

### **NATURE OF THE CASE:**

This is an election case. The only legal issue that needs to be decided by a Court (or any Court willing to actually decide the issue) is whether appellees Aimee Belgard and the Democratic State Committee filed a timely statutory N.J.S.A. 19:13-10 “objection” to appellant Edward Forschion’s Nominating Petition, for if they did not (and they DID NOT) then the case is over. Simply stated, under the circumstances present, can 4 days somehow be extended to 6 days so as to render the N.J.S.A. 19:13-10 “objection” as timely? The simple answer is that there was no legal authority for the Secretary of State to accept or file any statutory N.J.S.A. 19:13-10 “objection” to appellant Edward Forschion’s Nominating Petition after Saturday June 7, 2014. As the statutory N.J.S.A. 19:13-10 “objection” at issue in this case was first *faxed* (not filed) on Monday June 9, 2014 (two days out of time) and was not first *filed* until Tuesday June 10, 2014 (three days out of time), there can be no question that the statutory N.J.S.A. 19:13-10 “objection” is time barred and should never have been considered (and may not be considered) by the Secretary of State. At this point, there is no reasonable argument but that this is true, only which Court has authority to sign the Order acknowledging what all must agree is true. All agree that this Court has such authority. The expense of transcripts to confirm that salient facts – the dates of filing which are reflected in the paper record – should be dispensed with in these circumstances and it is submitted that appellants should be allowed to proceed on the paper record only. This case is particularly appropriate for expedited summary disposition.

The Statutory Political Party’s Primary Elections were held this year on Tuesday June 3, 2014 where the statutory political parties (the Democratic and Republican parties) chose their candidates whose names will appear on the November 2014 General Election Ballot. All “other” candidates who are seeking to run for public office but not as a candidate of either of the two

statutory political parties must gain access to the November 2014 General Election Ballot by filing conforming Nominating Petitions with the appropriate election official. For the office of the United States House of Representatives, Nominating Petitions must be filed with the Secretary of State, Division of Elections, by 4:00 p.m. on the same day that the Political Primary Election is held. In addition to other requirements, under law, a minimum of 100 voters who live in the Congressional District must sign a candidate's Nominating Petition. Stated otherwise, for the name of any "other" candidate seeking the office of United States House of Representatives to have his or her name appear on the November 2014 General Election Ballot, such "other" candidate must file a confirming Nominating Petition with at least 100 valid signatures on or before June 3, 2014.

Appellant Edward Forchion (hereinafter "Forschion") is a candidate seeking the public elective Office of the United States House of Representatives for the Third Congressional District in New Jersey at the November 2014 General Election. Forschion is running with the slogan "Legalize Marijuana Party". Forschion filed a Nominating Petition with the New Jersey Division of Elections on or before 4:00 p.m. on Tuesday June 3, 2014 seeking access as a candidate to the 2014 General Election Ballot. After the required preliminary review, the New Jersey Division of Elections found Forschion's Nominating Petition to facially comply with law and to facially have sufficient valid signatures so as to meet the statutory requirements of New Jersey Elections Laws as found in Title 19. As the Division of Elections found the Nominating Petition to facially comply with the law, the Nominating Petition was then "filed" by the Division of Elections and from that point on was a public document available for inspection by anyone who may seek to review the Nominating Petition for review for legal deficiencies so as to bring a "statutory objection" to the Nominating Petition as permitted by and within the time

frame outlined in *N.J.S.A.* 19:13-10. (**See “Exhibit E” paragraph 1**). Appellant Frederick John LaVergne (hereinafter “LaVergne”) is also a candidate seeking the public elective Office of the United States House of Representatives for the Third Congressional District in New Jersey at the November 2014 General Election. LaVergne is the chosen candidate of the Democratic-Republican Organization of New Jersey and is seeking to run with the slogan “Democratic-Republican”, although to date the Division of Elections has only approved the alternative slogan “D-R Party”.<sup>1</sup> LaVergne filed a Nominating Petition with the New Jersey Division of Elections on or before 4:00 p.m. on Tuesday June 3, 2014 seeking access as a candidate to the 2014 General Election Ballot. LaVergne’s Nominating Petition has not been objected to and LaVergne’s name will appear as a candidate on the November 2014 General Election ballot. (**See “Exhibit E” paragraph 2**).

