

**Douglas Steinhardt- NJ Atty ID # 020591994**  
**Florio, Perrucci, Steinhardt & Cappelli, LLC**  
 235 Broubalow Way  
 Phillipsburg, NJ 08865  
 908-454-8300  
 908-454-5827 Facsimile  
 Attorney for Plaintiffs Arthur Rittenhouse and Jean Kokoda

<p>ARTHUR RITTENHOUSE and JEAN KOKODA</p> <p style="text-align: center;">Plaintiff</p> <p style="text-align: center;">V.</p> <p>HONORABLE ELAINE FLYNN, in her official capacity as the Middlesex County Clerk; MIDDLESEX COUNTY BOARD OF ELECTIONS, JOHN/JANE DOE, in their official capacity as an election official based in Middlesex County, New Jersey responsible for any part of the November 5, 2019 General Election</p> <p style="text-align: center;">Defendants</p>	<p>SUPERIOR COURT OF NEW JERSEY          LAW DIVISION          MIDDLESEX COUNTY          LAW DIVISION</p> <p style="text-align: center;">CIVIL ACTION</p> <p style="text-align: center;">DOCKET NO.: MID-L-     -19</p> <p style="text-align: center;">VERIFIED PETITION CONTESTING THE          RESULTS OF THE NOVEMBER 5, 2019          GENERAL ELCTION FOR THE OFFICE OF          MAYOR OF THE BOROUGH OF          SAYREVILLE AND CIVIL RIGHTS          COMPLAINT</p>
--	--

Plaintiff Arthur Rittenhouse and Jean Kokoda by way of this Verified Petition pursuant to N.J.S.A. 19-29-1, et seq., and Civil Rights Complaint, allege and state:

### PARTIES

1. At all times relevant herein, Plaintiff Arthur Rittenhouse (“Rittenhouse”) was the Republican candidate for the office of Mayor in the Borough of Sayreville, in the County of Middlesex, State of New Jersey for the 2019 General Election held on November 5, 2019.
2. At all times relevant herein, Plaintiff Jean Kokoda was a resident of the Borough of Sayreville, County of Middlesex, State of New Jersey and a duly qualified voter who cast a Provisional Ballot in the 2019 General Election held on November 5, 2019.

3. At all times relevant herein, Defendant Elaine Flynn is the Middlesex County Clerk (“County Clerk”), who is vested with certain statutory duties and obligations related to the November 5, 2019 General Election, including among other things, designing and ordering the proper ballots, ballot envelopes and other paper election materials for state and county elections held in Middlesex County.
4. At all times relevant herein, Defendant Middlesex County Board of Elections (“Board of Elections”) was responsible for tabulating votes cast in elections held in Middlesex County pursuant to the mandates of Title 19 and for training all poll workers employed to assist voters during the November 5, 2019 General Election.
5. At all times relevant herein, Defendant John/Jane Doe was an official based in Middlesex County, New Jersey who was responsible for any part of the November 5, 2019 General Election.

### **JURISDICTION AND VENUE**

#### **A. The November 5, 2019 Election for Sayreville Mayor**

6. The Superior Court has jurisdiction over this election and civil rights matter pertaining to ballots in Middlesex County with respect to the General Election held on November 5, 2019.
7. Venue is proper in Middlesex County under Rule 4:3-2(a) (2) and (3) because the elections, candidates and ballots at issue pertain to Middlesex County, the cause of action arose in Middlesex County and all parties reside within Middlesex County.

### **FACTUAL BACKGROUND**

8. Rittenhouse was the Republican candidate for the Office of Mayor in the Borough of Sayreville, County of Middlesex, in the General Election held on November 5, 2019 (hereinafter referred to as the “Election”).
9. Upon information and belief, approximately 7,611 ballots were cast in the Election as set forth in Exhibit A attached hereto.

