

CASENOTE

NEW JERSEY DEMOCRATIC PARTY, INC. v. SAMSON: WHAT REMAINS OF NEW JERSEY'S ELECTION DEADLINES?

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I. INTRODUCTION

The New Jersey Supreme Court has a long history of liberally interpreting election laws to “effectuate their purpose” in a manner consistent with the public interest and the statutory scheme.¹ The Court’s recent decision in *New Jersey Democratic Party, Inc. v. Samson*,² however, is a veiled departure from that history. In *New Jersey Democratic Party*, all seven justices³ concurred in an

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1. *Kilmurray v. Gilfert*, 91 A.2d 865, 867 (N.J. 1952) (citing *Carson v. Scully*, 99 A. 199, 202 (N.J. Sup. Ct. 1916), *aff'd*, 101 A. 289 (N.J. 1917)); e.g. *Catania v. Haberle*, 588 A.2d 374, 379 (N.J. 1990) (holding a statutory notice requirement discretionary); *Wene v. Meyner*, 98 A.2d 573, 578–579 (N.J. 1953) (holding that the votes of electors who failed to sign a declaration of desire to vote in a party’s primary are not disqualified).

2. 814 A.2d 1028 (N.J. 2002).

3. New Jersey’s former Governor Christine Todd Whitman appointed six of the seven justices serving on the New Jersey Supreme Court. Robert P. George, *New Jersey’s Liberal Constructionists: Legislating from the Bench* <<http://www.nationalreview.com/comment/comment-george100302.asp>> (Oct. 3, 2002). Four of the seven justices on the New Jersey Supreme Court have monetary ties to the Democratic Party. Robert D. Alt, *Reaping the Whirlwind: The After-Effects of the N.J. Opinion* <<http://www.nationalreview.com/comment/comment-alt100402.asp>> (posted Oct. 4, 2002). The figures supporting that assertion are as follows: Justice James R. Zazzali donated \$1,000 to Senator Robert G. Torricelli’s 2002 campaign, \$2,500 to Torricelli’s 1996 campaign, and \$1,000 to Senator Frank R. Lautenberg’s 1994 senatorial campaign; Justice Jaynee LaVecchia’s husband donated \$2,000 to Torricelli’s 2002 campaign; Justice Virginia Long’s husband donated \$250 to Torricelli’s 1996 campaign; and Justice Barry T. Albin donated \$1,000 to Torricelli’s 2002

opinion that undermined the New Jersey Legislature's intent to establish mandatory deadlines for creating and filling election vacancies.⁴ The Legislature's purpose for these deadlines was to provide election officials sufficient time to prepare for an election,⁵ to protect absentee and military voters,⁶ to prevent last-minute political maneuvering that deprives voters of sufficient time to evaluate the candidates,⁷ and otherwise to provide for orderly elections.⁸

The Court's previous liberal interpretations were consistent with, or at least plausible under, the applicable statutory language because the Court never undermined the statutory scheme.⁹ On the contrary, its holding in *New Jersey Democratic Party* effectively writes the statute out of existence.¹⁰ When properly interpreted, New Jersey Statutes Section 19:13-20 prohibits the creation of vacancies after the fifty-first day preceding the general election.¹¹ Furthermore, the statute mandates that all vacancies created before the fifty-first day be filled by the forty-eighth day before the general election, and that the Secretary of State receive notice of the replacement by the forty-eighth day.¹²

Part II of this Note explores the facts of *New Jersey Democratic Party* and Senator Robert G. Torricelli's withdrawal as a New Jersey senatorial candidate.¹³ This Part also details the procedural posture and the Court's holding.¹⁴ Part III explores the

campaign, \$500 to his political action committee, \$1,500 to Torricelli's 1996 campaign, and \$500 to Lautenberg's 1994 campaign. *Id.*

4. See *N.J. Democratic Party*, 814 A.2d at 1028 (holding the dates in New Jersey Statutes Section 19:13-20 for creating and filling vacancies before the general election discretionary).

5. *Kilmurray*, 91 A.2d at 867.

6. See N.J. Sen. Assembly St. Govt., Civ. Serv., Elections, Pensions, and Veterans Affairs Comm. 2244 (Feb. 14, 1985) (a committee statement to the New Jersey Senate discussing the Legislature's goals regarding absentee voters) [hereinafter N.J. Sen. State.].

7. See N.J. Stat. Ann. § 19:13-20 (2002) (Implicit in the Legislature's requirement that all changes to the ballot occur on or before the forty-eighth day is a prohibition against last-minute political maneuvering, which additionally ensures that the voters of New Jersey have at least forty-eight days to evaluate the candidates.).

8. *Kilmurray*, 91 A.2d at 867. The Legislature enacted Section 19:13-20 "to afford the various election officials sufficient time in which to attend to the mechanics of preparing for the general election." *Id.*

9. See *id.* (recognizing the legislative intent behind the election statute).

10. N.J. Stat. Ann. § 19:13-20.

11. *Id.*

12. *Id.*

13. *Infra* nn. 18-42 and accompanying text.

14. *Infra* nn. 27-34 and accompanying text.

Court's opinion and addresses the Court's stated reasons for liberally interpreting Section 19:13-20.¹⁵ Part IV analyzes the Court's reasoning and focuses on the Court's frustration of legislative intent and the impact of the Court's holding.¹⁶ Finally, the conclusion summarizes the effect and likely results of the Court's decision.¹⁷

II. FACTS AND HOLDING

On June 4, 2002, the New Jersey Democratic Party nominated Senator Torricelli as its candidate for the November 5, 2002 general election.¹⁸ During the primary election, Senator Torricelli ran unopposed even though state and national Democratic leaders knew he had engaged in unethical conduct.¹⁹ On July 31, the Senate Ethics Committee "severely admonished" Senator Torricelli for unethical conduct.²⁰ Then, in late September, Senator Tom Daschle, at that time the Senate majority leader, apparently attempting to salvage Senator Torricelli's bid for re-election, told a New Jersey audience that "the future of this country" rested upon Senator Torricelli's re-election.²¹ The final blow to Senator Torricelli's campaign occurred on September 27, with the release of a nine-page letter written by federal prosecutors to United States District Court Judge Alfred M. Wolin.²² Senator Torricelli adamantly opposed this letter's release because it detailed his alleged receipt of illegal campaign contributions and other gifts from David Chang, a New Jersey businessman.²³ Finally, on Sep-

15. *Infra* nn. 43-80 and accompanying text.

