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**LEAGUE OF WOMEN VOTERS OF
NEW JERSEY and AMERICAN CIVIL
LIBERTIES UNION OF NEW JERSEY,**

Plaintiffs,

v.

**SECRETARY OF STATE, Tahesha Way,
in her official capacity, and DIRECTOR
OF THE DIVISION OF ELECTIONS,
Robert Giles, in his official capacity,**

Defendants.

) SUPERIOR COURT OF NEW JERSEY
)
) MERCER COUNTY
)
) LAW DIVISION
)
)
) Docket No.
)
)
) CIVIL ACTION
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)
) COMPLAINT
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)

Plaintiffs, through their undersigned attorneys, state their Complaint as follows:

NATURE OF ACTION

1. This action is brought by the League of Women Voters of New Jersey and the American Civil Liberties Union of New Jersey to protect one of the most fundamental civil rights: the right to cast a ballot and participate in democracy.

2. New Jersey law requires that polling locations be open between the hours of 6:00 A.M. and 8:00 P.M. Standard Time. Due to widespread technological issues reported throughout New Jersey, voters throughout New Jersey have been unable to cast their ballot at their local polling locations during these scheduled hours. The late opening of numerous polling locations spread across the state and ongoing operational issues throughout the day has resulted in dozens of voters being turned away, asked to return later, or leaving because of the long waits, resulting in their inability to cast a ballot. This necessitates the extension of voting hours such that voters, including Plaintiffs' members, who were unable to wait for operational voting machines during scheduled hours can vote after 8:00 p.m.

VENUE

3. Venue is proper in Mercer County pursuant to *R. 4:3-2(a)*. While Defendants' actions and omissions harm the organizational Plaintiffs and their members throughout and even beyond New Jersey, the ultimate decisions leading to their disenfranchisement are made by Defendants in their capacities within the Department of State, located in Mercer County.

PARTIES

4. The League of Women Voters of New Jersey ("LWVNJ") is a membership organization dedicated to promoting civic engagement and protecting democracy through advocacy and voter education, assistance, and engagement. Founded in 1920, LWVNJ has approximately 1600 members across New Jersey, many or most of whom are eligible to vote. LWVNJ has its offices in Trenton, New Jersey. It is the state affiliate of the League of Women Voters, which was officially founded in Chicago in 1920, just six months before the Nineteenth Amendment was ratified and women won the vote. Formed by the suffragists of the National American Woman Suffrage Association, the League began as a "mighty political experiment"

designed to help 20 million women carry out their new responsibilities as voters. LWVNJ brings this action in its organizational capacity and on behalf of its individual members.

5. The American Civil Liberties Union of New Jersey (“ACLU-NJ”) is a private, non-profit, non-partisan membership organization dedicated to the principles of individual liberty embodied in the Constitution. Founded in 1960, the ACLU-NJ has approximately 35,000 members and supporters in New Jersey, many or most of whom are eligible to vote. The ACLU-NJ has its offices in Newark, New Jersey. It is the state affiliate of the American Civil Liberties Union, which was founded in 1920 for identical purposes, and is composed of more than 1,500,000 members and supporters nationwide. The ACLU-NJ brings this action in its organizational capacity and on behalf of its individual members.

6. Defendant Tahesha Way is the Secretary of State of New Jersey. She is New Jersey’s top election official, overseeing the Division of Elections. Secretary Way is sued in her official capacity.

7. Defendant Robert Giles is Director of the Division of Elections within the New Jersey Department of State. He is responsible for managing the state voter registration program including the online 2021 NJ Voter Information Portal and assisting county election officials, county clerks and the public on matters of election administration. Director Giles is sued in his official capacity.

FACTUAL ALLEGATIONS

8. As of 3:00 p.m. on November 2nd, 2021, voters throughout the state, including members of LWVNJ and ACLU-NJ, have been unable to cast a ballot in the New Jersey statewide election because of widespread technical and operational issues, resulting in the late opening of polling locations across the state and in inoperable machines throughout the day.