On Monday June 9, 2014, six days after the June 3, 2014 deadline for filing Nominating Petitions, the New Jersey State Democratic State Committee, by way of a letter dated June 9, 2014, faxed the June 9, 2014 letter from one of their attorneys “objecting” to the Nominating Petition of Forschion. (**See “Exhibit A”**). Part of the review process for “statutory objections” requires that the Secretary of State issue a Final Decision within 3 days. *See N.J.S.A.* 19:13-\_\_\_\_. As such, the Division of Elections referred the “statutory objection” of the Democratic State Committee to the Office of Administrative Law as a contested case seeking a recommendation, directing that Foreschion appear at the Office of Administrative Law and that the hearing start the next morning, December 10, 2014, at 11:00 a.m.

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<sup>1</sup> Defendant Guadagno and the New Jersey Division of Elections have preliminarily rejected the right of Frederick John LaVergne and the other candidates chosen by the Democratic-Republican Organization of New Jersey to use the slogan “Democratic-Republican” but has approved the alternative submitted slogan of “D-R Party”. The denial of the right to use the first requested slogan “Democratic-Republican” on the 2014 General Election Ballot will be legally challenged in Court in a separate action that is being prepared by the General Counsel for the Democratic Republican Organization of New Jersey and will be filed shortly.

When Foreschion appeared he immediately argued that the statutory objection was time barred as untimely. The Administrative Law Judge “reserved” on the procedural legal argument of timeliness and proceeded to hold a hearing for the next 15 hours, ending the hearing in the early morning hours (approximately 1:00 a.m.) on Wednesday June 11, 2014. No recommendation was made at that time, but after “rejecting” signatures, the Democratic State Committee argued that Foreschion was 2 signatures short of the required 100. Foreschion believed that many signatures were improperly rejected. Point in fact, since the hearing Foreschion has been able to contacting the people on his Nominating Petition who were viewed as “invalid” and has been able to conform that more than a sufficient number of signatures were improperly rejected to ensure that he is above the 100 threshold. However, there is no forum within which to correct or supplement the record with this evidence. However, the real issue is the right of the Democratic State Committee to bring a “statutory objection” 7 days (if faxing is filing) or 8 (if faxing is not filing) after the day for filing the Nominating Petitions in the first instance when the statutory deadline within which a challenge must be brought is without question only 4 days. As such, later on the day of Wednesday June 12, 2014 Forschion filed anticipatory exceptions to the ALJ’s expected recommendation specifically on the issue of timeliness. (*See* “**Exhibit B**”). On \_\_\_\_ the ALJ issued his recommendation, evaded squarely addressing the timeliness issue, found that Forschion did not have sufficient signatures and recommended that Forschion be removed from the ballot.

On Thursday June 12, 2014 LaVergne filed his exceptions to the ALJ’s recommendations, specifically limiting his argument to the legal right of the Democratic State Committee to bring and proceed with a “statutory objection” which was time barred by the 4 day deadline in N.J.S.A. 19:13-10. (*See* “**Exhibit C**”).

On Friday June 13, 2014, Secretary of State Guadagno issued her Final Decision. (*See* **“Exhibit D”**). In the Final Decision Guadagno found that “faxing” and “filing” are synonymous, ignored the remainder of the timelines argument, and accepted the recommendations of the ALJ and Ordered Forschion off of the General Election Ballot.

On Monday June 16, 2014 Appellants filed a Verified Complaint in the Superior Court under N.J.S.A. 19:13-12 seeking a declaration that the entire Administrative Process was a nullity and void and seeking a Court Order directing that Forschion restored as a candidate on the November 2014 General Election Ballot because the initial N.J.S.A. 19:13-10 “statutory objection” was time barred under any possible evaluation of the facts and the law as being neither “faxed” nor “filed” within 4 days of June 3, 2014, and that as such, the Division of Elections had no authority to consider the substance of the objections. It was also requested that opportunity be provided to Forschion to demonstrate evidence to show that sufficient signatures were improperly rejected such that he had more than 100 valid signatures. (*See* **“Exhibit E” and “Exhibit F”**).