10. Victoria Kilpatrick (“Kilpatrick”) was the Democratic candidate for the office in Mayor of the Borough of Sayreville, County of Middlesex in the Election.
11. The unofficial preliminary results of the November 5, 2019 Election were listed by Defendant County Clerk which indicated that Rittenhouse had a margin of victory of 33 votes over Kilpatrick.
12. On the night of the November 5, 2019 Election the voting ballots in mail (“VBM”) and the Provisional Ballots had not yet been counted.
13. The Defendant Board of Elections had advised both Plaintiff Rittenhouse and Kilpatrick that it would be counting all VBM ballots and Provisional Ballots on November 8, 2019.
14. On November 8, 2019, the Board of Elections counted the VBM Ballots and Provisional Ballots. Plaintiff challenged ten (10) of the VBM Ballots and Provisional Ballots attached hereto as Exhibit B. The Defendant Board of Elections accepted and counted the challenged VBM Ballots.
15. Upon information and belief, there were a total of forty six (46) Provisional Ballots from several election districts within the Borough of Sayreville which remain uncounted.
16. Upon information and belief after the counting of the all VBM Ballots on November 8, 2019 the Plaintiff Rittenhouse was advised by Defendant Board of Elections that the margin of victory was now eighteen votes (18) over candidate Kilpatrick.
17. On November 12, 2019 the Defendant Board of Elections had counted the remaining Provisional Ballots not including the forty six (46) Provisional Ballots.
18. Subsequent to the counting of the Provisional Ballots on November 12, 2019, (not including the forty six (46) Provisional Ballots still remaining as uncounted), along with the rescanning of the VBM, Plaintiff Rittenhouse had lost additional votes and Kilpatrick was now three (3) votes ahead of the Plaintiff Rittenhouse.
19. Consequently, Plaintiff Rittenhouse filed a Petition in Support of Recount and Recheck on November 22, 2019, Docket No.: MID-L-8024-2019.
20. On November 27, 2019, the Petition was granted by the Honorable Judge Arthur Bergman and a recount and recheck was ordered.
21. Following the recount on December 5, 2019, Kilpatrick’s margin of victory was now six (6) votes over Plaintiff Rittenhouse.

22. As a result of the recount, many of the discrepancies set above and more fully described below were found.

### **B. Sealed and Missing Provisional Ballots**

23. Upon information and belief, there were a total of forty six (46) Provisional Ballots from several election districts within the Borough of Sayreville which remain uncounted.
24. Of the forty six (46) total Provisional Ballots, the Plaintiff Rittenhouse was initially advised the Defendant, Board of Elections that there were thirty five (35) Provisional Ballots from seven voting districts and six (6) Provisional Ballots from three election districts.
25. Upon information and belief, thirty (35) of the Provisional Ballots were placed in the official orange bag however the bag was not properly locked. The Defendant Board of Elections did not count the 35 Provisional Ballots due to concerns with the chain of custody on election night November 5, 2019.
26. Upon information and belief, the remaining five (5) Provisional Ballots were placed in with the supply materials bag from the election and not in the official locked orange bag. These Provisional Ballots were not discovered until after the November 5, 2019 Election.
27. On November 13, 2019, Plaintiff Rittenhouse was contacted by Board of Elections Commissioner Sylvia Engle and advised that the Board of Elections had now discovered the additional five (5) Provisional Ballots from three separate voting districts and that an emergency meeting of the Board of Elections would be held that same day at 2 pm to decide how to resolve this matter.
28. Subsequently, the Plaintiff Rittenhouse was further advised on December 9, 2019 by Thomas Lynch, Administrator of the Board of Elections that there were additional five (5) Provisional Ballots which were rejected for a total of forty six (46) uncounted. To date, Plaintiff Rittenhouse is unaware of which election districts the additional five (5) Provisional Ballots were from.
29. At the November 13, 2019 emergency meeting of the Board of Elections, Plaintiff Rittenhouse also requested that Commissioner Daniel Frankel recuse himself to avoid the appearance of a conflict of interest and not participate in the meeting since he is also the

full time Business Administrator of the Borough of Sayreville. The remaining commissioners of the Defendant Board of Elections did not act on Plaintiff's Rittenhouse request and thus Mr. Frankel participated in the emergency meeting.