16. *Infra* nn. 81-158 and accompanying text.

17. *Infra* n. 159 and accompanying text.

18. John Mercurio, *GOP, Democrats Tout Primary Victories* <<http://www.cnn.com/2002/ALLPOLITICS/06/05/state primaries/>> (June 5, 2002); Deroy Murdock, *Dem Jersey Games: What About the Law?* <<http://www.nationalreview.com/murdock/murdock100202.asp>> (Oct. 2, 2002).

19. Murdock, *supra* n. 18; *see infra* n. 23 (discussing Senator Torricelli's alleged unethical conduct).

20. *Id.*

21. George F. Will, *The Democrats' Torricellian Twist*, Wash. Post A29 (Oct. 4, 2002).

22. Ltr. from James B. Comey, Acting U.S. Atty., to Alfred M. Wolin, U.S. Dist. J., *U.S. v. Chang* (May 21, 2002) (accessed via <<http://www.wnbc.com/News/1690167/detail.html>>).

23. *Id.* The federal prosecutor wrote this letter to Judge Wolin seeking leniency at sentencing for Chang because of Chang's assistance in the prosecutors' investigation of Senator Torricelli's dealings with Chang; however, the letter goes into great detail about Chang's alleged dealings with a "Public Official," which the prosecutor used as a euphemism for Senator Torricelli. *Id.* at 3-5. The alleged dealings between Chang and Senator

tember 30, a mere thirty-six days before the general election, Senator Torricelli, trailing his opponent by thirteen points in the polls, announced his withdrawal as the New Jersey Democratic Party's senatorial candidate.²⁴ Senator Torricelli withdrew his candidacy not because of death, illness, or incapacity,²⁵ but because of politics; he did not, as he said, want to "be responsible for the loss of the Democratic majority in the United States Senate."²⁶

On October 1, the New Jersey Democratic Party initiated suit in New Jersey's Superior Court, Law Division, Middlesex County, seeking injunctive relief that would permit the Democratic State Committee to select a replacement candidate whose name would replace Senator Torricelli's on the general election ballot.²⁷ On the same day, the New Jersey Supreme Court, by its own motion, directly certified the matter.²⁸ The Court heard arguments on October 2, and issued an order without opinion²⁹ granting the relief sought by the Democratic Party.³⁰ The Court issued the order without opinion because "the interests of justice require[d] the

Torricelli include, but are not limited to, Chang's providing Senator Torricelli tens of thousands of dollars for assistance with business projects and making large cash donations to Senator Torricelli for his campaign, including one for allegedly \$25,000. *Id.* at 3-4. Additionally, Chang stated that he gave Senator Torricelli numerous things of value, such as "antiques, jewelry, clothing, electronic equipment, and decorative items." *Id.* at 4. In return, Senator Torricelli provided Chang with a number of services. *Id.* For example, Senator Torricelli introduced Chang to foreign business leaders, assisted with various business projects, and even allegedly attempted to persuade the State Department and National Security Council to recover a debt owed to one of Chang's businesses by the North Korean government. *Id.* The Government never charged Senator Torricelli for his alleged dealings with Chang, but did find "Chang's statements concerning the conduct of the Public Official to be credible in most material respects." *Id.* at 7. The Government did not prosecute the "Public Official" because Chang would have been a necessary witness and had "engaged in conduct, both before and after his plea, that greatly compromised the Government's ability to call him as a witness." *Id.*

24. *N.J. Democratic Party*, 814 A.2d at 1032; Jonathan Karl & Deborah Feyerick, *Dems Pick Lautenberg to Replace Torricelli* <<http://www.cnn.com/2002/ALLPOLITICS/10/01/elec02.nj.s.torricelli.race/>> (Oct. 2, 2002).

25. Will, *supra* n. 21.

26. Amy Fagan & Dave Boyer, *Torricelli Drops out of N.J. Race* <<http://www.washtimes.com/national/20021001-28179430.htm>> (Oct. 1, 2002).

27. *N.J. Democratic Party*, 814 A.2d at 1032. Under New Jersey Statutes Section 19:13-20, the state committee of a political party is charged with selecting replacement candidates. N.J. Stat. Ann. § 19:13-20.

28. *N.J. Democratic Party*, 814 A.2d at 1032.

29. *N.J. Democratic Party, Inc. v. Samson*, 814 A.2d 1025 (N.J. 2002) (court order without opinion).

30. *Id.* at 1027.

immediate issuance of an Order disposition with the Court's opinion to follow in due course."³¹

In a subsequent opinion,³² the Court unanimously held (1) the language of New Jersey's election-vacancy statute did not prohibit the filling of vacancies after the forty-eighth day preceding the general election; (2) election officials must remove Senator Torricelli's name from the ballot; (3) the Democratic State Committee would be permitted to select a replacement candidate whose name would appear on the general election ballot; (4) the option of voting for a third-party candidate did not preclude the need for a viable Democratic Party candidate; and (5) filling the vacancy did not violate the federal voting rights of overseas military and absentee voters.³³ The Court stated, in support of its holding, "If that is not what the Legislature intended, we anticipate that it will amend Section [19:13-20] accordingly."³⁴

In an attempt to preserve the rights of absentee and military voters, the Court ordered election officials to give precedence to the printing and mailing of the new ballots; however, election officials already had mailed 1,700 of 19,000 authorized absentee and military ballots, and some voters already had returned their completed ballots.³⁵ Furthermore, the Court, apparently recognizing the substantial stress placed on the State's election process, ordered the plaintiffs to deposit \$800,000 into a judicial trust to cover the costs associated with implementing the Court's order.³⁶ Additionally, the Court ordered the Attorney General of New Jersey to take any action necessary to prevent voter confusion, including an explanatory letter that would accompany all revised ballots.³⁷ Moreover, the Court ordered Superior Court Judge Linda R. Feinberg to take any steps necessary to ensure that voters could complete and return all ballots in time for the general election on November 5.³⁸

The day after the New Jersey Supreme Court's ruling, National Republican Senatorial Committee Chairman, Senator Bill

31. *Id.*

32. *N.J. Democratic Party*, 814 A.2d 1028.

33. *Id.* at 1036-1042.

34. *Id.* at 1039.

35. *Id.* at 1033, 1039.

36. *Id.* at 1033.

37. *Id.* at 1040.