These operational failures have resulted in Plaintiffs' members being turned away from their respective polling places despite their good faith efforts to cast a ballot at a time when statute requires the polls to be open and operational.

9. This year, the state is using new electronic poll books or “e-poll books”—electronic tablet-like devices—to conduct the election. The devices track each polling locations’ list of eligible voters. These devices have never before been used in the state.

10. Widespread operational issues have prevented the “e-poll books” from connecting to the Internet, causing delays preventing polling places from opening on schedule at 6:00 a.m. *See* Neil Vigdor & Tracey Tully, *Poll Workers in New Jersey Struggle To Connect To the Internet, Causing Delays*, N.Y. Times (Nov. 2, 2021), <https://www.nytimes.com/2021/11/02/us/elections/nj-poll-workers-wifi-problems.html>.

11. The delays caused by the operational and technical issues have caused confusion among both polling workers charged with the efficient administration of elections and the public attempting to exercise their right to vote. In response to the technical issues and the delays, voters have left the polls, one after being told to “go home” without casting a ballot.

12. Plaintiffs received multiple complaints from Middlesex County, particularly in Piscataway, New Jersey. According to a volunteer who visited several locations after receiving multiple reports about technology issues, voters and poll workers at 3 polling places experienced issues with their electronic poll books. She was told that each of these locations experienced issues once the electronic poll books connected with the “wi-fi” or “hotspot cellular device”, which resulted in voters having to wait while poll workers tried to resolve the issue. She was also able to confirm that at least 4 of the 5 of the locations had issues until at least 9 a.m., 3 hours past the opening of the polls in New Jersey. According to information she received directly, a poll

worker saw many voters leave the line at the Fellowship Farms polling location. Some of these voters explained that they were shift workers and would be unable to return before 8 p.m. She also spoke with a woman at the Shore School polling location who saw 10 to 12 voters who had to leave before 9:30 a.m. as a direct result of the delays in voting.

13. Based on reports, the problem is not localized to any one particular county or city—voters have not been able to cast ballots despite their good-faith efforts across the entire state. Elections officials themselves have highlighted the problem as a statewide issue. *See* Dan Alexander, *NJ Polling Places Plagued by Internet Problems, Long Lines on Election Day*, NJ101.5 (Nov. 2, 2021), <https://nj1015.com/nj-polling-places-plagued-by-internet-problems-long-lines-on-election-day/> (noting statements by officials in Monmouth and Middlesex counties caused by state-provided equipment). For example:

a. Middlesex County voters in towns beyond Piscataway experienced technological issues with electronic poll books, including South Plainfield, Old Bridge, South River, Monroe and Edison. In South Plainfield, 13 of 15 polling districts were inoperable according to a borough official. *See* Susan Loyer, *Problems with Voting Machines Reported Throughout Middlesex County*, MyCentralJersey (Nov. 2, 2021), <https://www.mycentraljersey.com/story/news/politics/elections/2021/11/02/nj-election-voting-machine-problems-middlesex-county/6247303001/>.

b. In Hudson County, certain polling places did not open for up to 3 hours after the appointed time of 6:00 a.m. *See id.*; James Solomon (@SolomonforJC), Twitter (Nov. 2, 2021, 1:20 PM); <https://twitter.com/solomonforjc/status/1455585512807444490?s=21>.

c. In a Mercer County precinct (West Windsor), polls still had not been able to accept voters as of 10:00 a.m., four hours after they were scheduled to open. Voters were urged to “consider going home.” *See* Carlton Haelig (@carltonhaelig), Twitter (Nov. 2. 2021, 10:11 AM),

<https://twitter.com/CarltonHaelig/status/1455537981239054340>.

d. Some polling locations have resorted to providing emergency paper ballots to allow voters to cast their vote. However, voters in these locations, including in Cumberland County, have also reported that the locations have run out of paper ballots, leaving voters with no means of casting their vote. Mike Roman (@mikeroman), Twitter (Nov. 2, 2021, 11:59 AM), <https://twitter.com/mikeroman/status/1455565232278024201>.

e. In Bernardsville, voters were turned away after new machines failed. *See A Light Turnout to Start and Some Problems with Machines, as N.J. Returns To In-person Voting*, NJ.com (Nov. 2, 2021), <https://www.nj.com/politics/2021/11/a-light-turnout-to-start-and-some-problems-with-machines-as-nj-returns-to-in-person-voting.html>.