30. Upon information and belief, as result of Mr. Frankel's participation on behalf of the Defendant Board of Elections, despite having direct personal interest in the outcome of the Sayreville Mayoral Election given his position as the Sayreville Business Administrator placed in doubt whether the actions of the Board of Elections were truly objective. Attached hereto as Exhibit C is memorandum from the Sayreville Republican Committee that Mr. Frankel recuse himself from the Sayreville Election process.
31. At the emergency meeting of November 13, 2019, the Defendant Board of Elections voted to reject the five (5) additional Provisional Ballots despite being sealed although placed in the wrong supply bag and not the official orange bag.
32. Upon information and belief, the Defendant Board of Elections provided a list of those eligible voters whose VBM Ballots or Provisional Ballots were rejected as set forth in Exhibit D and thus each such voter has been disenfranchised as their Provisional Ballots or VBM Ballots were rejected by the Defendant Board of Elections even though the voter properly sealed their ballot and provided their ballot to the poll worker.
33. Upon information and belief, of the forty six (46) Provisional Ballots that were all sealed and either placed in the wrong supply bag or the orange bag which was unlocked if Plaintiff receives seven or more of those ballots cast it could change the outcome of the Election.
34. Upon information and belief, none of the qualified voters who cast their Provisional sealed ballot at issue here returned their mail in ballot and as such, their Provisional Ballots should have been counted.
35. Additional sworn statements and testimony will further support this position.

### **C. Scanned Vote by Mail Ballots**

36. In addition to the forty six (46) Provisional Ballots that have gone uncounted as a result of them either placed in the wrong supply bag or the orange bag which was unlocked,

there was also an issue with the counting all of the VBM Ballots which were received by the Board of Elections for the November 5, 2019 election.

37. Upon information and belief, on November 12 and 13, 2019 VBM Ballots had to be re-scanned at the direction of New Jersey Attorney General's Office as the Defendant Board of Elections had advised they had encountered difficulties in the machine which initially scanned the VBM Ballots. See attached email communication from Thomas Lynch as set forth in Exhibit E.
38. Upon information and belief, Thomas Lynch, Administrator of the Board of Elections advised that the vote tally from the original machine which scanned the VBM Ballots had been erased. Thus, no comparison could be utilized when the VBM Ballots were re-scanned.
39. Upon information and belief, during the rescanning of the VBM Ballots jams occurred on two machines scanning the VBM Ballots and thus it was necessary for the operators of the machines to hand count at different times during the process for the total VBM Ballots to confirm they were all run through the machines. It is unclear whether the total VBM Ballots either counted by hand or scanned was accurate.
40. Thus, all of the voters who mailed their VBM Ballots to vote in the 2019 Sayreville Mayor election have also been disenfranchised as a result of the fact that each voter cannot be assured that their vote was counted in the November 5, 2019 Sayreville Mayoral Election.

## **GROUND FOR CONTESTING THE ELECTION AND LEGAL CLAIMS**

41. Plaintiffs repeat and reassert all of the allegation set forth in the forgoing paragraphs as if set forth herein.
42. N.J.S.A. 19:23-3 provides that a petition contesting the election may be filed within 10 days after the results of a recount has been determined or announced.

### **COUNT 1 (Errors and Irregularities)**

43. Plaintiffs repeat and reassert all of the allegations set forth in the foregoing paragraphs as if set forth herein at length.



44. As set forth above, a number of Provisional Ballots were not counted or rejected even though they were properly sealed by the voter but simply either placed in the wrong supply bag or in the official orange bag which was later confirmed to be unlocked.
45. All indications are that Provisional Ballots were completed in private, the voter attempted to seal same, and they were then put in the possession of Defendants poll workers as required by law.
46. Thereafter, Defendants poll workers placed the Provisional Ballots into bags which were thereafter individually sealed by each voter and provided to Defendants, where all seals were in place when the Provisional Ballot bags were either opened or later discovered as set forth above.
47. Thus, upon information and belief, there is a proper chain of custody for each of the sealed individual Provisional Ballots.
48. To the extent that these Provisional Ballots were either placed in the wrong supply bag or placed in the unlocked orange official bag, same was not through the fault of the voters as the individual ballots were properly sealed.
49. Defendant Flynn has a statutory duty to provide proper Provisional Ballots, envelopes and election materials to use in elections throughout the County, and while she may have attempted to do so, she ultimately failed to provide materials which would permit them to be properly sealed. See N.J.S.A 19:53C-1(a) and N.J.S.A 19: 53C-10.
50. The discrepancy in Provisional Ballots where were cast but not counted, and the conduct of the Board of Elections in not counting these votes as a result of same being rejected for the reasons set forth above is sufficient to affect the outcome of the election, and thus constitutes grounds to contest the election pursuant to N.J.S.A 19:29-1 (e), (f) and (g).
51. All of the aforementioned grounds, each independently and collectively constitute sufficient grounds to contest the Election pursuant to N.J.S.A 19:29-1(e), (f) and (g).

