IN THE ELECTION OF 2002, THE VOTERS OF NEW JERSEY WERE THE WINNERS

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> "It is in the public interest and the general intent of the election laws to preserve the two-party system and to submit to the electorate a ballot bearing the names of candidates of both major political parties as well as of all other qualifying parties and groups."[1]

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[1] Kilmurray v. Gilfert, 10 N.J. 435, 441 (1952) (statement by New Jersey Chief Justice Arthur Vanderbilt).

I. Introduction

On October 2, 2002, the New Jersey Supreme Court handed down its unanimous decision in *The New Jersey Democratic Party v. Samson*,[2] and in doing so, preserved the integrity of the New Jersey electoral system, including the fundamental right of voters to exercise the franchise in a meaningful fashion.[3] In its well-reasoned and insightful opinion, the court set forth the foundation for its decision to allow the plaintiffs to substitute another candidate in place of Robert G. Torricelli on the ballot as the Democratic candidate for U.S. Senator from the State of New Jersey thirty-five days before the general election.[4] This article will set forth the events leading up to the state supreme court's October 2, 2002 decision and will discuss why the New Jersey Supreme Court's decision was legally sound and in the best interest of the voters of New Jersey.

II. Factual Background

On September 30, 2002, thirty-six days before the November 5, 2002 general election, Robert G. Torricelli, United States Senator from

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[2] The New Jersey Democratic Party v. Samson, 175 N.J. 172 (2002), *cert. denied*, 123 S.Ct. 673 (2002) [hereinafter *Order*]. Following oral argument on October 2, 2002, the court issued an order disposition that granted plaintiffs' prayer for relief. *Id.* at 176-177. The disposition ordered the removal of Senator Torricelli's name from the ballot for the general election of November 5, 2002. *Id.* at 176. It also ordered the replacement of Senator Torricelli's name with the name of the Democratic candidate duly selected by the Democratic State Committee. *Id.* It ordered that the preparation of the revised ballots take place forthwith under the supervision of the Honorable Linda R. Feinberg, A.J.S.C. (Mercer County). *Id.* It gave the preparation of military and overseas ballots precedence in preparation and mailing. *Id.* at 177. The court's order disposition was followed by its written opinion on October 8, 2002. The New Jersey Democratic Party v. Samson, 175 N.J. 178 (2002) [hereinafter *Opinion*].

[3] *See Opinion*, 175 N.J. 178 (2002).

[4] The Democratic Party selected former Senator Frank Lautenberg as the new candidate for the U.S. Senate. Senator Lautenberg had been a United States Senator from 1982 to 2000. *About U.S. Senator Frank R. Lautenberg, at* http://lautenberg.senate.gov/about.html (last visited Jan. 14, 2003). After serving eighteen (18) years in the U.S. Senate, Senator Lautenberg did not run for reelection in 2000. *Id.* After a two-year hiatus, Senator Lautenberg agreed to appear on the ballot in place of Senator Torricelli as the Democratic candidate for Senate. Robert Cohen, *Lautenberg Gladly Steps Up for Political Foe*, STAR-LEDGER, Oct. 2, 2002 at A9. Thereafter, at the November 5th election, Lautenberg defeated Republican candidate Douglas Forrester and several third-party candidates to become the junior Senator from the state of New Jersey. David Kinney, *Lautenberg Wins the Day*, STAR-LEDGER, Nov. 6, 2002 at A1.

the State of New Jersey, withdrew his candidacy for re-election.[5] Thereafter, on October 1, 2002, the New Jersey Democratic Party filed an action in lieu of prerogative writs and order to show cause seeking temporary restraints in the Law Division of Middlesex County.[6] At the same time, due to the importance of the issue, it filed a motion for direct certification with the New Jersey Supreme Court.[7] The complaint asked for an order enjoining the county clerks from including Torricelli's name on the November 5, 2002 general election ballot as the Democratic party candidate for the office of United States Senator.[8] On October 1, 2002, the Law Division issued an order to show cause staying the printing of all ballots for the general election.[9] The state supreme court set the matter down for oral argument on the morning of October 2, 2002.[10]

Following its review of the parties' submissions and arguments of counsel, on the evening of October 2, 2002, the state supreme court issued an order, which granted the plaintiffs' application for relief.[11] The court concluded that the issue before it was whether "the dual interests of full voter choice and the orderly administration of an election" could be effectuated if the requested relief was granted.[12]

Having framed the issue as such, the court emphasized two

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[5] *Order*, 175 N.J. at 172; *Opinion*, 175 N.J. at 184.

