

PREPARED BY THE COURT

SCOTT D. SALMON,

Plaintiff,

v.

ROBERT F. KENNEDY, JR. and
TAHESHA WAY, as Secretary of
State for the State of New Jersey, in
her Official Capacity,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MERCER COUNTY
DOCKET NO. L-1241-24

CIVIL ACTION

**ORDER DISMISSING PLAINTIFF'S
COMPLAINT WITH PREJUDICE**

THIS MATTER having come before the Court, the Hon. Robert Lougy, A.J.S.C., presiding, on the Verified Complaint and Order to Show Cause filed by Plaintiff Scott D. Salmon, Esq., appearing as a self-represented litigant and additionally represented by Tracy L. Lucas, Esq.; and Defendant Robert F. Kennedy, Jr., represented by Donald F. Burke, Esq., having filed a Cross Motion to Dismiss Plaintiff's Complaint under Rule 4:6-2(e), and Defendant Tahesha Way, in her official capacity as the New Jersey Secretary of State, represented by Deputy Attorney Generals Charles A. Shadle and Adam W. Marshall, having filed a Cross Motion to Dismiss Plaintiff's Complaint under Rule 4:6-2(a) and (e); and Plaintiff having filed opposition to the Cross Motion; and Defendant Robert F. Kennedy Jr. having filed a sur-reply with leave of Court; and the Court having considered the

parties' pleadings and arguments; and for the reasons as stated below; and for good cause shown;

IT IS on this 29th day of July 2024 **ORDERED** that:

1. Plaintiff's application for an order preliminarily and permanently enjoining Robert. F Kennedy, Jr. from appearing on the ballot in New Jersey as an Independent Candidate for the Office of the President of the United States in the November 4, 2024, General Election is **DENIED**.
2. Plaintiff's application for an order preliminarily and permanently enjoining Defendant Way from certifying Defendant Kennedy as an Independent Candidate for the Office of the President of the United States in the November 4, 2024, General Election is **DENIED**.
3. Defendant Way's Cross Motion to Dismiss Plaintiff's Complaint with prejudice is **GRANTED**.
4. Defendant Kennedy's Cross Motion to Dismiss Plaintiff's Complaint with prejudice is **GRANTED**.
5. This Order shall be deemed filed and served upon uploading on eCourts.

/s/ Robert Lougy
ROBERT LOUGY, A.J.S.C.

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X **OPPOSED**
 UNOPPOSED

PURSUANT TO RULES 1:6-2(f) AND 1:7-4(a), THE COURT PROVIDES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This matter comes before the Court on Plaintiff’s Verified Complaint and Order to Show Cause seeking to enjoin Defendant Robert F. Kennedy, Jr. (“Kennedy”) from appearing on the ballot in New Jersey as an Independent Candidate in the November 2024 General Election for the Office of the President of the United States. Plaintiff seeks an order barring the candidate under New Jersey’s Sore Loser Law (“Sore Loser Law”). Defendants Kennedy and Way each filed a cross motion to dismiss Plaintiff’s Complaint with prejudice.

Because the Court agrees with Defendants that the proper avenue for Plaintiff to raise his objections is to file an objection to Kennedy’s petition with the Secretary of State, the Court grants Defendants’ motions to dismiss his complaint. The Court makes no conclusions regarding the merits of Plaintiff’s claims for relief or Kennedy’s arguments to the contrary.

Plaintiff is a registered voter in the State of New Jersey. Compl ¶ 1. Defendant Robert F. Kennedy, Jr. is a declared Independent Candidate for President. Id. at ¶ 2. Relevant here, Defendant Tahesha Way is the New Jersey Secretary of State. See id. at ¶ 3. She is the State’s chief election official.

N.J.S.A. 19:31-6a. Under her direction is the Division of Elections, which is the filing office for Federal elective office, including the President. N.J.S.A. 52:16A-98(a).

No facts are in dispute. On April 5, 2023, Kennedy filed a Statement of Candidacy with the United States Federal Election Commission (“FEC”) to run as a Democratic Candidate for President. Id. at ¶¶ 4-5. Kennedy raised approximately \$ 385,000 from New Jersey donors and spent approximately \$ 1,600,000 campaigning in the State. Id. at ¶ 9.