**WHEREFORE,** Plaintiffs demand judgement as follows:

A. Declaring that the (1) sealed Provisional Ballots be counted by the Board of Elections, (2) sealed mail in ballots be recounted by the Board of Elections by an independent monitor appointed by the Court to oversee such recount of the mail in ballots, and an appropriate

certificate of election be issued declaring the winner of the race following the counting of these votes;

B. In the alternative, ordering that the election be set aside, and that a re-rerun election be held; and

C. Granting such other relief as the Court may deem right and just upon the determination of this matter.

### **Count 2 (Eligible Voters)**

52. Plaintiffs repeat and reassert all of the allegations set forth in the foregoing paragraphs as if set forth herein at length.

53. Upon information and belief, the following individuals, among others, were eligible to vote and in fact voted in the Election but whose votes were not counted as a result of their Provisional Ballots being rejected improperly by Defendants for the reasons set forth above:

<b>Name (Last, First)</b>	<b>Address at which Voter is Registered to Vote</b>
Ahmed, Zunair, A	3189 Washington Rd, Sayreville, NJ 08872
Arigorat, Archimor, Sr.	4 singer Ct, Sayreville, NJ 08872
Arigorat, Elenita, A	4 Singer Ct, Sayreville, NJ 08872
Brown, George, F	48 Kendall Dr, Sayreville, NJ 08872
Brown, Sheila	48 Kendall Dr, Sayreville, NJ 08872
Butt, Amna, N	16 Skytop GDNS Apt- Unit 22, Sayreville, NJ 08872
Butt, Nadeem	16 Skytop GDNS Apt- Unit 22, Sayreville, NJ 08872
Dahou, Elhoussai	60 Richards Dr, Old Bridge, NJ 08859
DeBrito, Michael, J	1 Orta Ct, Sayreville, NJ 08872
Delduca, Sebastian, J	10 Buttonwood Dr, Sayreville, NJ 08872
Domagala, Anna, Maria	14 S Edward St, Sayreville, NJ 08872
Dworak, Ariel, S	22 Parkway Pl, Sayreville, NJ 08872
Dworak, James, A	22 Parkway Pl, Sayreville, NJ 08872
Esposito, Jessica, J	24 Haven Terr, Sayreville, NJ 08872
Fernandes, Jonathan	86 Winding Wood Dr, Sayreville, NJ 08872



