



March 26, 2020

Via email and express mail

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Dear Secretary Way and Attorney General Grewal:

I am writing to you on behalf of a potential New Brunswick School Board candidate, Mr. Jad Kaado, and his two running mates (who seek to run under the slogan "Students First"), to request your assistance in remedying, as soon as possible, a situation arising from the Governor's March 19, 2020, Executive Order No. 105, postponing New Brunswick's school board elections until May 12, 2020. See, Executive Order No. 105, attachment A.

Familiar with the nomination procedure set forth in N.J.S.A. 19:60-7, the Students First team submitted Mr. Kaado's nomination petition electronically fifty (50) days prior to the May 12<sup>th</sup> election, only to have it rejected by Mr. Jannarone, the New Brunswick Board of Education Business Administrator, as untimely. We believe that it is within the authority of both the Secretary of State and the Attorney General to clarify that the Executive Order's directives, which, *inter alia*, rescheduled all April school board elections to May 12, 2020, also extended

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the time period for submission of candidate petitions for that election for the same reason that citizens have additional time to register to vote in order to participate in that school board election. Both the nomination petition and registration statutes set submission deadlines a certain time period prior to the relevant election ostensibly to ensure orderly election processes; therefore, since the school board election was postponed, those deadlines must be deemed to have been similarly moved.

At this time, we are unaware of any other school board candidate petitions that were filed and rejected as untimely after March 19, 2020; however, an official clarification of the Executive Order would be appropriate as a matter of public policy in addition to a directive ordering the New Brunswick School Board to accept Mr. Kaado's petition and to include his name on the May 12, 2020 mail-in ballots, which will be sent to all registered voters in the relevant election district at a time and in a manner as set forth in the Executive Order.

#### Facts and Procedural History

Earlier this year, seven candidates filed and were approved to run for positions on the New Brunswick Board of Education in the previously scheduled April elections, including three "Students First" candidates. On March 7, 2020 one member of the Students First team dropped out of the race, withdrawing his name from the ballot on the final day to do so. On March 11, 2020 a ballot position drawing was held where the remaining two members of the Students First team secured "Line B."

On Thursday, March 19, 2020 the scheduled April 21 election was delayed to May 12 by Governor's Executive Order No. 105, which also relaxed some petition requirements, including the ability to sign and file petitions electronically. See Attachment A. On Monday, March 23, 2020, recognizing that N.J.S.A. 19:60-7 sets the candidate petition filing deadline at 50 days before the date of the election, Mr. Kaado submitted via email a petition with 11 signatures. See Petition and Additional Signatures, attachments B and C.

Simultaneously, another one of the Students First candidates submitted electronically a letter signed by all three candidates requesting to appear together with "Students First" bracketed below their names. See Letter dated March 23, 2020 to Mr. Jannarone, attachment D. The Board of Education Business Administrator Richard Jannarone quickly responded via email and



rejected the submission of Mr. Kaado's petition and the placement of his name on the ballot with the other two "Students First" candidates. He wrote: "Mr. Kaado: the deadline to submit a petition has passed, so your petition cannot be accepted."

We now submit this letter requesting that you reverse Mr. Jannarone's decision, and direct him to place Mr. Kaado's name on the May 12, 2020 school board mail-in ballot.

By Postponing the School Board Election Date, the Executive Order Effectively Moved the Nomination Petition Submission Date As Well.

Simply put, Executive Order No. 105 must be read *in pari materia* with N.J.S.A. 19:60-7, and together, they must be liberally construed to "allow the voters a choice," New Jersey Democratic Party, Inc. v. Sampson, 175 N.J. 178, 190 (2002), "protect the voters' franchise," Wene v. Meyner, 13 N.J. 185 (1953), and not "to bar candidates from the ballot when that makes no sense." Cantania v. Haberle, 123 N.J. 438, 448 (1991). See also In re Gray-Sadler, 164 N.J. 468, 475 (2000) (duty to construe election laws liberally to protect a citizen's right to have her vote count); (Deamer v. Jones, 42 N.J. 516 (1964) (election statutes should be liberally construed to effectuate their purpose); Sadloch v. Allan, 25 N.J. 118 (1957) (same); Kilmurray v. Gilfert, 10 N.J. 435, 440-441 (1952) (election laws to be liberally construed to effectuate purpose not to deprive voters of their franchise).