On October 17, 2023, Kennedy filed an amended Statement of Candidacy with the FEC declaring he would run as an Independent Candidate in the November 2024 General Election for President. Id. at ¶ 15. The complaint alleges that Kennedy still received approximately 140 write-in votes for the Democratic Nomination for President in New Jersey’s June 2024 Primary Election. Id. at ¶¶ 17-19. Applicable state election law requires the Secretary to certify all nominated candidates for the November 2024 General Election on August 9, 2024. Id. at ¶ 20. Plaintiff seeks a declaratory judgment declaring Kennedy ineligible to appear on the ballot for President in the November 2024 General Election and injunctive relief enjoining Kennedy from appearing on the ballot in said election.

On June 25, 2024, Plaintiff filed his Verified Complaint and Order to Show Cause. On July 8, 2024, the Lieutenant Governor filed a Cross Motion to Dismiss

Plaintiff's Complaint and Kennedy filed a motion for an order that the Court lacks personal jurisdiction over him.¹ On July 18, 2024, Kennedy filed a Cross Motion to Dismiss Plaintiff's Complaint. On July 26, 2024, the Court heard oral argument on the Order to Show Cause as well as the other pending applications.

Plaintiff argues the following in support of his application. Plaintiff asserts that given the time sensitive nature of this proceeding injunctive relief is the only viable remedy. Pb2.² Plaintiff maintains that Kennedy's independent presidential candidacy in New Jersey violates the Sore Loser Law. Id. at 3-8.

The Secretary of State takes no position on the merits of Plaintiff's pleadings and argues instead that the matter belongs before her as the State's chief elections officer. With regards to any injunctive relief, she argues that Plaintiff can show no reasonable likelihood of success. Id. at 13.

Kennedy argues that Plaintiff's complaint and relief sought fail on numerous grounds. First, he argues that Plaintiff, who is not a candidate for President, cannot establish standing and, per Title 19, has no right to seek relief in Superior Court. Second, he argues that Plaintiff cannot overcome these hurdles by relying on the

¹ Kennedy has withdrawn that motion.

² The Court adopts the designations provided in Rule 2:6-8 in citing to the parties' submissions. For clarity, the Secretary of State's brief is referred as the State Defendant's Brief ("SDb"). Kennedy's brief is referred to as Defendant's Brief ("Db").

Declaratory Judgment Act, which provides a party no substantive right or cause of action. Finally, he argues that Plaintiff's legal theory fails on the facts and that his proffered statutory interpretation violates the Constitution.

Plaintiff seeks to prevent Kennedy from appearing on New Jersey ballots based on N.J.S.A. 19:13-8.1. Colloquially known as a sore loser law, the provision directs that:

No petition for direct nomination, including a petition filed pursuant to R.S.19:13-19, which, for any reason, is filed after the deadline established in R.S.19:13-9 shall nominate to any elective public office a candidate who unsuccessfully sought the nomination of a political party to that office in the primary election held in the same calendar year and no unsuccessful primary candidate shall sign an acceptance of such a petition for direct nomination.

[N.J.S.A. 19:13-8.1.]

That provision is one of several in Chapter 13, "Nomination of Candidates," of Title 19 that are relevant here. N.J.S.A. 19:13-1 provides that candidates for all public offices can be nominated either by a petition or through a primary election. N.J.S.A. 19:13-3 provides that direct nomination by petitions – for candidates not nominated by a party at a state convention, N.J.S.A. 19:13-2 – for candidates running for offices that cover the whole state, a congressional district, or an area larger than a single county, as well as petitions nominating candidates for New Jersey's Senate and General Assembly, are filed with the Secretary of State.

(Because Plaintiff relies upon numerous unpublished decisions that do not involve the Secretary of State, the Court notes that N.J.S.A. 19:13-3 also specifies that petitions for other offices are filed with the county clerks.) N.J.S.A. 19:13-8 provides that no candidate can accept nomination by petition if they have already accepted the primary nomination or any other petition of nomination. N.J.S.A. 19:13-10 establishes the mechanism for objections:

Every petition of nomination in apparent conformity with the provisions of this Title shall be deemed to be valid, unless objection thereto be duly made in writing and filed with the officer with whom the original petition was filed not later than 4:00 p.m. of the fourth day after the last day for 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 the candidate at the candidate's place of residence as given in the petition of nomination.

[Ibid.]

N.J.S.A. 19:13-11 provides that the appropriate election official (the Secretary of State, in this instance) considers the objection “unless an order shall be made in the matter by a court of competent jurisdiction.” N.J.S.A. 19:13-12 specifically authorizes candidates – and only candidates – that believe their rights regarding their nomination petition have been violated to file a complaint in Superior Court.

Per the Secretary of State, the deadline this year for filing a direct nominating petition for the office of President of the United States is July 29, 2024. See

N.J.S.A. 19:13-9. The deadline for objecting to a petition is August 2, 2024.