Frank, Blake, A	108 Wilson Ave, Holmdel, NJ 08859
Harris, Eugene, W	5 Biesiada Ct, Sayreville, NJ 08872
Hester, Vanessa, D	19 Cypress Dr, Sayreville, NJ 08872
Holland, Sonni, Ali	64 Sayreville Blvd S, Sayreville, NJ 08872
Holton, Linda, S	104 Merritt Ave, Sayreville, NJ 08872
Hubbard, Neal, E	10 Ciecko Ct, Sayreville, NJ 08872
Imperato, Sarah, M	35 Buttonwood Dr, Sayreville, NJ 08872
Kalluri, Uma	11 Fern ct, Sayreville, NJ 08872
Kasbekar, Preeti, A	6 Memorial Way, Sayreville, NJ 08872
Kerchner, Heather, M	22 Cedar Terr, Sayreville, NJ 08872
Kodada, Jean	37 Brook Ave, Sayreville, NJ 08872
Kong, Christoph	6 Daisy Ct, Sayreville, NJ 08872
Laubach, J Lorraine	29 Harrison Pl, Sayreville, NJ 08872
Laguerre, Janina	1 Kosmoski Terr, Sayreville, NJ 08872
Leoncavallo, John, E	388 Washington Rd, Apt-Unit E, Sayreville, NJ 08872
Lesko, Joseph, W	16 Winding Wood Dr Apt- Unit 4B, Lakehurst, NJ 08872
Marion, Constance, C	25 Highland Dr, Sayreville, NJ 08872
McAuley, James, P	60 Canal St, Sayreville, NJ 08872
McGill, Adrienne, J	20 Stephen St, Sayreville, NJ 08872
Medina, Joseph	31 Begonia Ct, Sayreville, NJ 08872
Medina, Lisa, G	31 Begonia Ct, Sayreville, NJ 08872
Ofenbakh, Dmitriy	3 Giera Ct, Jersey City, NJ 08859
Patel, Dharmesh, R	16 Clark St, Sayreville, NJ 08872
Patel, Dharmishtha, Rameshbhai	141 Whitehead Ave, Sayreville, NJ 08872
Powers, Roseann	43 Ash Terr, Sayreville, NJ 08872
Rodriguez, Juan, A	10 Joyce Pl, Sayreville, NJ 08872
Rokadia, Hasumati, S	32 Daisy Ct, Sayreville, NJ 08872
Sheth, Kapilaben, K	32 Birch Terr, Sayreville, NJ 08872
Sheth, Manoj, Kantilal	32 Birch Terr, Sayreville, NJ 08872
Todman, Isaiah, L	3 Parr Dr, Sayreville, NJ 08872
Tumbleson, Michael, E	22 Cedar Terr, Sayreville, NJ 08872

54. Upon information and belief, the aforementioned voters cast Provisional Ballots as such ballots were rejected by Defendants even though properly sealed by the voter as either being placed in the wrong supply bag or in the unlocked orange bag.

55. The improper rejection of these individuals' votes is sufficient to affect the outcome of the election, and thus constitutes grounds to contest the election pursuant to N.J.S.A. 19:29-1 (e).

56. Similar issues exist for the rejection of qualified voters who cast mail-in ballots who were improperly rejected by the Board.

**WHEREFORE**, Plaintiffs demand judgement as follows:

A. Declaring that the (1) sealed Provisional Ballots be counted by the Board of Elections, (2) sealed mail in ballots be recounted by the Board of Elections by an independent monitor appointed by the Court to oversee such recount of the mail in ballots, and an appropriate certificate of election be issued declaring the winner of the race following the counting of these votes;

B. In the alternative, ordering that the election be set aside, and that a re-rerun election be held; and

C. Granting such other relief as the Court may deem right and just upon the determination of this matter.

**Count 3 (Violations of the New Jersey Civil Rights Act, N.J.S.A. 10:6-2(c))**

57. Plaintiffs repeat and reassert all of the allegations set forth in the foregoing paragraphs as if set forth herein at length.

58. The statutory provisions set forth above are intended to provide for the discharge of transparent, free and open elections, and to protect Plaintiffs' constitutional rights to access the franchise by placing clear obligations on Defendants to ensure that election equipment, and paper election materials such as ballots/ ballot envelopes at issue here are not defective.

59. Defendants failed to satisfy their statutory obligations in this regard, thus depriving Plaintiffs' substantive rights as voters and disenfranchising them.

60. The disenfranchisement of Plaintiffs, and others was a direct result of the errors and omissions committed by Defendants.
61. Defendants deprivation of Plaintiffs' rights occurred "under color of law," as Defendants were acting in their official capacities.
62. As a result, Plaintiffs are entitled to damages and reasonable attorneys' fees and costs pursuant to N.J.S.A. 10:6-2 (f).