14. Beyond the well-reported issues, the Lawyers Committee's nonpartisan Election Protection coalition advised of several reports received through its “Command Center.” Beginning early this morning, the Command Center became aware of several reports of polling places throughout the State of New Jersey that did not open at 6 a.m., as is required by law. We received such reports from Cumberland, Hudson, and Mercer Counties.

a. A voter in Jersey City tried to vote at the 396 Manila location at 6 a.m., but the polling place did not open until almost 7 a.m. The voter reported that a line was forming and a few people had left the line. She also reported that, once inside the polling

location, some of the machines were not set up and poll workers told people not to touch them. Then, when the machines were finally working, the iPads being used to check in voters did not initially identify the voter despite the voter being in the paper books. The voter was eventually able to vote, but reported that the polling place was “chaotic.”

b. In addition, two voters reported that the polling location at 350 Warren Street in Jersey City was not open on time at 6 a.m., and remained unopened as of 7 a.m. The Command Center was able to confirm that the location was open as of 10:30 a.m. Similarly, in Cumberland County, a voter reported that the polling location at 1676 NW Avenue in Vineland was not open as of 6:15 a.m. and that pollworkers told her they were “not ready to take her vote.” Also in Cumberland County, a voter reported that the polling place American Legion Nabb-Leslie Post 82, located at 220 Buck Street, Millville, was not open at 6:15 a.m., with poll workers reporting that the computers were not set up and they did not know how to set them up. The poll workers told voters that everyone had to vote via provisional ballots. By 8 a.m., voting machines were up and ready to be used; however, the voter heard poll workers say that the tall machine was not working. In Mercer County, a voter reported that the polling location at 400 Chambers Street in Trenton was not open as of 7 a.m. The Command Center was able to confirm that the location was open as of 9:48 a.m.

c. Other locations in Middlesex County have also experienced serious issues. At the Dwight D. Eisenhower Elementary School polling location, voters’ IDs were being checked electronically with the check-in tablets, which took three to four minutes per person. At Port Reading Elementary School, ballot scanning machines were reportedly down as of approximately 9:00 a.m., and poll workers had no emergency ballots on hand

to provide to voters. The Command Center has been unable to verify that scanning machines are operational at the Port Reading location as of 4:00 p.m. At approximately 1:00 p.m. in Washington School in Edison, poll workers reportedly told voters that polling place “computers weren’t working” and that the issue was “statewide.” Poll workers told voters to return to the polling place later rather than offering them emergency ballots. The Command Center has been unable to verify whether emergency ballots were available as of 4:00 p.m.

d. In Cumberland County, a voter reported long lines at Rossie Elementary School, 2572 Palermo Ave, Vineland, NJ 08361 caused by one of the two voting machines at the site malfunctioning. The voter waited more than one hour to vote. By the time she voted, both machines were down and the poll workers were handing out paper ballots, but by the time she left the polling place, the site had run out of paper ballots, and there were 20-30 voters in line waiting for the ballots to arrive. The caller witnessed at least 20 voters leaving the polling location in frustration while she waited to vote.

