 15(a)(1)(B), Plaintiffs submit this Amended Verified Complaint as a matter of course within 21 days after service of Defendant Secretary Way's Rule 12(b) motion.

NATURE OF ACTION

5. Plaintiffs, Eugene Mazo and Lisa McCormick, allege the content-based speech restrictions for candidate slogans on New Jersey primary election ballots violate the First and Fourteenth

Amendments to the United States Constitution. *See* U.S. Const. amends. I, XIV; N.J. Stat. §§ 19:23-17 and 19:23-25.1 (the “Slogan Statutes”).

6. The Slogan Statutes allow a New Jersey primary election candidate to print a slogan (up to six words) next to his or her name on the election ballot. *See* Slogan Statutes.

7. But the Slogan Statutes forbid any slogan that includes or refers to the name of any person or any New Jersey incorporated association without the written consent of that person or association. *Id.*

8. The Slogan Statutes prohibitions are unconstitutional content-based speech regulations.

9. The Slogan Statutes prohibitions fail First Amendment strict scrutiny because they serve no compelling government interest and are not narrowly tailored to any such interest.

JURISDICTION

10. This Court has jurisdiction because this action arises out of the First and Fourteenth Amendments. *See* 28 U.S.C. § 1331.

11. This Court has jurisdiction because this action arises under Section 1 of the Civil Rights Act of 1871. *See* 42 U.S.C. §§ 1983, 1988; 28 U.S.C. § 1343(a).

12. This Court has jurisdiction to grant relief under the Declaratory Judgment Act. *See* 28 U.S.C. §§ 2201 and 2202.

VENUE

13. Venue is proper under 28 U.S.C. §§ 1391(b)(1) (“a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located”) and (b)(2) (the “judicial district in which a substantial part of the events or omissions giving rise to the claim occurred”).

PARTIES

14. When this action commenced, Plaintiff Eugene Mazo was a 2020 candidate for the Democratic Party nomination for the U.S. House of Representatives in New Jersey's Tenth Congressional District. Mr. Mazo intends to be a candidate for the 2022 Democratic Party nomination for the U.S. House of Representatives in New Jersey's Tenth Congressional District and a candidate in subsequent primary elections for that office. Mr. Mazo is a resident and citizen of New Jersey.

15. When this action commenced, Plaintiff Lisa McCormick was a 2020 candidate for the Democratic Party nomination for the U.S. House of Representatives in New Jersey's Twelfth Congressional District. Ms. McCormick intends to be a candidate for the 2022 Democratic Party nomination for the U.S. House of Representatives in New Jersey's Twelfth Congressional District and a candidate in subsequent primary elections for that office. Ms. McCormick is a resident and citizen of New Jersey.

16. Defendant Tahesha Way, in her official capacity as New Jersey Secretary of State, is the state's chief election official and certifies candidate petitions for the U.S. House of Representatives. *See* N.J. Stat. §§ 19:13-3; 19:23-21; 52:16A-98(b).

17. Defendant Christopher Durkin, in his official capacity as Essex County Clerk, authors, drafts, prints, structures, formats, furnishes, prepares, stores, and distributes primary election ballots in New Jersey's Tenth Congressional District. *See* N.J. Stat. §§ 19:9-2; 19:14-19; 19:23-17; 19:23-22.4; 19:23-24; 19:23-25.1; 19:49-1; 19:49-2.

18. Defendant E. Junior Maldonado, in his official capacity as Hudson County Clerk, authors, drafts, prints, structures, formats, furnishes, prepares, stores, and distributes primary election ballots in New Jersey's Tenth Congressional District. *Id.*

19. Defendant Joanne Rajoppi, in her official capacity as Union County Clerk, authors, drafts, prints, structures, formats, furnishes, prepares, stores, and distributes primary election ballots in New Jersey's Tenth and Twelfth Congressional Districts. *Id.*

20. Defendant Paula Sollami Covello, in her official capacity as Mercer County Clerk, authors, drafts, prints, structures, formats, furnishes, prepares, stores, and distributes primary election ballots in New Jersey's Twelfth Congressional District. *Id.*