**WHEREFORE**, Plaintiffs demand judgement as follows:

- A. Declaring that the (1) sealed Provisional Ballots be counted by the Board of Elections, (2) sealed mail in ballots be recounted by the Board of Elections by an independent monitor appointed by the Court to oversee such recount of the mail in ballots, and an appropriate certificate of election be issued declaring the winner of the race following the counting of these votes;
- B. In the alternative, ordering that the election be set aside, and that a re-rerun election be held; and
- C. Granting such other relief as the Court may deem right and just upon the determination of this matter.
- D. Awarding Plaintiffs damages and all reasonable attorneys' fees and costs in connection with this matter, pursuant to N.J.S.A. 10:6-2 (f).

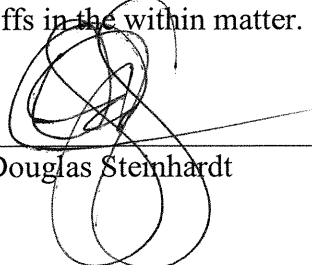
**Florio, Perrucci, Steinhardt & Cappelli, LLC**  
Attorneys for Plaintiffs  
Arthur Rittenhouse and Jean Kokoda

  
\_\_\_\_\_  
Douglas Steinhardt

Dated: December 12, 2019

**DESIGNATION OF TRIAL COUNSEL**

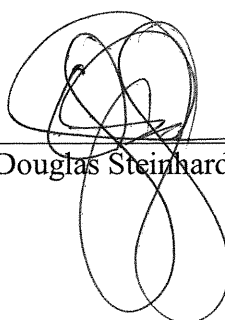
Pursuant to the provisions of R. 4:25-4 and R. 4:4-1 (c) Douglas Steinhardt, Esq. is hereby designated as trial counsel on behalf of Plaintiffs in the within matter.

  
\_\_\_\_\_  
Douglas Steinhardt

Dated: December 12, 2019

**RULE 4:5-1 CERTIFICATION**

Pursuant to Rule 4:5-1, I certify that, other than a Petition for recount/ recheck captioned as Petition of Arthur J. Rittenhouse Docket No.: MID-L-8024-2019, the within matter in controversy is subject to no other action pending in any Court or arbitration proceeding and that the names of all parties who should be joined in this action are set forth in the Petition and joined in the action. I am aware that if any of the foregoing statements are willfully false, I may be subject to punishment.



Douglas Steinhardt


Dated: December 12, 2019

**VERIFICATION**

I, Arthur J. Rittenhouse, hereby certify as follows:

1. I am the Plaintiff in the foregoing Verified Complaint contesting the results of the November 5, 2019 General Election for the Office of Mayor for the Borough of Sayreville.
2. I have read the foregoing Verified Complaint and state that the facts of which I have personal knowledge contained therein are true to my own knowledge and the allegations set forth on information and belief, I believe are true.

I am aware that should any of the foregoing be willfully false, I am subject to punishment.



Arthur J. Rittenhouse

Dated: December 12, 2019

AFFIDAVIT OF

STATE OF NEW JERSEY       )  
  ) SS:  
COUNTY OF MIDDLESEX       )

Jean Kokoda, of full age, being duly sworn, deposes and states as follows:

1. I am a registered voter in Middlesex County and am competent to make this affidavit.
2. I submit this affidavit as an individual whose provisional ballot in the November 5, 2019 General Election was not counted as advised by the Board of Elections since it was apparently placed in the wrong supply bag by the poll worker.
3. On November 5, 2019, I went to my polling location to vote and was informed by a poll worker that, in order to vote in-person, I would have to do so through a provisional ballot.
4. I was informed that I was to be given a provisional ballot because I had been previously sent a mail-in ballot, which I never received.
5. After filing out my ballot in private, I sealed my ballot and provided it to the poll worker.
6. I feel strongly that my vote should not be disenfranchised due to circumstances outside of my control and believe my ballot should be opened and counted.
7. At no point did I ever observe anyone (poll worker or otherwise) attempt to tamper with or open my ballot, or otherwise violate the secrecy of the voting process.

I do solemnly declare and affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing affidavit are true and correct. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By: Jean Kokoda

Sworn before me this 11<sup>th</sup> day of December, 2019

By: Jeanne A. Monte

My commission expires: \_\_\_\_\_

JEANNE A. MONTE  
NOTARY PUBLIC OF NEW JERSEY  
ID # 2393747  
My Commission Expires 2/28/2020