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Attorneys for Plaintiff

: SUPERIOR COURT OF NEW JERSEY

: LAW DIVISION : BERGEN COUNTY

ROBERT J. KUGLER, CANDIDATE FOR :

BERGEN COUNTY SHERIFF, :

Plaintiff, :

Civil Action

: DOCKET NO.

JOHN S. HOGAN, BERGEN COUNTY :

CLERK, :

Defendant.

VERIFIED COMPLAINT

IN LIEU OF PREROGATIVE WRIT

Plaintiff, Robert J. Kugler, Candidate for Sheriff in the County of Bergen, State of New Jersey, alleges as follows:

1. Plaintiff is the current Chief of Police in the Township of Saddle Brook, Bergen County, New Jersey.
2. Plaintiff had previously sought the nomination for the position of Bergen County Sheriff from the Bergen County Democratic Committee.
3. The position became vacant following the resignation of Bergen County Sheriff, Michael Saudino who was accused of making racist and other inappropriate remarks which became public by way of several news media sources.
4. On October 2, 2018, he Bergen County Democratic Committee hastily convened

a meeting for the purpose of nominating a candidate for the open Sheriff's position.

5. Plaintiff sought the nomination at the meeting, but was denied admittance.

6. Chairman, Louis Stellato called the meeting to order at 5:00pm on October 2, 2018 and immediately entertained a motion to nominate Anthony Cureton for the position.

7. Chairman Stellato then asked if there was a motion for another candidate and after waiting only seconds, closed the nomination process. Ultimately Mr. Cureton secured the Committee's nomination.

8. It was apparent to Plaintiff that Mr. Cureton was the Committee's inside choice and Chairman Stellato made sure that his man won.

9. Having been denied the opportunity for nomination by the Bergen County Democratic Committee, Plaintiff filed a Nomination by Petition.

10. Expressing his dissatisfaction with the Committee's nomination process, Plaintiff's petition contained with the "slogan" portion of the petition "Sheriff for Everyone".

11. The prior incumbent Sheriff had been the nominee of the Bergen County Democratic Party for the position of Bergen County Sheriff in the 2018 election.

12. It has been widely reported that the handling of Sheriff Saudino's resignation was in violation with the mandate of N.J.S.A. 40a:9-24, in that it was not immediately filed with the Governor and the Secretary of State.

13. N.J.S.A. 40a:9-24 requires a willful resignation be submitted in writing to the Governor. This did not appear to occur, thus calling the authority for the current election into question. Sheriff Saudino's resignation occurred within 37 days of the general election in which case, the Governor is required to appoint, with he advice and consent of the Senate, an interim Sheriff rather than call a special election such as the one that is the subject of this action.

N.J.S.A. 40a:9-102.

14. Defendant John S. Hogan is the Bergen County Clerk.

15. Pursuant to N.J.S.A. 19:14-1 et seq., the Bergen County Clerk is responsible for preparing the ballot for the November 6, 2018 General Election.

16. Pursuant to N.J.S.A. 19:14-21, the Bergen County Clerk is in addition, responsible for preparing the sample ballot for the November 6, 2018 General Election.

17. N.J.S.A. 19:14-22, requires that the General Election sample ballot shall be as nearly as possible a facsimile of the official General Election ballot to be voted on at such election.

18. Prior to the filing of replacement candidates, 40,000 ballots had already mailed to Bergen residents that did not include the office of Sheriff, well over 1,000 have been returned. (NJ Globe September 26, 2018).

19. A supplemental ballot was mailed to vote by mail ballot recipients that included only the candidates to fill the vacancy in the office of Sheriff.

20. There is a confusing and unnecessary gap in the supplemental ballot which, on the original vote by mail ballot included only the offices of a Libertarian for Senator and Congress. However, there is no Libertarian candidate for Sheriff and the column listed "nomination by petition is blank.

21. The initial ballot contained eight columns, including Republican, Democrat, and six (6) for personal choice. The supplemental ballot contained Democrat, Republican and 4 other columns, however only three of those columns contained the name of a candidate, once separated the Democrat and Republican candidates. Where the first ballot had at least a U.S. Senate candidate in each of the columns, the supplemental ballots had no candidate at all in the

third column - it was blank. The Plaintiff's free speech right to associate and the voters right to know that the Plaintiffs share the same platform should take priority as the legislative intent of the statute to ensure an orderly and timely election process will be maintained.