38. *Id.*

Frist, hand-delivered the Republican application for stay to United States Supreme Court Justice David Souter's office.³⁹ Justice Souter referred the application for stay to the Court, which issued a one-sentence ruling denying the application.⁴⁰

On the date of the general election, Frank Lautenberg, the Democratic Party's replacement candidate, received fifty-four percent of the New Jersey electoral vote, while Republican Doug Forrester received forty-four percent.⁴¹ Lautenberg, who founded and served as Chairman and CEO of Automated Data Processing (ADP), recently had retired from New Jersey politics in 2000 after serving the State for three terms as a United States Senator and was, therefore, well known and popular with the voters of New Jersey.⁴²

III. COURT'S REASONING

The New Jersey Supreme Court began its opinion, not by stating the language of the pertinent statute, but by stating the principles and precedent that would guide its interpretation of New Jersey Statutes Section 19:13-20.⁴³ The Court also compared Section 19:13-20 to analogous statutes from other states.⁴⁴ Once the Court established its reasoning for interpreting Section 19:13-20 liberally, the Court considered the effect on the voters of making the dates for creating and filling vacancies discretionary.⁴⁵

According to the Court, the purpose of New Jersey election law is simple: "At its center is the voter, whose fundamental right to exercise the franchise [of voting] infuses our election statutes with purpose and meaning."⁴⁶ Additionally, the Court quoted case-law concerning "the right of choice for whom to vote."⁴⁷ Apparently, the Court equated the "right to vote freely for the candidate

39. Robert S. Greenberger & Shailagh Murray, *High Court Spurns Challenge on New Jersey Ballot*, Wall St. J. A4 (Oct. 8, 2002).

40. *Forrester v. N.J. Democratic Party, Inc.*, 123 S. Ct. 67 (2002) (mem.).

41. Silla Brush, *Lautenberg Wins Land-Slide Victory against Forrester* <<http://www.dailyprincetonian.com/archives/2002/11/06/page3/#6214>> (Nov. 6, 2002).

42. *About U.S. Senator Frank Lautenberg* <<http://lautenberg.senate.gov/about.html>> (accessed Jan. 17, 2003).

43. *N.J. Democratic Party*, 814 A.2d at 1033.

44. *See id.* at 1037 (comparing Section 19:13-20 to statutes from New York, Colorado, and Washington).

45. *Id.* at 1039.

46. *Id.* at 1033.

47. *Id.* at 1034 (citing *Gangemi v. Rosengard*, 207 A.2d 665, 667 (N.J. 1965)).

of one's choice"⁴⁸ and the right that "the people should choose whom they please to govern them"⁴⁹ with the "right" of New Jersey's voters to have a viable Democratic candidate on the ballot, instead of a candidate with little chance of winning.⁵⁰

The Court proceeded to support its interpretation of Section 19:13-20 by citing other cases in which the Court had interpreted election laws liberally.⁵¹ The Court cited a number of cases; however, only two involved the liberal interpretation of statutory deadlines.⁵² Of the two, *Kilmurray v. Gilfert*⁵³ is the most analogous case. In *Kilmurray*, the Democratic candidate died on the thirty-sixth day before the general election, and the Democratic State Committee selected a replacement one day later.⁵⁴ Under the previous version of the statute interpreted in *Kilmurray*, all vacancies had to be created on or before the thirty-seventh day preceding the general election, and the state political committee had to select a replacement on or before the thirty-fourth day preceding the general election.⁵⁵ The Court liberally interpreted the previous version of Section 19:13-20, and held the date for creating vacancies discretionary, thereby permitting the Democratic State Committee to replace its candidate.⁵⁶ The Court reasoned that the Legislature's purpose for requiring all vacancies to be filled by a specific date was to afford election officials sufficient time to prepare for the general election, and because the Democratic State Committee had filled the vacancy by the final date for filling vacancies, the statute's purpose was not violated.⁵⁷

The second analogous case the Court cited as precedent for its liberal interpretation of Section 19:13-20 was *Catania v.*

48. *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (holding that the Alabama Legislature's two proposed plans for apportionment of the seats for the State's two houses were unconstitutional because the plans were not based on the relative locations of the State's population).

49. *Powell v. McCormack*, 395 U.S. 486, 541 (1969) (holding that the House of Representatives could not exclude a duly-elected member who was constitutionally eligible to serve).

50. *N.J. Democratic Party*, 814 A.2d at 1032-1033.

51. *See supra* n. 1 (listing cases cited by the Court as support for its liberal interpretation).

52. *Catania*, 588 A.2d at 374; *Kilmurray*, 91 A.2d at 865.

53. 91 A.2d at 866.

54. *Id.*

55. N.J. Stat. Ann. § 19:13-20 (amended 1985); *Kilmurray*, 91 A.2d at 866.

56. *Kilmurray*, 91 A.2d at 866.

57. *Id.* at 867.

Haberle.⁵⁸ In *Catania*, the Republican County Committee selected a candidate for an impending New Jersey Assembly special election after the preceding primary had failed to produce a Republican candidate.⁵⁹ The Secretary of State refused to place the Republican candidate's name on the ballot because, in her opinion, the Republican Party's failure to give seven days' notice, as required by Section 19:13-20, resulted in there being no vacancy to fill.⁶⁰ The Court held the seven-day-notice period to be discretionary, however, and ordered the Secretary of State to place the candidate's name on the ballot.⁶¹ The Court reasoned that the notice requirement was not mandatory because the Legislature did not require the notice to be written or mailed, the Secretary of State was not required to keep any record of notice given, and the statute did not place a notice requirement on significantly more important elections.⁶²

The opinion in *New Jersey Democratic Party* quoted the text of Section 19:13-20, which provides in pertinent part as follows:

In the event of a vacancy, howsoever caused, among candidates nominated at primaries, which vacancy shall occur not later than the [fifty-first] day before the general election . . . a candidate shall be selected in the following manner. . . . A selection made pursuant to this section shall be made not later than the [forty-eighth] day preceding the date of the general election, and a statement of such selection shall be filed with the Secretary of State . . . not later than said [forty-eighth] day. . . .⁶³

The Court determined that the statute would have created an absolute right for the Democratic State Committee to select a replacement candidate if Senator Torricelli had withdrawn on or before the forty-eighth day preceding the general election.⁶⁴ The Court also employed a legal fiction when it determined that "[n]othing in [Section] 19:13-20 addresses the precise question whether a vacancy that occurs between the forty-eighth day and

58. 588 A.2d 374.

59. *Id.* at 374-375.

60. *Id.* at 375.

61. *Id.* at 379.

62. *Id.* at 378.