21. Defendant Elaine Flynn, in her official capacity as Middlesex County Clerk, authors, drafts, prints, structures, formats, furnishes, prepares, stores, and distributes primary election ballots in New Jersey's Twelfth Congressional District. *Id.*

22. Defendant Steve Peter, in his official capacity as Somerset County Clerk, authors, drafts, prints, structures, formats, furnishes, prepares, stores, and distributes primary election ballots in New Jersey's Twelfth Congressional District. *Id.*

FACTS

Plaintiffs' Political Activity

23. Plaintiffs were candidates for the 2020 Democratic Party nomination for the U.S. House of Representatives in New Jersey's Tenth and Twelfth Congressional Districts, respectively, when they commenced this action on July 2, 2020.

24. The 2020 New Jersey primary election occurred on July 7.

25. Plaintiffs did not win their respective primary elections.

26. Plaintiffs intend to be candidates for the 2022 Democratic Party nomination for the U.S. House of Representatives in New Jersey's Tenth and Twelfth Congressional Districts, respectively, and candidates in subsequent primary elections for those offices.

27. A primary election candidate is permitted to print a slogan next to his or her name on the ballot that does not exceed six words. *See Slogan Statutes.*

28. A primary election candidate's ballot slogan is a form of political speech.

29. Plaintiffs wanted a slogan printed next to their respective name on the 2020 primary election ballot.

30. New Jersey state officials denied the Plaintiffs' request to use their chosen slogans for the 2020 primary election, citing provisions in the Slogan Statutes.

31. Under the Slogan Statutes, Plaintiffs' requests to use their chosen slogans will be denied again for the 2022 primary election as well as for any primary election Plaintiffs participate in after 2022.

32. Accordingly, this challenge "fit[s] comfortably within the established exception to mootness for disputes capable of repetition, yet evading review." *Fed. Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 462 (2007) (collecting cases). "That exception applies where (1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." *Id.*

33. Indeed, "most election cases[] fit[] squarely within the 'capable of repetition yet evading review' exception," *Merle v. United States*, 351 F.3d 92, 94 (3d Cir. 2003), and "it is reasonable to expect political candidates to seek office again in the future." *Belitskus v. Pizzingrilli*, 343 F.3d 632, 648 n.11 (3d Cir. 2003).

The Statutes at Issue

34. New Jersey Annotated Statute § 19:23-17 states: "Any person indorsed as a candidate for nomination for any public office or party position whose name is to be voted for on the primary

ticket of any political party, may, by indorsement on the petition of nomination in which he is indorsed, request that there be printed opposite his name on the primary ticket a designation, in not more than six words, as named by him in such petition, for the purpose of indicating either any official act or policy to which he is pledged or committed, or to distinguish him as belonging to a particular faction or wing of his political party; provided, however, that no such designation or slogan shall include or refer to the name of any person or any incorporated association of this State unless the written consent of such person or incorporated association of this State has been filed with the petition of nomination of such candidate or group of candidates.”

35. New Jersey Annotated Statute § 19:23-25.1 states: “No designation or slogan shall be printed on any ballot to be used in the conduct of any primary election in connection with any candidate or group of candidates for office, which designation or slogan includes or refers to the name of any other person unless the written consent of such other person has been filed with the petition of nomination of such candidate or group of candidates.”

Plaintiffs’ Desired Slogans

36. On his petition of nomination for the 2020 New Jersey primary election, Plaintiff Eugene Mazo listed three slogans to be printed on the ballot in Essex, Hudson, and Union counties respectively.

37. The three slogans were: “Essex County Democratic Committee, Inc.”

“Hudson County Democratic Organization”

“Regular Democratic Organization of Union County”

38. State officials informed Mr. Mazo that these slogans referred to the names of New Jersey incorporated associations and unless he was authorized by the chairperson of these organizations,

he could not use his desired slogans. Without the authorizations, his nomination petition would be certified as “NO SLOGAN.”

39. Mr. Mazo did not obtain the required authorizations, but, instead, used three different slogans with the authorization of three other New Jersey incorporated associations that he created.