22. Pursuant to N.J.S.A. 19:14-12 a drawing for position on the ballot is a procedure that by statute and history is open to the public. The drawing is required to be held at 3 o'clock in the afternoon on the 85th day prior to the general election. Because a vacancy occurred subsequently, the Clerk had an obligation to announce a public drawing for ballot order of the Sheriff's ballot. This failure to act has created irreparable harm for the Plaintiff, unfairly disadvantaging him, and not allowing the public viewing of the drawing established to prevent fraud and promote transparency and confidence in the election process.

23. Defendant's illegal practice in this General Election 2018 ballot regarding Sheriff is inconsistent with their correct procedure in the General Election 2018 regarding the NJ Legislature where per N.J.S.A. 19:14-8 they not only printed the title of each office to be filled at the general election in the proper order as proscribed: electors of President and Vice-President of the United States; member of the United States Senate; Governor, member of the House of Representatives, member of the State Senate, members of the General Assembly, county executive, sheriff, county clerk, surrogate, members of the board of chosen freeholders, mayor and members of municipal governing bodies. The Bergen towns that are involved in the 36 or 38th legislative districts have those offices appropriately listed with the candidates running in the special election to fill those vacancies. However, those Bergen towns that do not have legislative races do not have any blanks or gaps between the office of House of Representatives and the candidates for county executive. By contrast, the Sheriff candidates are prejudiced by ministerial action in several important and fatal flaws. Most significant the Sheriffs office is not only out of

order, it was sent in a separate mailing, on a separate piece of paper several days later that the original ballot with the candidates for office. These flaws alone are enough to fatally prejudice this election against the Plaintiff. However, even more egregious, there is an unnecessary blank column / box (Column 3) between the Democrat (Column 1), Republican (Column 2) and the three "Nomination by Petition" candidates – Robert P. Tormo "Tormo for Sheriff" (Column 4), Plaintiff, Robert J. Kugler, "Sheriff for Everyone" (Column 5) and James M. Ahearn "Ending Usual Politics" (Column 6). The only difference between the (correct) missing gaps on the ballot for the legislative races, is they serve to help the Democrat ticket, by making down-ballot candidate more open and accessible for Democrats who are running on the party endorsed column 1. Whereas, the extra column / box that was included in violation of N.J.S.A. 19:14-8 helps the Column A Democrats by keeping them further in space, especially from Plaintiff Robert Kugler who is a well known Democrat law enforcement officer, thus creating confusion and causing irreparable harm to his candidacy. (See Ballots - Exhibits A and B).

WHEREFORE, Plaintiff, Robert J. Kugler, Candidate for the position of Bergen County Sheriff, demands judgment against Defendant, John S. Hogan in his capacity as Bergen County Clerk, as follows:

- A. Declaring election invalid due to illegal resignation of Sheriff. Per N.J.S.A. 19:3-29, vacancy occurred within 37 days and therefore the Governor must fill the vacancy with the advice and consent of the Senate by appointment of a member of the same political party as that of the previous incumbent, until a successor is elected for a three year term.
- B. Declaring election invalid due to confusion and bias created by an unnecessary gap in the ballot that unfairly and illegally disadvantages the "Nomination by Petition" candidates including the Plaintiff in violation of N.J.S.A. 19:14-8 which requires the order and process in which the candidates are to be arranged in party columns and personal choice column and in violation of N.J.S.A. 19:14-10 which requires the order and process in which the candidates are to be arranged for nomination by petition.

- C. Declaring election invalid due to the failure to give notice regarding a drawing for ballot position for the supplemental ballot due to the vacancy for Sheriff as proscribed in N.J.S.A. 19:14-12.

CERTIFICATION PURSUANT TO R. 4:5-1

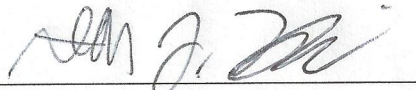
I certify that the matter in controversy in this action is not the subject of any other action pending in any court or of a pending arbitration proceeding and that to the best of my knowledge, no other action or arbitration proceeding is contemplated.