63. N.J. Stat. Ann. § 19:13-20.

64. *N.J. Democratic Party*, 814 A.2d at 1037.

the general election can, in that circumstance, be filled.”⁶⁵ This statement is a legal fiction because Section 19:13-20 addresses the issue of vacancies created after the forty-eighth day before the general election by prohibiting the creation of all ballot vacancies after the fifty-first day.

In an attempt to show that Section 19:13-20 lacked legislative direction concerning the filling of vacancies created after the fifty-first day, the Court compared the statute’s purpose with analogous statutes from New York, Colorado, and Washington.⁶⁶ New York’s election-law statute provides, in addition to its time restrictions, that a political party’s failure to follow the statute’s provisions “shall be a fatal defect.”⁶⁷ Colorado’s statute states that a withdrawn candidate’s name must remain on the general election ballot if the vacancy occurs fewer than eighteen days before the general election.⁶⁸ Additionally, the Colorado statute provides that, if the withdrawn candidate receives a plurality of the votes at the general election, the vacancy committee of the candidate’s political party shall fill the vacancy.⁶⁹ Washington’s statute states that when a “vacancy occur[s] after the sixth Tuesday prior to [the] . . . general election and time does not exist in which to correct ballots,” votes cast for a vacant candidate are counted for a replacement candidate selected by the political party’s state central committee.⁷⁰

After comparing these three statutes with New Jersey’s statute, the Court, without meticulous analysis, pronounced that, unlike the other statutes, the New Jersey statute lacked “legislative declaration.”⁷¹ The Court then briefly laid out each party’s

65. *Id.* The Court typically refers to the forty-eighth day as the final day for both the creation and filling of vacancies; this interpretation is correct if the *Kilmurray* court’s holding applies to the instant statute. See *Kilmurray*, 91 A.2d at 867 (holding that the date equivalent to the fifty-first day in a previous version of Section 9:13-20 was discretionary, and the date equivalent to the forty-eighth day was mandatory). Whether the fifty-first-day deadline is discretionary under *Kilmurray* is irrelevant, however, because the Court in *New Jersey Democratic Party* also held that the final date in the statutory scheme, the forty-eighth day, was discretionary. *N.J. Democratic Party*, 814 A.2d at 1037–1038.

66. *N.J. Democratic Party*, 814 A.2d at 1037.

67. N.Y. Election Law § 1-106(2) (McKinney 2002).

68. Colo. Rev. Stat. § 1-4-1002(2.5)(a) (2002).

69. *Id.*

70. Wash. Rev. Code Ann. § 29.18.160 (2002).

71. *N.J. Democratic Party*, 814 A.2d at 1037–1038.

arguments and proceeded to grant the Democratic Party the right to replace its candidate on the ballot.⁷²

The Court reasoned that the Legislature did not intend to limit the voters' choice of candidates when, in the Court's determination, sufficient time existed to prepare new ballots containing a replacement candidate and to conduct orderly elections.⁷³ The Court also adopted *Kilmurray*'s reasoning as follows:

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.⁷⁴

The Court also considered the impact that full voter choice would have on the orderly administration of the general election with respect to absentee and military voters.⁷⁵ Instead of enforcing the dates established by the Legislature, the Court determined that election officials had sufficient time to make the appropriate changes to the ballots and that absentee and military voters would have "sufficient time to apply for, receive, execute, and return their ballots."⁷⁶

Defendant's tangential arguments received limited analysis. The first such argument was that the Court's interpretation would cause a flood of last-minute political maneuvering.⁷⁷ The second argument was that third parties presented sufficient alternatives to the "two-party system."⁷⁸ Third, Defendant argued that the Court's holding would violate the voting rights of absentee and military voters who would not have sufficient time to receive and return their ballots.⁷⁹ The Court found none of the arguments sufficiently persuasive, and quickly dismissed them.⁸⁰

72. *Id.* at 1038. The Court dismissed the defendant's arguments by stating simply that "[w]e think plaintiffs have the better argument." *Id.*

73. *Id.* at 1039.

74. *N.J. Democratic Party*, 814 A.2d at 1034–1035 (quoting *Kilmurray*, 91 A.2d at 867).

75. *Id.* at 1039–1040.

76. *Id.* at 1039 (quoting *N.J. Sen. State.*, *supra* n. 6).

77. *Id.* at 1040–1041.

78. *Id.* at 1041.

79. *Id.*

80. *Id.*

IV. ANALYSIS OF NEW JERSEY DEMOCRATIC
PARTY, INC. v. SAMSON

This Part of the Note analyzes the New Jersey Supreme Court's frustration of both the Legislature's constitutional power to regulate the election of New Jersey's United States Senators and the Legislature's intent for New Jersey Statutes Section 19:13-20. The Note reaches its conclusion after critically analyzing the Court's ruling, reasoning, and holding. The Court's decision is analyzed by applying two relevant rules of statutory construction, distinguishing the Court's precedent cases, revealing the undermining effects of the Court's holding on two of New Jersey's other election statutes, and rebutting the Court's claim that Section 19:13-20 lacked legislative direction. Additionally, this Part of the Note addresses the Democratic Party's options under the correct interpretation of Section 19:13-20, the adverse effects of the Court's holding, and the New Jersey Legislature's response to the case.

A. The Legislature's Constitutional Power to Regulate the Election of New Jersey's United States Senators

The Constitution of the United States grants each state legislature the power to regulate the "Times, Places and Manner" of conducting congressional elections.⁸¹ Thus, New Jersey's election laws are, by their very nature, creatures of statutory law, having little or no common-law history.⁸² Under the Constitution, members of the New Jersey Legislature are charged with enacting laws that protect the sanctity of the election ballot, and they do so with the confidence of their constituents, who ultimately hold the members accountable for their actions through frequent elections.⁸³ The members of the Legislature, a vast majority of whom belong to the two major political parties, also understand that the election laws they enact will mold, structure, and ultimately affect the fortunes of the state's politicians and their political parties.⁸⁴ Because of the Legislature's constitutional power and ac-

81. U.S. Const. art. I, § 4, cl. 1.

82. William N. Eskridge Jr., Philip P. Frickey & Elizabeth Garrett, *Legislation and Statutory Interpretation* 117 (Found. Press 2000).

83. *Id.* at 19.