40. Mr. Mazo intends to use his original slogans, as stated in paragraph 37, in the 2022 primary election for the Democratic Party nomination for the U.S. House of Representatives in New Jersey’s Tenth Congressional District and in all subsequent primary elections for that office. He will not obtain the required authorizations under the Slogan Statutes. Consequently, state officials will deny Mr. Mazo the use of his desired slogans again in the 2022 primary election, and in all subsequent primary elections, under the Slogan Statutes.

41. On her petition of nomination for the 2020 New Jersey primary election, Plaintiff Lisa McCormick listed “Not Me. Us.,” as her slogan for the primary election ballot.

42. State officials informed Ms. McCormick that this slogan referred to the name of a New Jersey incorporated association and unless she was authorized by the chairperson of this organization, she could not use her desired slogan. Without the authorization, her nomination petition would be certified as “NO SLOGAN.”

43. Subsequently, Ms. McCormick listed “Bernie Sanders Betrayed the NJ Revolution,” as her slogan for the 2020 primary election ballot.

44. State officials informed Ms. McCormick that without the consent of Bernie Sanders, she could not use her desired slogan. Without the authorization, her nomination petition would be certified as “NO SLOGAN.”

45. Ms. McCormick did not obtain the required authorizations, but, instead, used a different slogan, “Democrats United for Progress,” with the authorization of that organization.

46. Ms. McCormick intends to use one of her original slogans, as stated in paragraphs 41 and 43, in the 2022 primary election for the Democratic Party nomination for the U.S. House of Representatives in New Jersey's Twelfth Congressional District and in all subsequent primary elections for that office. She will not obtain the required authorizations under the Slogan Statutes. Consequently, state officials will deny Ms. McCormick the use of her desired slogan again in the 2022 primary election, and in all subsequent primary elections, under the Slogan Statutes.

CAUSE OF ACTION

**Count One:
Violation of U.S. Constitution Amendments I and XIV**

47. Plaintiffs reallege and incorporate by reference paragraphs 1 through 46.

48. The First Amendment prevents Congress from enacting laws that abridge the freedom of speech. *See* U.S. Const. amend. I.

49. The First Amendment is applicable to the States through the Fourteenth Amendment. *See Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015).

50. Accordingly, States cannot “restrict expression because of its message, its ideas, its subject matter, or its content.” *Id.* (internal quotation marks and citation omitted).

51. “Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed.” *Id.*

52. Even laws that are “facially content neutral, will be considered content-based regulations of speech” if they “cannot be justified without reference to the content of the regulated speech.” *Id.* at 164 (internal quotation marks and citation omitted).

53. Content based laws are subject to strict scrutiny. *Id.*

54. Therefore, content-based laws “are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” *Id.* at 163.

55. “A law that is content based on its face is subject to strict scrutiny regardless of the government’s benign motive, content-neutral justification, or lack of animus toward the ideas contained in the regulated speech.” *Id.* at 165 (internal quotation marks and citation omitted).

56. “[A] speech regulation targeted at specific subject matter is content based even if it does not discriminate among viewpoints within that subject matter,” *id.* at 169, and “is content based if the law applies to particular speech because of the topic discussed or the idea or message expressed.” *Id.* at 171.

57. “The First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office,” which is why “political speech must prevail against laws that would suppress it, whether by design or inadvertence.” *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 339-40 (2010) (internal quotation marks and citations omitted).

58. “The political speech of candidates is at the heart of the First Amendment, and direct restrictions on the content of candidate speech are simply beyond the power of government to impose.” *Republican Party of Minnesota v. White*, 536 U.S. 765, 793 (2002) (Kennedy, J., concurring).

59. The Slogan Statutes restricted Plaintiffs’ freedom of expression in the 2020 primary election because of the content of their respective ballot slogans, thus, causing a First Amendment injury.

60. The Slogan Statutes will restrict Plaintiffs' freedom of expression in the 2022 primary election, and in subsequent primary elections, because of the content of their respective ballot slogans, thus causing additional First Amendment injuries.