[6] *Opinion*, 175 N.J. at 184. The order issued by the state supreme court erroneously lists the date of the filing of this action as September 30, 2002. *Order*, 175 N.J. at 174. The action named then New Jersey Attorney General David Samson as a defendant. Samson resigned as Attorney General in February 2003. Josh Margolin, *AG Calls His 1 Year Service Rewarding*, STAR-LEDGER, Jan. 22, 2003 at A17. It also named Regena Thomas, the Secretary of State of the State of New Jersey, Ramón de la Cruz, the Director of the New Jersey Division of Elections, all twenty-one county clerks, and U.S. Senate candidates, Douglas Forrester, Ted Glick, Elizabeth Macron, Norman Wahner and Gregory Pason, as defendants.

[7] *Opinion*, 175 N.J. at 184. New Jersey's court rules provide the state supreme court with the authority to certify any action for direct appeal. N.J. Rule 2:12-1 (2002).

[8] *Order*, 175 N.J. at 173; *Opinion*, 175 N.J. at 184.

[9] *Order*, 175 N.J. at 175; *Opinion*, 175 N.J. at 185. On the same day, the Supreme Court certified the matter for appeal and ordered that the stay of the printing of ballots remain in effect until further order of the court. *Order*, 175 N.J. at 175; *Opinion*, 175 N.J. at 185.

[10] *Order*, 175 N.J. at 175; *Opinion*, 175 N.J. at 185. The Court required the parties to submit supplemental briefs by the close of business on October 1, 2002 and set the matter down for oral argument at 10:00 a.m. the following day. *Order*, 175 N.J. at 175; *Opinion*, 175 N.J. at 185.

[11] *Order*, 175 N.J. at 176-177.

[12] *Id.* at 175.

fundamental principles that informed its decision.[13] First, the court reiterated its own prior pronouncements that it was in the public interest to preserve the two-party system.[14] Moreover, the court found that in keeping with the long-standing legal precedent of New Jersey, election statutes should be liberally construed.[15] With these principles in mind, the court determined that the statute which governs candidate withdrawals did not preclude the possibility of a vacancy occurring within fifty-one days of a general election.[16] Finally, the court

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[13] *Id.* at 175-176.

[14] *Id.* at 175.

[15] *Id.* at 175-176.

[16] *Order*, 175 N.J. at 176. The statute provides in relevant part:

In the event of a vacancy, howsoever caused, among candidates nominated at primaries, which vacancy shall occur not later than the 51st day before the general election, . . . a candidate shall be selected in the following manner: (a) (1) in the case of an office to be filled by the voters of the entire State, the candidate shall be selected by the State Committee of the political party wherein such vacancy has occurred. . . . At any meeting held for the selection of a candidate under this subsection, a majority of the persons eligible to vote thereafter shall be required to be present for the conduct of any business, and no person shall be entitled to vote at that meeting who is appointed to the State Committee or County Committee after the 7th day preceding the date of the meeting. . . .

(b)(4) Whenever in accordance with the provisions of subsection a. of this section the State committee of a political party is empowered to select a candidate to fill a vacancy, it shall be the responsibility of the chairman of that State committee to give notice to each of the members of the committee of the date, time and place of the meeting at which the selection will be made, that meeting to be held at least one day following the date on which the notice is given. . . .

(d) The selection made pursuant to this section shall be made not later than the 48th day preceding the date of the general election, and the statement of such selection shall be filed with the Secretary of State or the appropriate County Clerk, as the case may be not later than said 48th day and in the following manner;

(1) a selection made by a State Committee of a political party shall be certified to the Secretary of State by the State Chairman of the political party. . . .