e. Similar issues were reported in Monmouth County. Election Protection volunteers were notified about a Tweet from approximately 6:30 a.m. stating that voting machines at a polling location in Bradley Beach were “inoperable” as of 6:00 a.m. The Command Center was able to confirm that as of approximately 9:15 a.m., voting machines in Bradley Beach were operating. In addition, a voter reported that check-in tablets at the polling location at 424 Lakewood Road in Neptune were malfunctioning, and that voters were not being admitted to the polling place or offered emergency ballots. Voters further reported that at the same location, poll workers complained that they had

not been appropriately trained, and a voter said that they “did not know what to do to accept voters”; poll workers reportedly gave voters provisional ballots rather than emergency ballots.

f. At or about 6:41 am, a voter attempting to vote at the Star Cross Social Hall polling place located at 4231 Tuckahoe Road in Williamstown, New Jersey (Gloucester County) reported that the voter was unable to vote due to a polling place computer malfunction. The voter further reported that poll workers were unable to print out provisional ballots due to the computers not working. At or about 7:00 am, a Command Center volunteer called the county Board of Elections to report the problem, and was advised that the Board was aware of and working on the issue. At or about 9:04 am, a Command Center volunteer called the Board again to ask whether the polling place was up and running. The representative said the Board would respond later. At or about 3:00 pm, a Command Center volunteer spoke to a Board representative named Judy who reported that the polling place was now functional.

g. At Columbia High School, 17 Parker Avenue, Maplewood, NJ 07040, in Essex County, a voter reported that all of the “machines” were down and that voters were being given provisional ballots. Poll workers indicated that they had no idea who to contact to get the machines fixed.

h. Significant issues were also reported in Hudson County, where polling locations were late to open. In one instance, a voter reported that a challenger was not appropriately identified, and that the challenger was acting as a poll worker checking voters in. Voters also reported multiple issues with voting machines; the Hudson County Board of Elections directed the Command Center to contact a specific individual

identified as “Pablo,” who is apparently in charge of servicing voting machines. Pablo informed the Command Center on multiple occasions that he would not take any action unless a member of the Board of Elections called him directly.

i. Most recently, in Somerset County, a volunteer at the Command Center spoke to an election official named Sandy who indicated county-wide issues regarding broken voting machines. Additionally, a voter reported that they went to their polling place, East End Middle School, North Plainfield, NJ 07062, at 6:30 a.m., 8:00 a.m. and 11:00 a.m., and each time the voting machines were broken. At around 2:30 p.m. the Command Center confirmed that the machines at East End Middle School were operational. At around 1:45 p.m., a voter reported that two of the three machines at 122 Elizabeth St, South Bound Brook, NJ 08880 were not operational. As of around 4:00 p.m., the Command Center was not able to confirm whether the machines were working properly.

15. A spokesperson for the Secretary of State has urged voters who failed to cast their ballot due to acknowledged issues to “return to their polling location and cast a ballot.” But because they have been prevented from voting during polling hours, despite their good faith efforts, hundreds of voters are left without another opportunity to cast a ballot before polls are scheduled to close at 8 p.m. Such voters would require extra time to cast their ballots due to family or professional obligations.

16. Because these problems are so widespread, it would be a hardship for Plaintiffs to identify all potential polling places that have been impacted by delayed openings and where voters have been turned away.

17. On information and belief, Defendants will not direct that the polls in affected areas

remain open past 8 p.m. or to take such or other action as is necessary to ensure that the polls remain open without a court order, making this Court's intervention necessary in order to protect the voters' constitutional rights.

Plaintiff's Stake in the Matter:

18. LWVNJ's mission is to protect democracy through advocacy and voter education, assistance, and engagement. As such, it works to expand access to voting and to ensure its members and the members of the broader communities it serves have access to safe and effective means of casting a ballot. LWVNJ's work includes promoting voter registration and assisting members and others to register to vote; providing information to the community about upcoming elections and voting options; and encouraging its members and other eligible voters to get out and vote. When issues related to voting rights arise on or around Election Day, LWVNJ expends additional resources and staff time advising its members and connecting them to lawyers or others who can ensure their vote is counted.