On Tuesday June 17, 2014 the Honorable Mary C. Jacobson, J.S.C. signed the Order to Show Cause and fixed a return date of Thursday June 19, 2014 at 10:00 a.m. (*See* **“Exhibit G”**). On Thursday June 19, 2014 Judge Jacobson heard oral argument. At argument the Attorney General did not dispute appellants’ arguments regarding timeliness, only arguing, despite the clear terms of N.J.S.A. 19:13-12 – which expressly confers jurisdiction on the Superior Court to hear the case - that under all of the circumstances it should be the Appellate Division which decides the legal issue. While Judge Jacobson clearly appeared to agree with appellees’ position that under the facts present and law as it exists that the Democratic State Committee’s N.J.S.A. 19:13-10 “statutory objection” was indeed untimely and time barred, that since there had been a

hearing in the Office of Administrative Law, that jurisdiction – notwithstanding *N.J.S.A.* 19:13-12 - properly was in the Appellate Division, and that she could not declare the Democratic State Committee’s “objection” as untimely and time barred, but that at this point in the process, only the Appellate Division could do this. As such, Judge Jacobson declined to enter the relief requested and declined to consider additional evidence regarding the validity of signatures that should have not been rejected, and rather transferred the entire case to the Appellate Division to make such decisions. (*See* “**Exhibit H**”).

**RELIEF APPELLANTS SEEK:**

- (1) An Appellate Order allowing Appellants Edward Forschion and Frederick John LaVergne to proceed on the paper record only without necessity of ordering or producing any transcripts from any of the proceedings below;
- (2) An Appellate Order pursuant to *R.* 2:8-3(b) Summarily Reversing the June 19, 2014 Order of the Honorable Mary C. Jacobson, A.J.S.C. and/or alternatively an Order Summarily Reversing the June 13, 2014 Final Decision of the Secretary of State, so as to Dismiss With Prejudice the *N.J.S.A.* 19:13-10 “objection” of Aimee Belgard and the Democratic State Committee to the Nominating Petition of Edward Forschion as such “objection” is barred by *N.J.S.A.* 19:13-10; or
- (3) An Appellate Order pursuant to *R.* 2:5-5(b) confirming the Trial Court’s subject matter jurisdiction to entertain the claims of appellants and/or to allow the record to be supplemented in the Trial Court of before the Agency on the issue of improperly rejected signatures pursuant to *R.* 2:5-5(b); and

- (4) An Appellate Order expediting this Court’s consideration of the requests for Appellate relief as outlined in paragraphs 1, 2 & 3 herein.

**LEGAL ARGUMENT:**

**POINT I**

**THE “STATUTORY OBJECTION” OF BELGARD AND  
THE DEMOCRATIC STATE COMMITTEE IS TIME  
BARRED BY OPERATION OF N.J.S.A. 19:13-10 AND MUST  
BE DECLARED SO BY THIS APPELLATE COURT:**

The only legal authority for anyone to object to a candidate’s Nominating Petition is found in N.J.S.A. 19:13-10, which requires that any “objection”, for whatever reason, must be *filed* with the Division of Elections “... *not later than the fourth day after the last day for the filing of petitions.*” *Id.* (Emphasis added) It is undisputable as a matter of simple math that four days after **Tuesday** June 3, 2014 (“...*the last day for the filing of petitions...*”) is **Saturday** June 7, 2014. This is a specific statutory process approved and put in place by the Legislature with very specific time deadlines. Otherwise stated, unless there is some legal authority that Belgard and the Democratic State Committee can cite that somehow extends the Saturday June 7, 2014 specific statutory deadline for filing an N.J.S.A. 19:13-10 “statutory objection” to an additional 2 days to the following Monday June 9, 2014 (and there is none), the “statutory objection” of Belgard and the Democratic State Committee is time barred by simple operation of the four day limitation for bringing a “statutory objection” as found in N.J.S.A. 19:13-10.

The Democratic State Committee did not *fax* or *file* any N.J.S.A. 19:13-10 “statutory objection” before the deadline of Saturday June 7, 2014. This is undisputed. The Democratic State Committee also did not even *file* the “statutory objection” on Monday June 9, 2014 with the Division of Elections but rather merely *faxed* a letter to the Division of Elections some time after

4:00 p.m. on that date. *Faxing* and *filing* are not the same thing under the law. Similarly, this motion had to be *filed*: Appellants could not merely *fax* the motion to the Office of the Clerk of the Appellate Division. At issue here, the original of the June 9, 2014 letter from the Democratic State Committee which is the first time any “objection” is raised (presumably) arrived at the Division of Elections via commercial courier the next day on Tuesday June 10, 2014 and was (presumably) then *filed* by the Division of Elections on June 10, 2014.