(e) A statement filed pursuant to subsection d. of this section shall state the residence or post office address of the person so selected, and shall certify that the person so selected is qualified under the laws of this State to be a candidate for such office, and is a member of the political party filling the vacancy. Accompanying the statement the person endorsed therein shall file a certificate stating that he is qualified under the laws of this State to be a candidate for the office mentioned in this statement, and that he consents to stand as a candidate at the ensuing general election and that he is a member of the political party named in said statement, and further that he is not a member of, or identified with, any other political party or any political organization as espousing the cause of candidates of any other political party, to which shall be annexed the

concluded that since the equitable relief sought by the plaintiffs was not in its opinion inconsistent with precedent or the terms of the statute, it would grant the requested relief.[17] In its written opinion, which followed on October 8, 2002, the court set forth the bases for its decision in detail, beginning with a discussion of state election law precedent.[18]

III. New Jersey Courts Have a Longstanding History of Liberal Construction of the State's Election Laws

There was no shortage of legal precedent to guide the New Jersey Supreme Court's decision. The court reviewed its rich history of election cases to set forth the underpinnings of its decision.[19]

The seminal election law case in New Jersey is *Kilmurray v. Gilfert*.[20] In *Kilmurray*, the New Jersey Supreme Court interpreted the prior version of the replacement statute, and concluded that it did not prevent county political committees from filling vacancies which occurred outside of the time frame set forth in the statute.[21] At that time, the prior version of the replacement statute provided guidance relative to vacancies which occurred "not later than thirty-seven days before the general election. . ."[22] In *Kilmurray*, a candidate died thirty-six days before a general election.[23] The court was required to

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oath of allegiance prescribed in R.S. 41:1-1 duly taken and subscribed by him before an officer authorized to take oaths in this State. The person so selected shall be the candidate of the party for such office at the ensuing general election.

N.J. STAT. ANN. § 19:13-20 (West 2002).

[17] *Order*, 175 N.J. at 176. The court concluded that it "should invoke its equitable powers in favor of a full and fair ballot choice for the voters of New Jersey." *Id.* On October 3, 2002, Douglas Forrester, then Republican candidate for Senate, petitioned the United States Supreme Court for a stay of the New Jersey Supreme Court's Order. On October 7, 2002, after its review of the arguments submitted, the Court denied Mr. Forrester's application. "The application for stay presented to Justice SOUTER and by him referred to the Court is denied." Forrester v. New Jersey Democratic Party, Inc., et al., 123 S.Ct. 67 (2002). Additionally, on October 4, 2002, Mr. Forrester petitioned the United States Supreme Court for a Writ of Certiorari, which was denied on December 9, 2002. Forrester v. New Jersey Democratic Party, Inc., et al., 123 S.Ct. 673 (2002).

[18] *See Opinion*, 175 N.J. 178.

[19] *Opinion*, 175 N.J. at 186-191.

[20] *Kilmurray*, 10 N.J. 435.

[21] *Id.* at 441.

[22] N.J. STAT. ANN. § 10:13-20 (West 1952) (current version at N.J. STAT. ANN. § 19:13-20 (West 2002)).

[23] *Kilmurray*, 10 N.J. at 438.

determine whether the county committee could substitute a new candidate for the deceased candidate.[24]

The *Kilmurray* court began its analysis by reiterating the underlying principle that "[e]lection laws are to be liberally construed so as to effectuate their purpose."[25] The court found that the election laws "should not be construed so as to deprive voters of their franchise or so as to render an election void for technical reasons."[26] The court ultimately found that it would be contrary to the public interest to deny the right of one of the major political parties to place its candidate's name on the ballot because the vacancy was caused thirty-six rather than thirty-seven days prior to the general election.[27] Perhaps most importantly, the court found that the prior version of the replacement statute was only directory, not mandatory.[28] In coming to this conclusion, the court relied upon the premise that election laws should be liberally construed.[29]

The court's proclamation in *Kilmurray* that election laws should be liberally construed has guided New Jersey's interpretation of election law since 1952.[30] For example, in 1953, the New Jersey Supreme Court was again faced with interpreting an election statute.[31] In *Wene v. Meyner*, an unsuccessful gubernatorial candidate in a primary election challenged a state statute that prohibited any voter who had not participated in two consecutive primary elections from voting in another primary election until he filed a declaration identifying his party affiliation.[32] The contestant argued that the requirements of the statute were mandatory.[33] However, the court posited that a statute should not

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[24] *Id.*

[25] *Id.* at 440 (*citing* Carson v. Scully, 89 N.J.L. 458, 465 (Sup. Ct. 1916), *affirmed*, 90 N.J.L. 295 (E. & A. 1917)).

[26] *Kilmurray*, 10 N.J. at 440-41 (*citing* In re Stoebling, 16 N.J. Misc. 34 (Cir. Ct. 1938); Sharrock v. Keansburg, 15 N.J. Super. 11 (App. Div. 1951)).

[27] *Kilmurray*, 10 N.J. at 441.