84. *Id.* at 117.

countability, along with the statutory nature of election laws, it is assumed under the separation-of-powers doctrine that the Legislature's election-law-making power is superior to the law-making power of the judiciary.⁸⁵ Although the allocation of power between the Legislature and the judiciary is complicated, conflicts between the two branches must be resolved in favor of the Legislature.⁸⁶ The judiciary's law-making power is proper in the absence of statutory language concerning the issue at hand, but the judiciary must remain "appropriately deferential to the properly promulgated views of the [L]egislature."⁸⁷

The New Jersey Legislature, keenly aware that access to the ballot must be subject to certain, reasonable date restrictions, enacted Section 19:13-20 to provide election officials with sufficient time to prepare for an election,⁸⁸ to protect absentee and military voters,⁸⁹ to prevent last-minute political maneuvering that deprives voters of sufficient time to evaluate the candidates,⁹⁰ and otherwise to provide for orderly elections.⁹¹ The Legislature designed the statute to achieve these goals by prohibiting the creation of ballot vacancies after the fifty-first day, thereby requiring all candidates listed on the ballot after the fifty-first day to remain on the ballot even if they withdraw from the election.⁹² If a candidate who withdraws after the fifty-first day is subsequently elected, Section 19:3-26 provides that only the governor has the power to appoint a replacement.⁹³

B. The Court's Frustration of the Legislature's Intent

The Court, under the guise of a liberal interpretation, relied on the absence of explicit language concerning whether a vacancy that occurs after the forty-eighth day, but before the general elec-

85. Reed Dickerson, *The Interpretation and Application of Statutes* 8 (Little, Brown & Co. 1975).

86. *Id.*

87. *Id.*

88. *Kilmurray*, 91 A.2d at 867.

89. *N.J. Sen. State.*, *supra* n. 6.

90. *See* N.J. Stat. Ann. § 19:13-20(d) (implying that the Legislature's requirement that all changes to the ballot occur on or before the forty-eighth day is a prohibition against last-minute political maneuvering, which additionally assures that the voters have at least forty-eight days to evaluate the candidates).

91. *N.J. Sen. State.*, *supra* n. 6.

92. N.J. Stat. Ann. § 19:13-20.

93. *Id.* at § 19:3-26.

tion can be filled, to hold that the statute allowed the creation and filling of vacancies after the forty-eighth day.⁹⁴ This reasoning ignored the Legislature's clear statement that a vacancy that occurred fifty-one days or fewer before the general election requires that a selection "shall be made not later than the [forty-eighth] day."⁹⁵ The logical conclusion to the Court's illogical interpretation of the clear statutory language is a legal standard such as the following: "All government actions that are not expressly precluded are permitted."⁹⁶ The Court's standard requires the Legislature, even after creating statutory language that expressly permits some action to the exclusion of other action, to then create statutory language explicitly prohibiting the very action that the previous statutory language implicitly prohibited. This standard, of course, turns the law inside out because it inherently grants powers to the judiciary that are fundamentally legislative.⁹⁷ Thus, the Court rested its ruling upon a foundation that is fundamentally flawed.

In an effort to conceal its perversion of the law, the Court crafted an opinion that disguised the means it employed to reach its final decision by focusing almost exclusively on the ends accomplished. The ends promoted by the Court were the "two-party system," "the public interest," and "the general intent of the election laws."⁹⁸ The flaws in the Court's reasoning are apparent, however, after applying two relevant rules of statutory construction to Section 19:13-20, distinguishing the cases cited by the Court as precedent, evaluating the impact of the Court's holding on two of New Jersey's other election laws, and calling into question the Court's determination that Section 19:13-20 lacked legislative direction.

1. Analysis of New Jersey Statutes Section 19:13-20 under Two Relevant Rules of Statutory Construction

Although the Court is not bound by the rules of statutory interpretation, two rules are helpful in uncovering the statute's

94. *N.J. Democratic Party*, 814 A.2d at 1042.

95. N.J. Stat. Ann. § 19:13-20(d).

96. Robert A. Levy, *Torricelli-to-Lautenberg: Perverting the Rule of Law* <<http://www.cato.org/cgi-bin/scripts/printtech.cgi/dailys/10-07-02-2.html>> (Oct. 7, 2002).

97. *Id.*

98. *N.J. Democratic Party*, 814 A.2d at 1034–1035.

meaning. Arguably, the most applicable rule to New Jersey Statutes Section 19:13-20 is the *plain meaning rule*, pursuant to which, “If a reading of the statute provides a clear answer to the case . . . ‘the sole function of the courts is to enforce it according to its terms.’”⁹⁹ In this instance, the statute clearly states that, “vacancy, howsoever caused . . . shall occur not later than the [fifty-first] day.”¹⁰⁰ Additionally, the statute clearly states that a “selection . . . shall be made not later than the [forty-eighth] day . . . and a statement of such selection shall be filed with the Secretary of State . . . not later than said [forty-eighth] day.”¹⁰¹ The Legislature expressly intended to prohibit the creation of any vacancies after the fifty-first day, yet the Court disregarded the plain statutory language and found ambiguity where it did not exist.¹⁰²

The second rule of statutory construction, *expression unius est exclusion alterius*, means that an “expression of one thing suggests the exclusion of others,”¹⁰³ is applicable only because the Court found ambiguity in the statutory language.¹⁰⁴ Here, the Court determined that the Legislature’s failure explicitly to discuss the methods for filling vacancies occurring after the fifty-first day created sufficient ambiguity for the Court to “determine the ‘essential purpose and design’ of the election law,”¹⁰⁵ abandon the statutory language, and ultimately order the replacement of the Democratic Party candidate.¹⁰⁶ The Court’s finding of ambiguity is illogical because the Legislature clearly stated that no vacancies shall be created after the fifty-first day and that all vacancies must be filled by the forty-eighth day.¹⁰⁷ This language expressly prohibited the creation of vacancies after the fifty-first day and, by its prohibition of such vacancies, necessarily precluded the need for the Legislature to include any language concerning how vacancies created after the fifty-first day should be filled. Fur-

99. Abner J. Mikva & Eric Lane, *An Introduction to Statutory Interpretation and the Legislative Process* 9–10 (Aspen L. & Bus. 1997) (quoting *Caminetti v. U.S.*, 242 U.S. 470, 485 (1917)).

100. N.J. Stat. Ann. § 19:13-20.

101. *Id.*

102. *N.J. Democratic Party*, 814 A.2d at 1037–1038.

103. Eskridge, Frickey & Garrett, *supra* n. 82, at 375.

104. *N.J. Democratic Party*, 814 A.2d at 1037–1038.

105. *Id.* at 1038 (quoting *Aponte-Correa v. Allstate Ins. Co.*, 744 A.2d 175, 178 (N.J. 2000)).