In any or either event, the Democratic State Committee can not produce a *filed* or *faxed* copy of their “statutory objection” dated Saturday June 7, 2014, the firm statutory deadline for filing such statutory objections. Even if “faxing” and “filing” are to be treated as synonymous for purposes of N.J.S.A. 19:13-10 (and they are not), the undisputed fact is that the June 9, 2014 faxed letter itself is still 2 days out of time as it was not faxed before the deadline. Surely if “faxing” and “filing” *are* to be treated as synonymous for purposes of N.J.S.A. 19:13-10, there is no reason to extend any “filing” date to Monday June 9, 2014: The Democratic State Committee could have met the deadline by *faxing* the “statutory objection” It is undisputed that the Democratic State Committee did not *fax* their objection on or before the Saturday June 7, 2014 midnight deadline. And the Democratic State Committee did not *file* the “statutory objection” on Monday June 9, 2014 either, they merely *faxed* the statutory objection. So if “faxing” and “filing” are *not* to be treated as synonymous for purposes of N.J.S.A. 19:13-10, it is irrelevant whether the Democratic State Committee can point to some law that extends the Saturday deadline to the following Monday (there is none) because the “statutory objection” is still clearly time barred as it was not “filed” until Tuesday June 10, 2014. Therefore, against the law and the facts extant, this Court does not even have to reach the issue of whether “faxing” and “filing” are



synonymous for purposes of N.J.S.A. 19:13-10, for under any analysis the “statutory objection” of the Democratic State Committee is untimely and is time barred. It is that simple.

Not only have Belgard and the Democratic State Committee failed to point to any legal authority allowing an extension, the statutory framework itself confirms that there is no extension when any date falls on a Saturday. To this end, N.J.S.A. 19:11-1 provides as follows:

**Should the day for the filing of any petition, declaration, resignation, instrument in writing or other paper or document required to be filed in any office under the provisions of this title, or for the performance of any duty required by this title by any person, candidate or official, fall on the first day of the week, commonly called Sunday, or any legal holiday, such filing or performance of duty shall be effected upon the next following business day. (Emphasis added).**

[N.J.S.A. 19:11-1].

More directly stated, “[s]hould the day for the filing of any ... instrument in writing or other paper or document required to be filed in any office under the provisions of [the Elections Laws of Title 19], ... fall on the first day of the week, commonly called Sunday, ... such filing ... shall be effected upon the next following business day.” *Id.* The legislature specifically included in the Election Laws in N.J.S.A. 19:11-1 an exception to any specifically stated Title 19 Election Law “deadline” for any specific **filing** date when the **filing date** happens by circumstances to fall on a Sunday. In such a case (where a **filing** deadline falls on a Sunday) then the **filing** deadline is extended to the next business day (expected to be the next day Monday, unless such Monday is a holiday). There is no such specific statutory extension for when circumstances are such that a **filing** deadline falls on a Saturday. By **specifically including** only SUNDAY in the N.J.S.A. 19:11-1 extension, the legislature thereby **specifically excluded** the day of SATURDAY from such extension. Stated otherwise, the fourth day deadline for the **filing** of any N.J.S.A. 19:13-10

“statutory objection” to Forschion’s Nominating Petition was Saturday June 7, 2014. As *N.J.S.A.* 19:11-1 only grants an extension for *filing* when a deadline falls on a Sunday, there is no extension that applies here, and the deadline for anyone to file a *N.J.S.A.* 19:13-10 “statutory objection” to Forschion’s Nominating Petition passed at midnight (or 11:59 and 59 seconds p.m.) on Saturday June 7, 2014.

Lastly, construing the statutory framework and the 4 day deadline any other way than as appellants contend it must be would operate to violate the rights of appellants to Equal Protection of the Laws as guaranteed and secured by the Fourteenth Amendment to the United States Constitution.

The statutory scheme in New Jersey’s Election Laws (Title 19) for candidates seeking elective public office seeking to gain access to the General Election Ballot as a candidate requires that each and every candidate submit a “Nominating Petition” at some point in the statutory process.