SDb4. (In his opposition, Kennedy asserted that Plaintiff missed the opportunity to file an objection. Db9.) The Court accepts the calendar and deadlines advanced by the State's chief election official.

“We rely on our election laws and on the fair conduct of elections to ensure that the people may be heard through the ballot and that their will, as expressed through their votes, may be effectuated.” In re Contest of the Nov. 8, 2005 Gen. Election for Off. of Mayor of Twp. of Parsippany-Troy Hills, 192 N.J. 546, 559 (2007). “Our elections laws provide us with the framework within which our Legislature has directed” that election-related disputes proceed. Ibid. That includes “the manner in which the contest may be brought and decided.” Ibid.

The Court finds that the plain language of N.J.S.A. 19:13-10 and -12 compel the dismissal of Plaintiff's complaint. N.J.S.A. 19:13-10 could not be clearer in establishing to whom and by when objections to petitions of nomination are to be made. Plaintiff does not dispute this; rather, he argues that the provision governs “objections to the technical elements of a petition” while challenges to the “eligibility of a candidate” are not within the statute's constraints. The statute's plain language affords him no support for that argument. The provision makes no such distinction. Rather, it includes all challenges to a petition's “conformity with the provisions of [Title 19],” including N.J.S.A. 19:13-8.1. The provision's broad

language is consistent with the Legislature’s determination that the appropriate election official considers objections raised by persons other than a candidate.^{3,4}

The Court rejects Plaintiff’s attempt to construe N.J.S.A. 19:13-8.1 inconsistent with the remaining provisions of Title 13. As Justice Albin explained in Wilson ex rel. Manzano v. City of Jersey City, “[a]n enactment that is part of a larger statutory framework should not be read in isolation, but in relation to other constituent parts so that a sensible meaning may be given to the whole of the legislative scheme.” 209 N.J. 558, 572 (2012). See also Bedford v. Riello, 195 N.J. 210, 244 (2008) (“[S]tatutes must be read in their entirety; each part or section should be construed in connection with every other part or section to provide a

³ Plaintiff’s own pleadings demonstrate the Secretary’s role in enforcing N.J.S.A. 19:13-8 for offices for whom she is the appropriate election official. See Compl., Ex. E.

⁴ Plaintiff’s efforts at oral argument to recast – or more accurately, more broadly cast – his complaint as an action in lieu of prerogative writ do not suffice to provide him an avenue to Superior Court. His complaint is not an action in lieu of prerogative writ. It is not captioned as an action in lieu of prerogative writ, R. 4:69-1 (“The complaint shall be the designation ‘In Lieu of Prerogative Writ’”), and it does not seek reliefs enumerated under the rule. Some of the unpublished decisions upon which Plaintiffs rely were brought as actions in lieu of prerogative writ because they were challenging the determinations of the county clerk. Here, Plaintiff is not challenging the action of any municipal or county official. Rather, he is seeking to bypass the Secretary of State’s review of his objection, which would then be subject to judicial review under a different rule. See R. 2:2-3. Finally, the Court entered the order to show cause in this matter because Plaintiff was seeking injunctive relief, per Rule 4:52-1; nothing in that rule or that order brings this matter within the scope of an action in lieu of prerogative writ.

harmonious whole.”). N.J.S.A. 19:13-8.1 contains no language that its construction, administration, or enforcement should differ from other challenges to the validity of a petition. The Court declines to craft an exception that the Legislature did not create.

Likewise, N.J.S.A. 19:13-12 allows a candidate, not a voter, to file in Superior Court. Sadloch v. Allan, 25 N.J. 118, 129 (1957) (“This authorizes the filing of a verified complaint setting forth any invasion or threatened invasion of the candidate’s rights under the petition of nomination filed with the county clerk, and directs the Superior Court to hear the matter in a summary way and make such order as will protect and enforce the rights of such ‘candidates.’”). The Court observes that the title of the provision is “Recourse to court by candidates for protection of rights”; although the title of a statute may not always be instructive, it is here. State v. Hodde, 181 N.J. 375, 382-83 (2004). It expresses plainly and consistent with the provision’s language that such recourse to the courts is available only to candidates. Plaintiff relies upon two unpublished judicial decisions construing and applying the sore loser statute that demonstrate the limitations imposed by N.J.S.A. 19:13-12, as candidates for office were the plaintiffs in both matters.

The Court dismisses Plaintiff's application with prejudice. The appropriate venue for his objection is with the Secretary of State. He is not out of time to raise them.⁵

⁵ The Court thanks all counsel for the quality and completeness of their written and oral arguments.