106. *Id.* at 1027.

107. N.J. Stat. Ann. § 19:13-20.

thermore, the Legislature's requirement that all vacancies be filled by the forty-eighth day necessarily precludes the need for any language concerning how vacancies are to be filled after the forty-eighth day. Therefore, the Court should have interpreted Section 19:13-20 to require that Senator Torricelli's name remain on the ballot as the Democratic Party candidate because the withdrawal occurred after both the fifty-first and forty-eighth days before the general election.

2. Distinguishing the Court's Precedent Cases

The Court relied heavily upon the reasoning and holding in *Kilmurray* as support for its use of a liberal interpretation. In 1952, the *Kilmurray* Court liberally interpreted an earlier, but substantially similar, version of New Jersey Statutes Section 19:13-20,¹⁰⁸ and held that the date for creating vacancies was discretionary.¹⁰⁹ Although the *Kilmurray* Court interpreted a substantially similar version of Section 19:13-20, the factual situations in *Kilmurray* and *New Jersey Democratic Party* were substantially different from one another. First, in *Kilmurray*, the vacancy was caused by the death of the Democratic candidate.¹¹⁰ Second, the candidate's death occurred just one day after the final day for creating vacancies.¹¹¹ Third, and most importantly, the death occurred two days before the final deadline for filling vacancies.¹¹² This factual situation is distinguishable from *New Jersey Democratic Party*, in which Senator Torricelli withdrew not because of death, illness, or incapacitation, but because he was losing in the polls.¹¹³ Additionally, Senator Torricelli's withdrawal did not occur between the last day for creating vacancies and the

108. The only difference between the current version of Section 19:13-20 and the version that the *Kilmurray* court interpreted is the number of days that the Legislature determined as necessary for the election officials to conduct an orderly election; in 1952, the last day for creating a vacancy was the thirty-seventh day preceding the general election and the last day for filling any vacancy was the thirty-fourth day preceding the general election. *Kilmurray*, 91 A.2d at 867 (citing N.J. Stat. Ann. § 19:13-20 (amended 1985)).

109. *Id.* at 868.

110. *Id.* at 866. Although the statute does not distinguish between reasons for withdrawal and the subsequent creation of a ballot vacancy, the argument for liberally interpreting the statute would be strengthened when the candidate died as opposed to when the candidate withdrew because of political reasons.

111. *Id.*

112. *Id.* at 866-867.

113. *Supra* nn. 25-26 and accompanying text.

last day for filling vacancies, as was the case in *Kilmurray*.¹¹⁴ Here, Senator Torricelli voluntarily created a vacancy twelve days after the final day for filling all ballot vacancies.¹¹⁵

The most important distinction between *Kilmurray* and *New Jersey Democratic Party* is that the *Kilmurray* court did not undermine the Legislature's ultimate purpose.¹¹⁶ Although the *Kilmurray* court held that the date for creating vacancies was discretionary, it reasoned that such a date was not a limit on the party's authority to "fill a vacancy so long as it [made] and file[d] its selection with the . . . clerk [thirty-four] days or more before the general election."¹¹⁷ The thirty-fourth day was the final day for filling vacancies according to the earlier version of the statute.¹¹⁸ Additionally, the *Kilmurray* court reasoned that the substitution was permissible because the Democratic Party "made and filed its selection of a substitute within the time prescribed by statute,"¹¹⁹ in other words, before the final statutory day for filling vacancies. Therefore, although the *Kilmurray* court interpreted the statute flexibly, it did not violate the Legislature's purpose for the statute because it upheld the final date in the statutory scheme as a mandatory date for filling vacancies.¹²⁰

The *New Jersey Democratic Party* court's selective use of the *Kilmurray* opinion and its failure to address the language concerning the nondiscretionary nature of the date for filling vacancies are indicative of the Court's approach to this case. The Court in *Catania* also failed to address similar language regarding the mandatory nature of the date for filling vacancies.¹²¹ The *Catania* court stated in dicta that the "only timetable in the statute [Section 19:13-20] . . . to fill [a] vacancy is the requirement that the candidate's name be sent to the Secretary of State, forty-eight days before the general election."¹²² The *Catania* court's interpreta-

114. *Kilmurray*, 91 A.2d at 866–867.

115. Fagan & Boyer, *supra* n. 26.

116. *Kilmurray*, 91 A.2d at 867.

117. *Id.* at 868 (emphasis added).

118. *Id.* at 867 (citing N.J. Stat. Ann. § 19:13-20 (amended 1985)).

119. *Id.* at 868 (emphasis added).

120. *Id.* at 867–868. Under the *Kilmurray* court's interpretation of Section 19:13-20, a political party that's candidate died after the thirty-fourth day before the general election could not replace its candidate because, of course, the party's selection could not be made and filed with the clerk thirty-four days before the general election. *Id.* at 868.

121. *Catania*, 588 A.2d at 378.

122. *Id.* at 377–378 (emphasis added).

tion of Section 19:13-20 is consistent with the interpretation in *Kilmurray* concerning the mandatory nature of the forty-eighth-day deadline.¹²³

The *New Jersey Democratic Party* court's reliance on *Kilmurray* as support for its liberal interpretation of Section 19:13-20 also is weakened by the dissent in *Wene*, in which Chief Justice Arthur T. Vanderbilt, who had penned the *Kilmurray* majority opinion just one year prior, admonished the *Wene* court for its flagrant disregard of clear and unambiguous statutory language under the pretense of a liberal interpretation.¹²⁴ In his dissent, Chief Justice Vanderbilt addressed the *Wene* court's misuse of a liberal interpretation as a free pass to rewrite an election law with which the Court disagreed.¹²⁵ Additionally, Chief Justice Vanderbilt reiterated the language from *Kilmurray*, which the *New Jersey Democratic Party* court freely used as justification for its actions, that "election laws are not to be construed so as to render an election void for technical reasons."¹²⁶ However, Chief Justice Vanderbilt clarified the above language by remarking that election laws "must at the same time be interpreted and enforced so as to protect the sanctity of the ballot, which is the foundation on which popular government necessarily rests."¹²⁷ The Court's use of the above language from *Kilmurray* must have been for persuasive effect because none of the issues in *New Jersey Democratic Party* involved an election rendered void for technical reasons. Chief Justice Vanderbilt also wisely noted that "[i]f the safeguards set up by the Legislature are broken down there will be nothing to prevent the abuse of the right of suffrage."¹²⁸

3. *The Court's Interpretation of New Jersey Statute Section 19:13-20 Undermined Two Other Election Statutes*

The adverse impact of the Court's interpretation of New Jersey Statutes Section 19:13-20 is not limited to that provision. The Court's interpretation undermines the purpose of two other election laws, New Jersey Statutes Section 19:57-14 and New Jersey

123. *Supra* nn. 117–119 and accompanying text.