Moreover, the N.J. Supreme Court's directive to interpret election laws liberally and flexibly to promote robust voter and candidate participation is consistent with the letter and policy of the Executive Order. The Order finds that temporary modifications of certain election requirements to permit electronic submission of petitions "is needed to keep voters engaged during this unprecedented [public health] crisis"; as well as a temporary delay in certain elections is required to "give the county and municipal election officials enough time to send vote-by-mail ballots to all registered voters for these elections, allowing voters to exercise their constitutional franchise without jeopardizing their health and safety." Whereas clauses, attachment A.

In keeping with the policies motivating the Executive Order and the N.J. Supreme Court's previous directives that election statutes must be liberally construed for the purpose of promoting voter choice and enabling the franchise, Mr.

Jannarone's interpretation of N.J.S.A. 19:60-7 in light of the rescheduling of the New Brunswick school board election is not defensible, and should be reversed.

N.J.S.A. 19:60-7 states, in relevant part:

Each candidate to be voted upon at a school election shall be nominated directly by petition. . . . Notwithstanding the provisions of R.S.19:13-5, however, a petition of nomination for such office shall be signed by at least 10 persons, one of whom may be the candidate, and filed with the secretary of the board of education on or before four p.m. of the 50th day preceding the date of the April school election, or with the county clerk on or before four p.m. of the last Monday in July preceding the November school election, as applicable. The signatures need not all appear upon a single petition . . .

(emphasis added)

On the face of the statute, the deadline for submission of nomination petitions falls on the "50<sup>th</sup> day preceding the date of the April election." That election now will not occur in April, but pursuant to the Executive Order will be held on May 12, 2020. Nothing in the language of the statute mandates that the submission deadline be set in stone, and not movable based on the time the election is actually held. Similarly, the policy behind the statute seems to be based on the state's interest in conducting an orderly election and specifically, in enabling election officials to have sufficient time to prepare and print the ballot and distribute it to all voters. Similar, but not identical, election processes concerns motivate the voter registration statute that also sets a submission deadline within a certain period prior to an election, see N.J.S.A. 19:31-6 (Any person qualified to vote in an election shall be entitled to vote in the election if the person shall have registered to vote on or before the 21st day preceding the election . . ."); and as we do know, election officials are still accepting and processing voter registrations that will enable first time voters to participate in the May 12, 2020 school board elections throughout the state. See <https://nj.gov/state/elections/voter-registration> ("The registration deadline to vote in the next election is 21 days prior to the election day"). It therefore follows that there is no justification to bar Mr. Kaado from running for a position on the New Brunswick School Board. To the contrary, he complied with the statute, because he in fact



submitted his nomination petition 50 days prior to the date that the election will be held.

In support of our position, one should heed the words of Justice Wilentz in Cantania v. Haberle, supra, 123 N.J. at 448:

Concerns have been expressed that by giving this deadline provision a directory, rather than mandatory, construction we will create doubts about many other sections of the election law, a law that is driven by deadlines. Our only response is that this Court has traditionally given a liberal interpretation to that law, "liberal" in the sense of construing it to allow the greatest scope for public participation in the electoral process, to allow candidates to get on the ballot, to allow parties to put their candidates on the ballot, and most importantly to allow the voters a choice on Election Day. [citation omitted] Obviously, there will be cases in which provisions must be interpreted strictly, mandatorily, for in some cases it will be apparent that that interpretation serves important state interests, including orderly electoral processes. But those cases must be decided on their own facts, under the law involved. This Court has never announced that time limitations in election statutes should be construed to bar candidates from the ballot when that makes no sense and when it is obviously not the Legislature's intent. There are states that have such rules, but New Jersey is not one of them. [citations omitted]

(emphasis added).

Liberal construction, common sense, and application of our election laws to ensure candidate access to the ballot and voter choice are hallmarks of New Jersey's jurisprudence. And, there is no reason not to apply them to the case at hand.

As a result, we assert that in light of the rescheduling of the elections previously to be held in April, and the relaxation of certain voting requirements as set forth in Governor's Executive Order, it would be eminently reasonable and appropriate for Mr. Kaado's petition to be accepted by the Board of Elections. We therefore request that Mr. Kaado be given the right to appear on the New Brunswick school board election

ballot, and that the voters be given another choice in this race.

Thank-you for your anticipated consideration of our request for immediate relief. If you have any questions, do not hesitate to contact me at 973-735-0523.

Respectfully,

NEW JERSEY APPLESEED PUBLIC  
INTEREST LAW CENTER



Renée Steinhausen, Ex. Dir.

Enclosures:

- Attachment A: Executive Order No. 105, dated March 19, 2020
- Attachment B: Initial Petition of Jad Kaado
- Attachment C: Additional Signatures supporting Petition
- Attachment D: Request to appear under slogan "Students First"

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