



May 26, 2022

Via CM/ECF System

The Hon. Patricia S. Dodszeit
Clerk
U.S. Court of Appeals for the Third Circuit
21400 U.S. Courthouse
601 Market St.
Philadelphia, PA 19106-1790

RE: *Mazo, et al v. New Jersey Secretary of State, et al.*
Case Number: 21-2630
District Court Case Number: 3:20-cv-08174

Dear Ms. Dodszeit:

On behalf of the Plaintiffs-Appellants in the above captioned matter, I respectfully submit the following supplemental letter brief as requested in your May 5, 2022, letter.

1. *Whether New Jersey's ballot slogan regulations are content neutral under the Supreme Court's decision in City of Austin v. Reagan National Advertising of Austin, LLC, et al., 596 U.S. __ (2022) (slip op.), considering:*
 - a. *Whether the consent requirement "single[s] out any topic or subject matter for differential treatment." Id. at 8.*

New Jersey's ballot slogan regulations are not content neutral under the Supreme Court's decision in *Reagan*, because the laws' consent requirements "single out [] topic[s] or subject matter for differential treatment." *Id.* at 8. The regulations require officials to treat slogans differently based on their topics or subject matter. The content of a slogan that contains the name of any person or New Jersey corporation is regulated, but the content of a slogan that omits these topics or subject matter is not regulated. *See* N.J. Stat. §§ 19:23-17, 19:23-25.1. Accordingly, the laws are content-based regulations of political speech that "single out" slogans that mention any person or New Jersey corporation. *Reagan*, slip op. at 8.

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Indeed, the regulations do not merely discriminate based on content, they also discriminate on the basis of viewpoint. Slogans naming people or New Jersey corporations require the named parties' approval—a viewpoint, which in turn, will tend to reflect the given slogan's viewpoint. Slogans that speak well of the named person or corporation, or which at least do not offend those parties, will gain their approval. Slogans communicating critical views of those parties are unlikely to gain approval. Thus, these slogans are not only singled out for “differential treatment” based on their subject matter, *id.*, in that mentioning a person or New Jersey corporation triggers the approval requirement, but they are also treated differently based on their viewpoints—viewpoints approved by the subjects get printed in the ballot, others do not.

New Jersey's ballot slogan laws “single out any topic or subject matter” concerning individuals or New Jersey corporations “for differential treatment,” *id.*, and “can stand only if they survive strict scrutiny.” *Reed v. Town of Gilbert*, 576 U.S. 155, 171 (2015).

b. Whether the consent requirement “requires an examination of speech only in service” of drawing neutral distinctions. Id. at 6.

The consent requirement is not a content neutral law that “requires an examination of speech only in service” of drawing neutral distinctions such as time, place, and manner. *Reagan*, slip op. at 6.

In *Reagan*, the law was “a location-based and content-agnostic [regulation that did] not, on its face, ‘singl[e] out specific subject matter for differential treatment.’” *Id.* at 13 (quoting *Reed*, 576 U.S. at 169). The law merely asked whether the substantive speech on the billboard discussed matters occurring at the sign's location or not—a content neutral distinction. *Id.* at 8. Although “enforcing the City's challenged sign code provisions requires reading a billboard to determine whether it directs readers to the property on which it stands or to some other, offsite location,” the ordinance was nonetheless content neutral, because “[t]he message on the sign matters *only* to the extent that it informs the sign's relative location. The on-/off-premises distinction is therefore similar to ordinary time, place, or manner restrictions.” *Id.* at 8 (emphasis added).

In contrast, New Jersey's laws require an examination of speech to discern whether it substantively mentions people or New Jersey corporations, thus triggering a regulation as to viewpoint—allowing viewpoints approved by the speech's subjects, disallowing viewpoints unapproved by the speech's subjects. These distinctions are decidedly not neutral.

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2. *Whether New Jersey's ballot slogan regulations are analogous to any "ordinary time, place, or manner restrictions."* *Id.* at 8. Cf. *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989); *Frisby v. Schultz*, 487 U.S. 474, 482 (1988).

New Jersey's ballot slogan regulations are not analogous to any "ordinary time, place, or manner restrictions." *Reagan*, slip op. at 8. Valid time, place, and manner regulations have "nothing to do with [the] content" of the message expressed. *Ward v. Rock Against Racism*, 491 U.S. 781, 792 (1989) (internal quotation marks omitted). They include content-neutral regulations of when speech may occur, see *Bowman v. White*, 444 F.3d 967, 982 (8th Cir. 2006) (public universities may require a small number days of advance notice to prepare before permitting a speaking engagement); *Sonnier v. Crain*, 613 F.3d 436, 445 (5th Cir. 2010) (same); *Bloedorn v. Grube*, 631 F.3d 1218, 1240 (11th Cir. 2011) (same); where speech may occur, see *Frisby v. Schultz*, 487 U. S. 474, 477 (1988) (cities may prohibit picketing outside residences); *Reagan*, slip op. at 13 n.4 (Thomas, J., dissenting) ("*Frisby* upheld an ordinance that regulated only *where* picketing may take place and not *what* message the picketers could communicate."); or how speech is expressed, *Rock Against Racism*, 491 U.S. at 792 (cities may regulate noise levels at concert venues).

The challenged ballot slogan regulations do not dictate when, where, or how the slogans appear. They apply to all slogans timely submitted for inclusion on the ballot, and they determine only whether the slogans are, or are not, printed on the ballot, based on the slogans' content. Different regulations determine all aspects of the slogans' time, place, and manner—when, where, and how slogan-containing ballots are printed and distributed; the appearance of the slogans' text, such as font, size, and color; and the slogans' location within the ballot. In contrast, the regulations at issue are only triggered if a candidate's slogan contains certain content, *i.e.*, the name of a person or a New Jersey corporation. Unlike the regulation of the where speech could occur in *Frisby* or how loud the speech could be in *Rock Against Racism*, New Jersey's laws regulate the words candidates use in their slogans. Consequently, New Jersey's ballot slogan regulations have everything "to do with content." *Id.*

No traditional time, place, or manner regulation would allow or forbid the publication of speech based on whether a person or corporation mentioned in the speech agrees to the publication.

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Respectfully,

/s/ Ryan Morrison
Ryan Morrison
Counsel for Plaintiffs

The body of this letter contains 1,011 words as measured by Microsoft Word.

cc: all counsel (via CM/ECF)