124. *Wene*, 98 A.2d at 579–581 (Vanderbilt, C.J., dissenting).

125. *Id.*

126. *Id.* at 581.

127. *Id.*

128. *Id.*

Statutes Section 19:14-1, which were intended to establish that the dates for creating and filling vacancies in New Jersey were mandatory.¹²⁹ These two laws, which place mandatory requirements on election officials, have now lost their significance because the forty-eighth day is no longer the final day for filling vacancies. For example, Section 19:57-14 requires election officials to prepare absentee ballots listing all candidates who are known on the forty-eighth day preceding the general election.¹³⁰ This statute lacks a legitimate purpose if the ballots prepared by the election officials are continually subject to revision up until a date to be determined by the Court.¹³¹ Additionally, Section 19:14-1 requires each county clerk to have a copy of the ballot ready for the printer on the forty-third day preceding the general election.¹³² Therefore, the Court's holding that the Democratic Party could replace its candidate on the thirty-fourth day before the general election contradicted the Legislature's intended schedule because election officials were statutorily obligated to begin printing ballots ten days earlier.

4. Rebutting the Court's Determination That New Jersey Statutes Section 19:13-20 Lacked Legislative Direction

The Court determined that New Jersey Statutes Section 19:13-20 lacked legislative direction because other state legislatures had spoken more explicitly and succinctly about the filling of vacancies created after a statutorily prescribed deadline.¹³³ Although the Court's statement is correct in that the other legislatures were more explicit and succinct in addressing the issue, the Court's conclusion that New Jersey's election statutes did not provide sufficient legislative direction is incorrect. Section 19:13-20 requires all vacancies to be created by the fifty-first day and all vacancies to be filled by the forty-eighth day; therefore, the implication is that vacancies created after the fifty-first day or vacancies that are not filled by the forty-eighth day will not be reflected

129. The Court should have interpreted Section 19:13-20 to maintain the textual integrity of the other statutes, to "[a]void interpreting a provision in a way that is inconsistent with a necessary assumption of another provision." Eskridge, Frickey & Garrett, *supra* n. 82, at 376.

130. N.J. Stat. Ann. § 19:57-14.

131. *Infra* nn. 150-152 and accompanying text.

132. N.J. Stat. Ann. § 19:14-1.

133. *N.J. Democratic Party*, 814 A.2d at 1037-1038.

on the ballot. As a result, the voter's choice on election day is between the candidates listed on the ballot. If the voters elect a candidate who vacates the ballot after the statutory dates, Section 19:3-26 provides that the Governor of the State shall appoint a replacement.¹³⁴ Therefore, the New Jersey Legislature's election laws provided a remedy to the issue at hand and were not so lacking in legislative direction as to require the Court to determine how the Legislature would have resolved the instant situation had the Legislature foreseen it.

C. How the Court Should Have Decided *New Jersey Democratic Party* and the Democratic Party's Options under a Correct Interpretation of New Jersey Statutes Section 19:13-20

The Court's intent to put the name of a viable Democratic Party candidate on the ballot ultimately led the Court down the wrong path. The New Jersey Supreme Court misused United States Supreme Court cases stating, for example, that the "right to vote freely for the candidate of one's choice is of the essence of a democratic society,"¹³⁵ as support for its proposition that the New Jersey voters' right of choice would be diminished unless the Court ordered the replacement of the fading Democratic Party candidate with a more viable candidate. The Court ignored the fact that this case had nothing to do with constitutional issues of voter choice; the voters of New Jersey had a choice because New Jersey Statute Section 19:13-20 prevented Senator Torricelli's withdrawal from the ballot. Although the choice was between a strong Republican candidate and a weak Democratic candidate, and thus the election was not between two competitive candidates, the simple fact is that most elections for national office today are not competitive. For example, after the 1998 elections, 98.3% of incumbents were re-elected.¹³⁶ In the United States House of Representatives that year, fewer than one in ten seats were won by less than a ten percent margin,¹³⁷ while only twelve of twenty-eight United States Senate re-election campaigns were

134. N.J. Stat. Ann. § 19:3-26.

135. *N.J. Democratic Party*, 814 A.2d at 1034 (quoting *Reynolds*, 377 U.S. at 555).

136. Carl Weiser, *For Most Incumbents in Congress, Re-election Is a Sure Bet* <http://www.fairvote.org/op_eds/mort1000.htm#carl> (Oct. 20, 2000).

137. Lee Mortimer, *Elections Give Voters Too Little Say* <http://www.fairvote.org/op_eds/mort1000.htm#lee> (Oct. 2000).

considered competitive.¹³⁸ If the courts of every state, or even a minority of states, permitted the actions ordered by this Court, the stability and sanctity of those states' election processes would be continually subject to the whims of politics.

Had the Court properly interpreted Section 19:13-20 and held that Senator Torricelli's name should remain on the ballot, the Democratic Party had several options to make the election as competitive as possible. First, and notwithstanding the fact that the Democratic Party could have endorsed another, more ethical candidate during the primary or procured Senator Torricelli's withdrawal before the fifty-first day, Senator Torricelli could have run as the Democratic candidate and subjected himself and his party to the probable voter backlash brought on by his alleged unethical activities.¹³⁹ Second, the Democratic Party could have accepted Senator Torricelli's withdrawal, even though his name would have remained on the ballot, and waged a massive write-in or paste-in campaign¹⁴⁰ to persuade voters to elect the eventual replacement candidate, Frank Lautenberg.¹⁴¹ Third, the Democratic Party could have utilized Section 19:3-26.¹⁴² This statute provides that when a vacancy occurs in the representation of the State of New Jersey in the United States Senate the vacancy

shall be filled at the general election next succeeding the happening thereof, . . . unless the governor of this state shall deem it advisable to call a special election therefor, which he is authorized hereby to do. The governor of this state may make a temporary appointment of a senator of the United States from this state whenever a vacancy shall occur by reason of any cause other than the expiration of the term; and such appointee shall serve as such senator until a special election or general election.¹⁴³

138. Weiser, *supra* n. 136.

139. Akhil Reed Amar & Vikram David Amar, *Rewriting the New Jersey Ballot: Some Preliminary Issue Spotting* <<http://writ.news.findlaw.com/amar/20021004.html>> (Oct. 4, 2002).