Candidates of the two “statutory political parties” (as of today, only the “Democratic Political Party” and the “Republican Political Party”) must, as per statute, successfully complete a well defined three step statutory process:

- (1) The first step in the statutory process requires a “statutory political party” candidate to obtain access to the Political Primary Election Ballot, which is done by obtaining a sufficient number of signatures on a “Political Party Primary Nominating Petition”;
- (2) The second step in the statutory process requires the candidate to “file” their “Political Party Primary Nominating Petition” with the appropriate Election Official (The Secretary of State, County Clerk, or Municipal Clerk); and lastly,
- (3) The third step in the statutory process requires the “statutory political party” candidate to obtain more votes than the other candidates at a State funded and administered Political Primary Election.

As is easily understood, to have obtained access to the General Election Ballot, “statutory political party” candidates will have had to have overcome the three statutory requirements of first successfully collecting sufficient signatures on their (*Political Party Primary Election*) Nominating Petition, then filing the (*Political Party Primary Election*) Nominating Petition with the appropriate Election Official, and third, winning the Political Primary Election by receiving more votes than the other candidates for the same office. As pertains to the November 2014 General Election for the Office of United States House of Representatives for the Third District in New Jersey, the “statutory political party” candidates who have successfully completed this three part statutory process are defendant Democratic Candidate Aimee Belgard and Republican Candidate Thomas McArthur.

All “other” candidates who are seeking to run for elective public office obtain access to the General Election Ballot as a candidate in a slightly different yet substantially similar two step statutory process.

- (1) The first step in the statutory process requires all “other” candidates to collect signatures on a “General Election Nomination and Petition”; and
- (2) The second step in the statutory process requires all “other” candidates to “file” their “General Election Nominating Petition” with the appropriate Election Official (The Secretary of State, County Clerk, or Municipal Clerk).

As is easily understood, to have obtained access to the General Election Ballot, all “other” candidates will have had to have overcome the two statutory requirements of first successfully collecting sufficient signatures on their (*General Election*) Nominating Petition, then filing the (*General Election*) Nominating Petition with the appropriate Election Official. As pertains to the November 2014 General Election for the Office of United States House of Representatives for the Third District in New Jersey, the “other” candidates who have

successfully completed this two part statutory process are plaintiff Frederick John LaVergne, the candidate of the Democratic Republican Organization of New Jersey, and plaintiff Edward Foschion, the candidate of the “Legalize Marijuana Party”.

While each candidate must collect signatures on and file a Nominating Petition as part of the statutory process, the time frame for the actual filing of a Political Party Primary Election Nominating Petition (used by “statutory political party” candidates) and a General Election Nominating Petition (used by all “other” candidates) are both defined by statutes, with each statute fixing the time frame for filing of Nominating Petitions directly related to the day that the Political Party Primary Election is held.

In this regard, N.J.S.A. 19:23-14 specifically governs the time frame within which candidate Nominating Petitions for Political Party Primary Election Petitions must be filed, and provides in relevant part as follows:

Petitions addressed to the Secretary of State, the county clerk, or the municipal clerks shall be filed with such officer, respectively, **before 4:00 p.m. on the 64<sup>th</sup> day next preceding the day of holding of the primary election for the general election.** (Emphasis added).

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[N.J.S.A. 19:23-14].

N.J.S.A. 19:13-9 governs the time frame within which “other” candidate Nominating Petitions for Political Party Primary Election Petitions must be filed provides in relevant part as follows:

All such petitions and acceptances thereof shall be filed with the officer or officers to whom they are addressed **before 4:00 p.m. of the day of the holding of the primary election for the general election in this Title provided.** All petitions when filed shall be open under proper regulations for private inspection. (Emphasis added).

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[N.J.S.A. 19:13-9].

As can be seen, the Nominating Petitions of “statutory political party” candidates must be filed “... before 4:00 p.m. on the 64<sup>th</sup> day next preceding the day of holding of the primary election for the general election ...”, N.J.S.A. 19:13-9, and the Nominating Petitions of “other” candidates must be filed “...before 4:00 p.m. on the 64<sup>th</sup> day next preceding the day of holding of the primary election for the general election ...”, N.J.S.A. 19:13-9. To this end, N.J.S.A. 19:2-1 provides that the Political Primary Election “... shall be held in each year on the Tuesday next after the First Monday in June.” Id.