I further certify that the foregoing statements made by me are true to the best of my knowledge and belief. I am aware that if any of the foregoing statements made by me are willfully false that I am subject to punishment.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R 4:25-4 Plaintiff hereby designates Alan J. Zakin trial counsel for purposes in this matter.

AZZOLINI & BENEDETTI, LLC
Attorney for Plaintiff, Robert J. Kugler,
Candidate for the Position of
Bergen County Sheriff

By: 
Alan J. Zakin

DATED: October 26, 2018

EXHIBIT A

John S. Hogan
 JOHN S. HOGAN
 Secretario del Condado de Bergen/버겐 카운티 클럭

OFFICIAL MAIL-IN BALLOT GENERAL ELECTION / VOTO OFICIAL POR CORREO ELECCION GENERAL /
 Bergen County, New Jersey - Tuesday, November 6, 2018 / Condado de Bergen, Nueva Jersey - Martes, 6 de noviembre de 2018 / 뉴저지, 버겐 카운티
Borough of Ho-Ho-Kus
 5th Congressional District / 5° Distrito del Congreso / 연방하원 5선거구

Party / Partido	Column / Columna	Candidate / Candidato	Ballot Mark / Marca de Voto
Democratic / 민주당	COLUMN 1 / COLUMNNA 1/컬럼 1	ROBERT MENENDEZ	<input type="radio"/>
	COLUMN 2 / COLUMNNA 2/컬럼 2	BOB HUGGIN	<input type="radio"/>
Republican / 공화당	COLUMN 3 / COLUMNNA 3/컬럼 3	JOSH GOTTHEIMER	<input type="radio"/>
	COLUMN 4 / COLUMNNA 4/컬럼 4	JOHN J. MCCANN JR.	<input type="radio"/>
Nomination by Petition / 정원에 의한 지명	COLUMN 5 / COLUMNNA 5/컬럼 5	JAMES J. TEDESCO III	<input type="radio"/>
	COLUMN 6 / COLUMNNA 6/컬럼 6	NORMAN SCHMELZ	<input type="radio"/>
Nomination by Petition / 정원에 의한 지명	COLUMN 7 / COLUMNNA 7/컬럼 7	STEVEN A. TANELLI	<input type="radio"/>
	COLUMN 8 / COLUMNNA 8/컬럼 8	HECTOR OLMO	<input type="radio"/>
Nomination by Petition / 정원에 의한 지명	COLUMN 9 / COLUMNNA 9/컬럼 9	TRACY SILNA ZUR	<input type="radio"/>
	COLUMN 10 / COLUMNNA 10/컬럼 10	ERIC KULMALA	<input type="radio"/>
Nomination by Petition / 정원에 의한 지명	COLUMN 11 / COLUMNNA 11/컬럼 11	NO NOMINATION MADE	<input type="radio"/>
	COLUMN 12 / COLUMNNA 12/컬럼 12	DOUGLAS TROAST	<input type="radio"/>
Nomination by Petition / 정원에 의한 지명	COLUMN 13 / COLUMNNA 13/컬럼 13	NO NOMINATION MADE	<input type="radio"/>
	COLUMN 14 / COLUMNNA 14/컬럼 14	DANE M. POLICASTRO	<input type="radio"/>

EXHIBIT B

John S. Hogan
JOHN S. HOGAN
 Bergen County Clerk
 Secretario del Condado de Bergen
 버겐 카운티 클럭

OFFICIAL MAIL-IN BALLOT GENERAL ELECTION
VOTO OFICIAL POR CORREO ELECCIÓN GENERAL / 공식 분선거 우편 투표용지
 Condado de Bergen, Nueva Jersey - Tuesday, November 6, 2018
 Bergen County, New Jersey - Tuesday, November 6, 2018
 Condado de Bergen, Nueva Jersey - Martes, 6 de noviembre de 2018 / 뉴저지, 버겐 카운티 2018년 11월 6일 화요일