[28] *Id.* at 442.

[29] *Id.* at 440.

[30] *See* Wene v. Meyner, 13 N.J. 185, 197 (1953); Afran v. County of Somerset, 244 N.J. Super. 229, 232 (App. Div. 1990) ("Because the right to vote is the bedrock upon which the entire structure of our system of government rests, our jurisprudence is steadfastly committed to the principle that election laws must be liberally construed to effectuate the overriding public policy in favor of the enfranchisement of voters.") (citations omitted); Catania v. Haberle, 123 N.J. 438, 448 (1990).

[31] *Wene*, 13 N.J. 185.

[32] *Id.* at 190-91.

[33] *Id.* at 190-91. The statute provided that a voter who had not voted in a primary for

be given an arbitrary construction, but rather a construction which advances the "sense and meaning fairly deducible from the context."[34] Ultimately, the court found that technical noncompliance with the statute did not constitute sufficient grounds to overturn the election results.[35]

In 1965, the state supreme court addressed the validity of a statutory requirement that candidates for elective office be registered voters of the political subdivision in which they wished to stand for office for at least two years prior to their candidacy.[36] The plaintiff wished to run for Mayor of Jersey City, but had not been a registered voter within the city for the requisite two years.[37] In reaching its decision to strike the challenged statute, the court first discussed the history of the right to vote.[38] The court stated that, "the right to vote has taken its place among our great values. Indeed, the fact that the voting franchise was hoarded so many years testifies to its exalted position in the real scheme of things."[39] More importantly, however, the court went on to proclaim that an integral feature of the right to vote is the right to choose for whom to vote,[40] finding that, "the right to vote would be empty indeed if it did not include the right of choice for whom to vote."[41]

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two subsequent annual primary elections would not be permitted to vote in a primary election until he had first signed and filed a declaration designating the political party for which he would vote in a primary. N.J. STAT. ANN. § 19:23-45 (West 1953).

[34] *Wene*, 13 N.J. at 197. "The reason of the statute prevails over the literal sense of terms; the manifest policy is an implied limitation on the sense of the general terms, and a touchstone for the expansion of narrower terms." *Id.* (citing Fischer v. Fischer, 13 N.J. 162 (1953)).

[35] *Wene*, 13 N.J. at 197.

[36] Gangemi v. Rosengard, 44 N.J. 166, 167 (1965) (citing N.J. STAT. ANN. § 40:69A-167.1 (repealed 1980).

[37] *Gangemi*, 44 N.J. at 167.

[38] *Id.* at 169-171.

[39] *Gangemi*, 44 N.J. at 170. Chief Justice Weintraub discussed the history of suffrage in the United States, broadly, and New Jersey, specifically. *Id.* The citizens of New Jersey would not see universal suffrage until the state constitution was amended in 1947 to read:

> [e]very citizen of the United States, of the age of twenty-one years, who shall have been a resident of this State one year, and of the county in which he claims his vote five months, next before the election, shall be entitled to vote for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to a vote of the people.

N.J. CONST. Art. II, §I, ¶3; *Id.* at 169.

[40] *Gangemi*, 44 N.J. at 170.

[41] *Id.* (citations omitted).

In *Catania v. Haberle*, the court reaffirmed this commitment to the voting rights of New Jersey's citizens.[42] The *Catania* court addressed the question of whether a statutory amendment which would foreclose a party from selecting a candidate in the event of failure of party to secure a nomination at the primary election would apply retroactively.[43] Moreover, the court was asked to determine whether the seven-day time limit for providing notice of a meeting to fill a vacancy on the ballot was mandatory.[44] Affirmative responses to these questions would have left the Republican Party with no candidate in a special election for the New Jersey General Assembly.[45] In holding that the vacancy was properly filled and that the plaintiff was entitled to have his name on the ballot,[46] the court reiterated its rule in favor of the liberal construction of election laws.[47]

With these cases as its backdrop, the New Jersey Supreme Court then undertook its analysis of the specific statute at issue in the case at bar.[48]

IV. The State Supreme Court's Decision Properly Construed State Election Law in a Manner Consistent with Statutory Language and Longstanding Precedent

At oral argument and on their respective briefs, the parties had competing views of the meaning of the replacement statute.[49] The court

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[42] Catania v. Haberle, 123 N.J. 438, 440 (1991). "[P]roviding the public with a choice between candidates is one of the most important objectives of our election laws. . . ." *Id.*

[43] *Catania*, 123 N.J. at 441.