This related statutory scheme is important for two specific reasons: First, since N.J.S.A. 19:2-1 mandates that the Political Primary Election **will always** be held on a **Tuesday**, the deadline for “other” candidates (such as plaintiff Frederick John LaVergne) to file their Nominating Petitions **will always occur and fall on a Tuesday**. N.J.S.A. 19:13-9. Second, since N.J.S.A. 19:2-1 mandates that the Political Primary Election **will always** be held on a **Tuesday**, and since as N.J.S.A. 19:23-14 fixes the deadline for “statutory political party” candidates to file their Nominating Petitions as “... the 64<sup>th</sup> day next preceding the day of holding of the primary election ...”, N.J.S.A. 19:23-14, no matter what **numeric date** in June the “... Tuesday next after the First Monday in June ..” happens to fall on, 64 days earlier from **Tuesday** will **always** fall on a **Monday**. Always.

The significance of this incontrovertible as true observation has in relation to the statutory scheme at issue in this case will now be explained. N.J.S.A. 19:13-10 governs the time frame and procedure for the bringing of an objection to a Nominating Petition for objections to both “Political Party Primary Election Nominating Petitions” and “General Election Nominating Petitions”.

Every petition of nomination in apparent conformity with the provisions of this Title shall be deemed valid, unless objection

thereto be duly made in writing and filed with the officer with whom the original petition was filed not later than the fourth day after the last day for the filing of petitions. If such objection is made, notice thereof, signed by such officer shall forthwith be mailed to the candidate, who may be affected thereby, addressed to him at his place of residence as given on the petition of nomination.

[N.J.S.A. 19:13-10].

Simply stated, Monday + 4 days will *always* fall on a Friday, and Tuesday + 4 days will *always* fall on a Saturday. As pertains to the issue at hand, the filing deadline for “Political Party Primary Election Nominating Petitions” will always fall on a Monday, so the filing of any objections (under N.J.S.A. 19:13-10) must *always* be filed on Friday, otherwise the statutory right to object will expire: 4 days = 4 days. The filing deadline for “General Election Nominating Petitions” will *always* fall on a Tuesday, and therefore any objections (under N.J.S.A. 19:13-10) must *always* be filed on Saturday or the statutory right to object will expire: 4 days = 4 days.

Below Rajiv D. Parkh, Esq., attorney for the Democratic State Committee, quite clearly argued that the Court should “interpret” the statutory scheme at issue to somehow extend a 4 day Saturday deadline to a 6 day Monday deadline<sup>2</sup>, but points to no legal authority to do so, and can not explain N.J.S.A. 19:11-1 which only authorizes an extension when a deadline falls on a Sunday.

It is more than simple language and simple math. For this Court to somehow interpret the statutory framework as suggested, allowing an extension when this deadline falls on a Saturday to the following Monday, would render the entire statutory framework unconstitutional as applied to this (and all) N.J.S.A. 19:13-10 statutory challenges as a violation of the equal

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<sup>2</sup> It is noted that the Attorney General does not join in this argument. Rather, the Attorney General implicitly accepts the fact that plaintiffs are correct as to the deadline, merely arguing that this deadline argument (and a ruling in plaintiffs’ favor) should come from the Appellate Division and not this Court. It is again noted that the Attorney General conveniently fails to cite to or acknowledge the statute that renders their argument literally frivolous: N.J.S.A. 19:13-12.

protection clause of the Fourteenth Amendment to the United States Constitution. How can a statute with the applicable 4 day deadlines always falling on either a Friday or Saturday mean 4 days for a “statutory political party” candidate and operate to mean 6 days for all “other” candidates?

As candidates in this election, plaintiff Frederick John LaVergne and plaintiff Edward Forchion have both the right to have the laws applied as written and to the Equal Protection of the laws, and have the right to have the laws that govern this election properly – and accurately – and fairly – and equally - applied. Such rights, which are here being “invaded”, clearly meets the standard of “... invasion or threatened invasion of rights ...” covered by *N.J.S.A.* 19:13-12. Such rights are deserving of protection by this Appellate Court.