9th Congressional District / 9^o Distrito del Congreso / 연방하원 9선거구

GENERAL ELECTION ELECCIÓN GENERAL 본선거	Democratic 민주당 COLUMN 1/COLUMNA 1/컬럼 1	Republican 공화당 COLUMN 2/COLUMNA 2/컬럼 2	Nomination by Petition 정원에 의한 지명 COLUMN 3/COLUMNA 3/컬럼 3	Nomination by Petition 정원에 의한 지명 COLUMN 4/COLUMNA 4/컬럼 4	Nomination by Petition 정원에 의한 지명 COLUMN 5/COLUMNA 5/컬럼 5	Nomination by Petition 정원에 의한 지명 COLUMN 6/COLUMNA 6/컬럼 6	PERSONAL CHOICE 개인선택
For Sheriff Para Alcaide 세린포	ANTHONY CURETON	JOHN M. DELORENZO III	ROBERT P. TORMO	ROBERT J. KUGLER	JAMES M. AHEARN		<input type="checkbox"/>
<small>NOTE: BEFORE VOTING, PLEASE PRINT YOUR NAME IN THE OVAL</small>							<small>Write in, escriba el nombre / 제 22기</small>

INSTRUCTIONS TO VOTER: To vote for any person whose name is printed on this ballot use only black pen and fill in the oval to the right of the candidate's name, not in excess of the number to be elected to the office.
 To vote for any person whose name is not printed on this ballot, write the name in the personal choice column, and fill in that oval to the right of name. Do not vote for more candidates than are to be elected.

INSTRUCCIONES PARA EL VOTANTE: Para votar por alguna persona cuyo nombre está impreso en esta tarjeta de votación, use solamente lapicero negro y llene el óvalo a la derecha del nombre del candidato, sin sobrepasar el número que será elegido para la oficina.
 Para votar por cualquier persona cuyo nombre no está impreso en esta tarjeta de votación, escriba el nombre en la columna de opción personal y llene el óvalo a la izquierda del nombre. No vote por más candidatos de los que serán elegidos.

유권자를 위한 설명: 이 투표용지에 이름이 인쇄된 후보자에게 투표하려면, 선출할 인원수가 넘지 않도록 검정색 펜만을 사용하여 원하는 후보자 이름 오른쪽에 있는 타원을 채워 넣으십시오. 투표용지에 이름이 인쇄되지 않은 사람에게 투표하려면 개인 선택 컬럼에 그 사람의 이름을 적고 이름 오른쪽에 있는 타원을 채워 넣으십시오. 선출할 인원수보다 많은 후보자를 선택하지 마십시오.

IT IS AGAINST THE LAW FOR ANYONE EXCEPT YOU THE VOTER TO OPEN MARK INSPECT OR SEAL THIS BALLOT. However, a family member may assist you in doing so. If you are an incapacitated realtor voter, a person other than a family member may also assist you in doing so.

ES CONTRARIO A LA LEY QUE CUALQUIER PERSONA CON EXCEPCION DE USTED EL VOTANTE ABRA, MARQUE, INSPECCIONE O SELLE ESTA TARJETA DE VOTACION. Sin embargo, un miembro de su familia puede prestar asistencia para hacerlo. Si usted es un votante incapacitado, una persona diferente a un miembro de su familia tambien puede prestar asistencia para hacerlo.

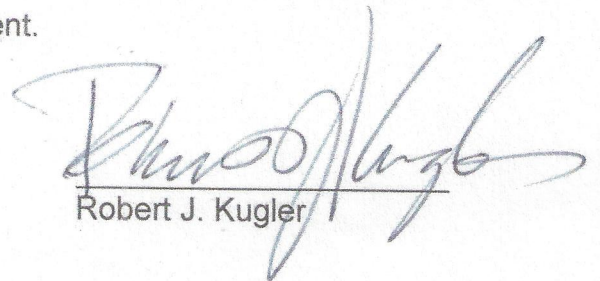
유권자 본인 이외 다른 사람이 이 투표용지를 개봉, 기밀, 검사, 확인하는 행위는 법에 위배됩니다. 하지만 가족은 이 투표 과정들 도울 수 있습니다. 금치산자인 유권자의 경우 가족이 아닌 다른 사람도 투표 과정을 도울 수 있습니다.



VERIFICATION

I, Robert J. Kugler, hereby certify as follows:

1. I am the Plaintiff in the foregoing matter.
2. I have read the contents of the Petition and incorporate same by reference and state that the contents therein are true to the best of my knowledge, information and belief. I am aware that if any of the foregoing statements made by me are willfully false I am subject to punishment.



Robert J. Kugler

Dated: October 26, 2018