[44] *Id.* at 441-442.

[45] *Id.* at 440.

[46] *Id.* at 449. The court reiterated that it:

> 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.

Id. at 448 (*citing Kilmurray*, 10 N.J. at 440-41). Moreover, the court stated that each case involving the election laws must be decided on its own facts. *Id.* at 448.

[47] *Id.* at 442-43. "[A]bsent some public interest sufficiently strong to permit the conclusion that the Legislature intended strict enforcement, statutes providing requirements for a candidate's name to appear on the ballot will not be construed so as to deprive the voters of the opportunity to make a choice." *Id.*

[48] N.J. STAT. ANN. § 19:13-20 (West 2002). For the relevant portions of the statute, *see supra* note 16.

[49] *Opinion*, 175 N.J. at 193.

framed the dispute between the parties in this way:

Defendants ask the court to interpret Section 20 as rendering unlawful *per se* the filling of a vacancy within fifty-one days of the election . . . Plaintiffs contend that the time frame specified in Section 20 was meant to 'afford the various election officials sufficient time in which to attend to the mechanics of preparing for the general election.' The provision was not enacted, plaintiffs argue, to usurp a fundamental principle of democracy, but must be interpreted so as to afford the voter a real choice among candidates representing a full spectrum of political ideologies.[50]

The most relevant part of the statute establishes that, "In the event of a vacancy, howsoever caused, among candidates nominated at primaries, which vacancy shall occur not later than the 51st day before the general election . . .the candidate shall be selected by the State committee of the political party wherein such vacancy has occurred . . . ."[51] Plaintiffs argued that the statute was directory in nature, and that its fundamental purpose was to provide sufficient time to the election officials to prepare the ballots.[52] Plaintiffs also argued that given this purpose, the statute should not be construed or applied in a way that would constitute a barrier to ballot access or to the exercise of the franchise.[53] Defendants argued that the statute was clear on its face and required that plaintiffs go into election day with a candidate who had already announced his withdrawal from the race.[54]

In analyzing the language of the statute, the court properly observed that "[The statute] simply does not contain a legislative declaration that the filling of a vacancy within forty-eight days of the election is prohibited."[55] Moreover, the court pointed to other states' statutes that specifically deal with consequences of a vacancy occurring outside of that window.[56] For example, the court approvingly quoted the clear language of New York's replacement statute, which provides that "[t]he failure to file any petition or certificate relating to the designation or nomination of a candidate for party position or public office or to the

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[50] *Id.* (internal citations omitted).

[51] N.J. STAT. ANN. § 19:13-20 (West 2002). For the relevant portions of the statute, *see supra* note 16.

[52] *Opinion*, 175 N.J. at 193.

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] *Id.* at 194.

acceptance or declination of such designation or nomination within the time prescribed by the provisions of this chapter shall be a *fatal defect*."[57] The court also approved of the statutes in Colorado, which allow substitution up to the eighteenth day before the general election,[58] and the Washington statute, which allows substitution before the sixth Tuesday prior to the election and following the sixth Tuesday, only if there is sufficient time to correct ballots.[59]

Having found that the statute did not prohibit the replacement of a candidate less than fifty-one days prior to the general election, the court then made a factual determination that there was sufficient time to place a new candidate's name on the ballot,[60] for at the time of the decision, approximately 19,000 absentee ballots had been authorized; only 1,700 had actually been mailed out.[61] Moreover, the court had been informed that the printing of the revised ballots could be completed in as little as five business days.[62] The court therefore concluded that because there was sufficient time to place a new candidate on the ballot and to conduct the election in an orderly fashion, the legislative intent behind the replacement statute would likely be in favor of full voter choice.[63] Therefore, the court found in favor of the plaintiffs and ordered the relief that they had requested.[64]

V. The Decision of the State Supreme Court Squarely Addressed and Refuted the Numerous Alleged Harms Posited by Defendants

A. *The Potential for Abuse*

Defendants argued that the court's decision could lead to the abuse of the statute by providing an incentive to candidates who feared losing at the polls to withdraw on the eve of an election.[65] As the court

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[57] *Id.* at 192 (quoting N.Y. ELEC. LAW §1-106(2) (McKinney 1998)) (emphasis in original).

[58] *Id.* at 192 (quoting COLO. REV. STAT. ANN. § 1-4-1002 (West 2002)).