19. The ACLU-NJ has worked on voting rights since the organization's founding, recognizing suffrage as a fundamental constitutional protection under both the United States and New Jersey Constitutions. The ACLU-NJ has litigated cases regarding the right to vote and has advocated at the State House for legislation protecting and expanding that right, including most recently to New Jerseyans on probation and parole. Each election, the ACLU-NJ publishes Know Your Rights and other public education material for its members and New Jerseyans more broadly, which it distributes in many ways, including through in-person and online presentations, email, and social media channels. The ACLU-NJ also works with coalition partners to respond to complaints received from the Election Protection call center on Election Day, often resulting in significant expenditure of staff time providing legal advice and frequently seeking judicial relief.

Where possible, the ACLU-NJ seeks to work with the Department of State to ensure these issues of voter protection are addressed before they require litigation.

20. Defendants having failed to take adequate action to safeguard the voting rights of hundreds of New Jerseyans, LWV NJ and the ACLU-NJ, as organizations, have a significant stake in this matter. LWV NJ's 1,600 members and the ACLU-NJ's 35,000 members, many or most of whom are eligible to vote and may themselves be displaced, also have a significant individual interest in ensuring their right to vote is protected.

21. Plaintiffs LWV NJ and the ACLU-NJ bring the claims in their Complaint accordingly.

FIRST CAUSE OF ACTION
VIOLATION OF ARTICLE II, SECTION I, PARAGRAPH 3 OF
THE NEW JERSEY CONSTITUTION
(Right to vote)
(brought directly under the New Jersey Constitution
and pursuant to N.J.S.A. 10:6-2(c))

22. The allegations of the preceding paragraphs are incorporated as if fully set forth herein.

23. The New Jersey Constitution safeguards the fundamental right to vote.

24. By failing to provide a meaningful process to allow those New Jerseyans to vote who were previously prevented from casting their ballots due to technical issues, Defendants are depriving potentially hundreds of New Jerseyans of the fundamental right to vote.

25. Unless the Court enjoins Defendants and requires Defendants to allow New Jerseyans to return to the polls and vote until 9:30 p.m., Plaintiffs and their members will suffer irreparable harm.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request judgment against Defendants as follows:

1. Immediate, preliminary and permanent injunctive relief:
 - A. Ordering Defendants to take all necessary steps to keep all polling places throughout New Jersey open for 90 additional minutes, so that polling places close at 9:30 p.m. instead of the original designated time of 8 p.m.
 - B. Ordering Defendants to take all necessary steps to ensure that any voters who arrive at the above polling places after 8:00 p.m. and until 9:30 a.m. are permitted to vote and have their votes counted;
 - C. Requiring Defendants to provide public notice of these extended voting opportunities by notifying all local media of the poll hour extension and by posting sufficient notices of the extension at all affected poll locations, including on the websites of the New Jersey Secretary of State and on the social media accounts used by the New Jersey Secretary of State and the County Boards of Elections.
2. Attorneys' fees and costs associated with this action, pursuant to the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(f) and other relevant authority; and
3. Any further relief as this Court deems just and proper.

Dated: November 2, 2021



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NO JURY DEMAND

Plaintiffs waive trial by jury in this action.

DESIGNATION OF TRIAL COUNSEL

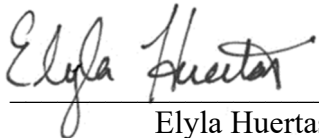
Plaintiffs designate Elyla Huertas as trial counsel.

CERTIFICATION PURSUANT TO R. 4:5-1

Plaintiffs, via counsel, hereby certify that there are no other proceedings or pending related cases arising from the same factual dispute described herein and that the matter in controversy is not the subject of any other action pending in any other court or a pending arbitration proceeding, and no other action or arbitration proceeding is contemplated.

Other than the parties set forth in this complaint, the undersigned knows of no other parties that should be made a part of this lawsuit. In addition, the undersigned recognizes the continuing obligation to file and serve on all parties and the court an amended certification if there is a change in the facts stated in this original certification.

Dated: November 2, 2021



Elyla Huertas