140. Section 19:15-28 (2002) grants the voters of New Jersey the right to write-in or paste-in the name of a desired choice in the column designated "personal choice" for the particular office.

141. Amar & Amar, *supra* n. 139.

142. *N.J. Democratic Party*, 814 A.2d at 1038.

143. N.J. Stat. Ann. § 19:3-26.

To utilize this provision, the Democrats could have reached an agreement with Senator Torricelli that he would resign his seat if elected, thereby creating a vacancy in the Senate.¹⁴⁴ As soon as Senator Torricelli agreed, New Jersey's Democratic governor, James E. McGreevy, could have publicly announced the agreement and explained to the voters that he would replace Senator Torricelli with Frank Lautenberg if the voters elected Senator Torricelli at the general election.¹⁴⁵ Under this option, the voters of New Jersey would have been assured that a vote for Senator Torricelli was actually a vote for Lautenberg.¹⁴⁶ This scenario, while requiring some extreme maneuvering by the Democratic Party, would have given the voters of New Jersey effectively the same choice without the Court's misapplication of the law. Thereby, the judiciary would have respected the Legislature's power to regulate elections, and the dates in Section 19:13-20 would still be applicable and mandatory.

D. The Adverse Effects of the Court's Holding

The New Jersey Supreme Court's decision destabilized the election process established by the New Jersey Legislature. One of the most obvious problems caused by the Court's holding is that it supports, or at least condones, last-minute political maneuvering.¹⁴⁷ Senator Torricelli admitted that his withdrawal was a calculated political move when he stated that he would not willingly "be responsible for the loss of the Democratic majority in the United States Senate."¹⁴⁸ It is foreseeable that as the science of polling becomes increasingly more accurate, more politicians and their parties will look to this holding as an opportunity for a "do over."¹⁴⁹

This "parade of horrors"¹⁵⁰ is a very real threat, not only to the sanctity of the election process, but also to the New Jersey court system. The Court's holding opened the floodgates to this type of litigation because the Court failed to establish concrete

144. Amar & Amar, *supra* n. 139.

145. *Id.*

146. *Id.*

147. *See supra* nn. 25-26 (recounting the political maneuvering employed by Senator Torricelli and the Democratic Party).

148. Fagan & Boyer, *supra* n. 26.

149. Amar & Amar, *supra* n. 139.

150. *N.J. Democratic Party*, 814 A.2d at 1041.

dates concerning the creation and filling of vacancies. According to the Court's reasoning, a political party can replace its candidate at any time before the election so long as election officials have sufficient time to make the appropriate changes and the political party has the money to pay for such changes.¹⁵¹ The Court's determination that sufficient time for the change existed in the instant case came after testimony elicited during oral argument.¹⁵² Because this determination is necessarily *ad hoc*, and, by its nature, a subjective decision based on multiple variables, the concept of sufficient time will vary from election to election. The lack of future direction will result in political parties filing suit whenever an opposing party attempts to utilize this decision. In effect, the Court has replaced the Legislature as the governing body in control of the state's ballot deadlines.

E. The New Jersey Legislature's Response to
New Jersey Democratic Party

The Court's statement to the Legislature, "[i]f that is not what the Legislature intended we anticipate that it will amend [Section 19:13-20] accordingly,"¹⁵³ coupled with the perception that the Court's intention was "[w]e will write the law as we prefer it,"¹⁵⁴ brought swift response from the New Jersey Legislature. On October 10, 2002, New Jersey Assemblymen Rick Merkt and Guy R. Gregg introduced Assembly Bill 2878, which reiterated the Legislature's intent that no vacancies shall occur after the fifty-first day preceding the general election.¹⁵⁵ The bill is accompanied by a declaration that severely admonishes the Court for "clearly overstepp[ing] its authority and blatantly disregard[ing] the intention of the Legislature."¹⁵⁶ The bill reiterates that "[i]t is the role of the Legislature, and not the Judiciary, to write new law or amend any current law . . . pertaining to elections" and that any further such act would "[constitute] a fatal defect in the role of the Judiciary."¹⁵⁷

151. *Id.* at 1039-1040.

152. *Id.* at 1039.

153. *Id.*

154. Levy, *supra* n. 96.

155. N.J. Assembly 2878, 210th Leg. (Oct. 10, 2002).

156. *Id.*

157. *Id.*

Furthermore, on November 18, 2002, New Jersey State Senator Shirley K. Turner, a Democrat, introduced Senate Bill 2096, which, if enacted, would permit vacancies created after the fifty-first day before the general election to be filled until the thirtieth day if the vacancy was caused by the candidate's death, or physical or mental incapacitation.¹⁵⁸ Although this senate bill is significantly less stringent than New Jersey Statute Section 19:13-20 or Assembly Bill 2878, all three would prohibit the acts permitted by the Court in *New Jersey Democratic Party*.

V. CONCLUSION

The New Jersey Supreme Court's decision in *New Jersey Democratic Party*¹⁵⁹ is the result of the Court's intentional misinterpretation of New Jersey Statute Section 19:13-20. The unfortunate consequences of the Court's decision are the Court's misapplication of precedent cases supporting further liberal interpretations, the violation of the separation-of-powers doctrine, the abandonment of two applicable rules of statutory interpretation, and the rejection of the Legislature's intent for the pertinent statute and two other related statutes. Although one can hardly argue with the Court's basic assertion that elections should be competitive, the Court's actions to make this election competitive are disturbing. Because of the Court's willingness to misinterpret the language of Section 19:13-20, the members of the Legislature should become more aware of the need for precise language in the State's election statutes to preempt future misinterpretations by the Court. Additionally, the importance of mandatory dates in election statutes must not be overlooked, because even the slightest uncertainty in an election statute's language increases the motivation for political parties to abuse the election process to expand their political power.

The Court's decision in *New Jersey Democratic Party* clearly achieved the Court's short-term agenda of placing a viable Democratic Party candidate on the ballot; however, the Court disregarded the potential long-term negative impacts of its holding on the New Jersey election process. The New Jersey Legislature's introduction of the two bills supporting the mandatory nature of

158. N.J. Sen. 2096, 210th Leg. (Nov. 18, 2002).

159. 814 A.2d 1028.

the dates in Section 19:13-20 is a step in the right direction. One can only hope the Legislature will enact one of the two bills and take other affirmative steps towards reclaiming its constitutional right to regulate the State's elections.