[59] *Id.* at 192, (quoting WASH. REV. CODE ANN. § 29.18.160 (West 2002)).

[60] *Opinion*, 175 N.J. at 195-196.

[61] *Id.* at 196.

[62] *Id.* "We understand that express mailing, both outgoing and return, is available to and from most overseas locations, and that if a source of funding for those activities is available, they can be carried out expeditiously." *Id.*

[63] *Id.* at 197-198.

[64] *Order*, 175 N.J. at 176-177; *Opinion*, 175 N.J. at 200.

[65] *Opinion*, 175 N.J. at 196.

properly concluded, however, the defendants did not present any evidence showing electoral chaos in states that allow substitution close to the election.[66] Moreover, the court pointed out that there is significant time and expense associated with a change in nominee, and opined that it would be difficult for parties to routinely replace candidates so close to an election.[67]

B. *Full Voter Choice*

Another argument advanced by the defendants was that the existence of third-party candidates provides the voters with choice, thereby obviating the need to grant plaintiffs' requests.[68] The court rejected this argument, stating that "[a]lthough the participation of third-party candidates supports a robust democracy, we recognize the present reality of the two-party system as an organizing principle of the political process in this country."[69] The court went on to state that "vigorous elections under our present system require the participation of the two major parties."[70]

C. *The Uniformed and Overseas Citizens Absentee Voting Act*

Finally, the court analyzed and rejected the argument proffered by the defendants relative to the Uniformed and Overseas Citizens Absentee Voting Act.[71] Defendants argued that the Act would be

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[66] *Id.* at 197.

[67] *Id.*

[68] *Id.* at 198.

[69] *Id.* (comparing Gerald Leonard, *Party as a "Political Safeguard of Federalism": Martin Van Buren and the Constitutional Theory of Party Politics*, 54 RUTGERS L.REV. 221, 227 (2001)).

[70] *Opinion*, 175 N.J. at 198.

[71] 18 U.S.C. §§608-609 (2002), 39 U.S.C. §3406 (2002), 42 U.S.C. §1973 (2002). Specifically, 42 U.S.C. §1973 states in pertinent part that

> Each State shall—
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> (1) permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office;
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> (2) accept and process, with respect to any election for Federal office, any otherwise valid voter registration application and absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election;
>
> (3) permit overseas voters to use Federal write-in absentee ballots (in accordance with section 1973ff-2 of this title) in general elections for

violated if the requested relief were to be granted, because of the mistaken belief that the Act required all absentee ballots to be sent out no later than thirty-five days before a general election.[72] However, the court found that the expeditious handling of amended absentee ballots would assure that the voters who use those ballots would have their votes counted.[73] Moreover, the court empowered Judge Feinberg, who was overseeing the election, to extend the time for certifying the election results to allow absentee ballots to be tabulated.[74] Based on the specific facts before it, the court found that there would be no violation of the Act.[75]

VI. The Aftermath of the State Supreme Court's Decision

In the aftermath of the court's decision, Senator Torricelli's name was replaced with that of former Senator Frank Lautenberg. On November 5, 2002, the voters of New Jersey went to the polls and elected Frank Lautenberg as their United States Senator.[76] The thrust of the court's decision centered on voter choice. That analysis was validated by the results of the election.

Federal office; and
(4) use the official post card form (prescribed under section 1973ff of this title) for simultaneous voter registration application and absentee ballot application.

42 U.S.C. §1973 (2002).

[72] The Act contains no such requirement. If anything, it requires the contrary, because §1973ff-1(2) requires States to accept registration applications from absent uniformed service and overseas voters *up to thirty days prior to a general election.* 42 U.S.C. § 1973ff-1(2) (2002) (emphasis added).

[73] *Opinion*, 175 N.J. at 199.

[74] *Id.* (citing Harris v. Florida Elections Canvassing Commission, 122 F.Supp.2d 1317, 1325 (2000) (holding ten-day extension allowing State to count overseas absentee ballots in federal elections to be valid); U.S. v. Wisconsin, 771 F.2d 24, 245 (1985) (upholding district court order requiring election officials to count certain late-arriving ballots)).

[75] *Opinion*, 175 N.J. at 199.

[76] David Kinney, *Lautenberg Wins the Day*, STAR-LEDGER, Nov. 6, 2002 at A1. Senator Lautenberg received approximately fifty-four percent of votes cast. *Id.*