61. The Slogan Statutes apply to Plaintiffs' ballot slogans because of the message expressed in the slogans.

62. Defendants cannot justify the Slogan Statutes without reference to the content of the Plaintiffs' regulated ballot slogans.

63. Therefore, the Slogan Statutes are content-based laws and subject to strict scrutiny.

64. It is irrelevant that the Slogan Statutes do not discriminate among viewpoints. *Id.* at 169.

65. The Slogan Statutes "are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Id.* at 163.

66. There is no compelling state interest for the speech restrictions in the Slogan Statutes.

67. The Slogan Statutes are not narrowly tailored.

68. Accordingly, the Slogan Statutes are unconstitutional under the First Amendment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, Eugene Mazo and Lisa McCormick, request judgment be entered in their favor and against Defendants as follows:

A. A declaration that N.J. Stat. §§ 19:23-17 and 19:23-25.1 are content-based regulations of speech that are facially unconstitutional and as-applied to Plaintiffs' desired primary ballot slogans.

B. A declaration that N.J. Stat. §§ 19:23-17 and 19:23-25.1 serve no compelling governmental interest.

- C. A declaration that N.J. Stat. §§ 19:23-17 and 19:23-25.1 are not the least-restrictive means to advance any governmental interest.
- D. A declaration that N.J. Stat. §§ 19:23-17 and 19:23-25.1 are not appropriately tailored to serve any governmental interest.
- E. Such injunctive relief as this Court may direct.
- F. Nominal damages.
- G. Costs and attorneys' fees pursuant to any applicable statute or authority.
- H. Any other relief this Court may grant in its discretion.

Respectfully submitted,

/s/ Walter M. Luers

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Counsel for Plaintiffs

Dated: October 23, 2020

VERIFICATION

COMMONWEALTH OF KENTUCKY)
) ss.
COUNTY OF JEFFERSON)

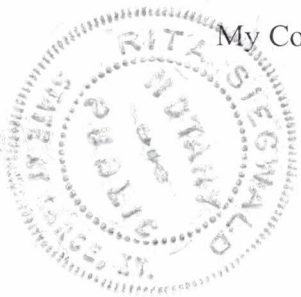
I, Eugene Mazo, being first duly sworn, state under oath that I have read the foregoing AMENDED VERIFIED COMPLAINT, and that the statements contained therein are true and correct to the best of my knowledge, information, and belief.

Eugene D. Mazo

Subscribed and sworn before me this 21st day of October, 2020.

Rita Siegwald
Notary Public

My Commission Expires: 6/24/22



VERIFICATION

STATE OF NEW JERSEY

)
) ss.

COUNTY OF HUNTERDON

)

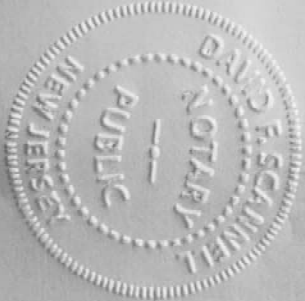
I, Lisa McCormick, being first duly sworn, state under oath that I have read the foregoing AMENDED VERIFIED COMPLAINT, and that the statements contained therein are true and correct to the best of my knowledge, information, and belief.

Lisa McCormick

Subscribed and sworn before me this 23rd day of October, 2020.

[Signature]
Notary Public

My Commission Expires: 5/17/24



DAVID F. SCANNELL
NOTARY PUBLIC OF NEW JERSEY
Commission # 50105015
My Commission Expires 5/17/2024

CERTIFICATE OF SERVICE

On October 23, 2020, I electronically filed the foregoing with the Clerk of the Court via the CM/ECF system, which will serve the document on counsel for all parties.

/s/ Walter M. Luers
Walter M. Luers

COURTESY COPY CERTIFICATE

On October 23, 2020, a courtesy copy of the foregoing was sent by regular U.S. mail in compliance with the Local Rules and the preferences of this Court to the following address:

Hon. Susan D. Wigenton
U.S. District Judge
Martin Luther King Bldg. &
U.S. Courthouse
50 Walnut St.
Newark, NJ 07101

/s/ Walter M. Luers
Walter M. Luers