**POINT II:**

**IF THE “STATUTORY OBJECTION” TO FORSCHION’S  
NOMINATING PETITION IS NOT SUMMARILY  
DISMISSED BY THIS COURT WITH PREJUDICE AS  
BEING TIME BARRED, APPELLANTS ALTERNATIVELY  
SEEK A REMAND TO THE TRIAL COURT OR TO THE  
OFFICE OF ADMINISTRATIVE LAW FOR  
SUPPLEMENTATION OF THE RECORD:**

Appellants contend that *N.J.S.A.* 19:13-12 clearly confers subject matter jurisdiction on the Trial Court to dismiss the *N.J.S.A.* 19:13-10 “statutory objection” of the Democratic State Committee as being time barred. Further, appellants contend that signatures of citizen voters were improperly recommended for objection by the ALJ, whose decision was then adopted by the Secretary of State in the Final Decision within 48 Hours. Though both appellants were able to file exceptions to the ALJ’s decision on the threshold *procedural issue* to argue to the Secretary of State that the statutory objection of Belgard and the Democratic State Committee was time barred by application of *N.J.S.A.* 19:13-10, due to the extraordinarily brief time frame

that the statutory objection was heard and then decided by the Secretary of State (whose decision was still 1 day later under the statutory mandate) there simply was no reasonable amount of time for appellants to evaluate the the substance of the ALJ's recommendation and to then personally contact the Nominating Petition signers whose names had been recommended for "rejection" so as to determine if such Nominating Petition signers were in fact registered to vote and to obtain evidence to present to confirm that each had indeed personally signed the Nominating Petition. In the past several days appellants have been able to personally check and confirm that a sufficient number of persons who signed appellant Foreschion's Nominating Petition were (a) registered to vote and (b) indeed signed the Nominating Petition who were nevertheless improperly "rejected" and who should have been allowed so as to confirm that the number of legally conforming and valid signatures on appellant Forschion's Nominating Petition exceeds the 100 required. There was neither time nor existing procedure to present this rebutting evidence to the Secretary of State, and the Superior Court (though specifically authorized by N.J.S.A. 19:12-11) declined and did not provide opportunity to hear any supplemental evidence, ruling (despite the clear wording of the statute) that there was no jurisdiction to proceed, that jurisdiction was exclusively with the Appellate Division.

R. 2:5-5(b) provides as follows:

(b) Supplementation of Administrative Record. At any time during the pendency of an appeal from a state administrative agency, it appears that evidence unadduced in the proceedings below may be material to the issues on appeal, the appellate court, on its own motion or on the motion of any party, may order, on such terms as it may deem appropriate, that the record on appeal be supplemented by the taking of additional evidence and the making of findings of fact thereon by the agency below or, in exceptional instances, by a judge of the Superior Court especially designated for that purpose.

[R. 2:5-5(b) ].



In these motions Appellants primarily contend the fact and legal reality that the statutory objection of Belgard and the Democratic State Committee is time barred by N.J.S.A. 19:13-10 is so clear that the “objection” itself should be summarily dismissed with prejudice by this Court. In the unlikely event that this Court disagrees on this rather clear and evident legal point, as a matter of substance, the fact is that appellants have checked and have found that signatures were incorrectly rejected by the ALJ in numbers sufficient that, if accepted, appellant Foreschion’s Nominating Petition would clearly exceed the minimum of 100 required. However, Appellate Courts such as this Court do not have original jurisdiction (or only have extremely limited original jurisdiction authority) and only review facts that have already been presented to Courts or Administrative Agencies below. In this case, due to expedited way that the Secretary of State (Division of Elections) and ALJ handled this matter, and due to the Superior Court declining to provide relief on this point claiming lack of jurisdiction to provide any relief, appellants were denied a reasonable time and opportunity to present this rebutting evidence to some fact finding forum. Therefore, if the statutory objection of Belgard and the Democratic State Committee is not summarily dismissed by this Court with prejudice as being time barred, appellants alternatively seek a remand to the trial Court for supplementation of the record under R. 2:5-5(b) as appellants claim that the facts of this case equate with an “exceptional instance” contemplated by the cited rule. If this Court does not view these circumstances as sufficiently “exceptional”, then

**CONCLUSION**

For the foregoing reasons and authorities cited in support thereof, it is respectfully requested that the relief requested by **GRANTED**.

**Dated: June 23, 2014**

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**EDWARD FORCHION**  
The Legalese Marijuana Party Candidate for Congress in  
the Third Congressional District of New Jersey  
Plaintiff-Appellant *Pro Se*

**Dated: June 23, 2014**

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**FREDERICK JOHN LaVERGNE**  
The Democratic-Republican Candidate for Congress in  
the Third Congressional District of New Jersey  
Plaintiff-Appellant *Pro Se*