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July 24, 2020

VIA ELECTRONIC MAIL

Chairwoman Janice S. Mironov
Mercer County Democratic Committee
P.O. Box 1195
East Windsor, New Jersey 08520

Re: July 28, 2020 Mercer County Democratic Committee Meeting

Dear Chairwoman Mironov:

The undersigned has been retained to represent several members of the Mercer County Democratic Committee (referred to herein as "MCDC" or the "Committee"), Robin Bridges Johnson, Gregory Johnson, Esq., and Charles E. Geter, with respect to the upcoming meeting of the Committee, which is presently scheduled for July 28, 2020 at 6:00 p.m. (the "Meeting"). We write in response to your decision to hold the MCDC election on July 28, 2020 and to the numerous deficiencies in the notice on the MCDC website¹ (the "Meeting Notice" or "Notice") purporting to announce the Committee's Biennial Reorganization Meeting. Based on our review of the MCDC governing documents and assessment of the pertinent law, you have improperly called the Reorganization Meeting and, as such, it cannot be held on July 28, 2020.

A review of the MCDC Constitution and Bylaws (the "Bylaws") reveals that the July 28, 2020 Reorganization Meeting is in violation of the Committee's governing documents for the following reasons:

- 1) The telephonic nature of the Meeting impermissibly infringes on right of Committee members to fully participate in the business of the MCDC;
- 2) The purportedly "secure" telephone system to be used at the Meeting offers no guarantee of secrecy of ballots/votes and illustrates a distressing lack of transparency by the Chair that attends this novel process; and

¹<https://mercerdemocrats.files.wordpress.com/2020/07/microsoft-word-2020-reorganization-meeting-notice-final-draft.png?w=791>, accessed Jul 23, 2020.

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- 3) The change in the Committee's voting procedures as described in the Meeting Notice contravenes the express provisions of the Bylaws, the past practices of the Committee when voting during prior reorganization meetings, and basic principles of a free and fair election.

We have included our reasoning below for your review. Because there is not sufficient time to correct these fatal deficiencies, we anticipate that the Meeting will be cancelled and rescheduled in conformity with the provisions of the Bylaws as explained herein.

1. The Meeting, as Planned, Fails to Allow for Full Participation of the Membership.

As we are sure you are aware, Art. I, Sec. 2 of the Bylaws states that the purpose of MCDC shall be "encouraging grass roots participation in the Democratic Party." It is the responsibility of the Committee Chair to carry out the goals and directives of the MCDC. (See Art. III, Sec. 1). By holding the Meeting in the manner described in the Meeting Notice, without any explanation or details as to how the meeting itself will be conducted apart from a cursory statement that same will be conducted entirely by telephone, the Chair is violating her responsibility to encourage grass roots participation in the Democratic Party and her responsibilities to the Committee membership.

Without a clearly outlined process by which the meeting will be run and the voting will be held, the Committee members and Mercer County Democrats are being deprived of the opportunity and right to fully participate in the business of the Committee. Indeed, a telephonic voting system would inevitably disenfranchise Committee members and individuals who may not have internet access or a familiarity with teleconference processes. Further, a 'telephone town hall' meeting disposes of the usual process whereby individuals are permitted to make comments at the meeting or have a speaking role, as is common practice during in-person reorganization meetings. The Meeting as described in the Notice runs counter to the long-standing principles of a transparent, united, and inclusive party.

Further, the Notice erroneously assumes that by declaring the Committee members appointed to fill vacancies eligible to participate in the Meeting, all candidates will have access to communicate with them in advance of July 28th. This is patently false, as vacancies on

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Municipal Committees will not be filled until the day prior, July 27th. Thus, the full list of eligible voters will not be made available to Committee members, other than the Chair, until the very day of the Meeting, which flies in the face of the idea that a full, free and fair election might be had.

2. The Proposed Novel Voting Procedure Outlined in the Meeting Notice Fails to Provide Any Safeguards to Ensure the Secrecy of Votes Cast by the Membership and Illustrates a Distressing Lack of Transparency by the Chair.

The Notice for the purported Meeting states in part that “[t]he meeting will be conducted entirely by telephone,” that “[a]fter the presentations, eligible voters will be contacted by phone and asked to vote,” while also indicating, paradoxically, that “[a]ll voting will be via secret ballot, conducted by secure telephone system and independently verified by a neutral outside party.” These contradictory points raise many disturbing questions about the actual ability of the Chair to maintain the confidentiality of voting during the Meeting; questions that are compounded by the Chair’s lack of transparency in setting up this “secure” system.

In particular, the registration form for this Meeting² is a basic Google Form document into which registrants are required to submit their first and last names and home address, cell or other telephone number and other contact information. It appears that this information will be used to conduct the ‘telephonic’ voting, inevitably tying the personal information of the voter to the ballot that they might cast. Given the unprecedented nature of this procedure, Committee members cannot know how this information will be used, with respect to tabulating ballots or otherwise, by the Chair and/or the company/entity managing this “secure” telephonic system. Of course, none of the information about this process has been shared, which is yet another fatal defect in the voting process.

Further, the Meeting Notice indicates that the results of the “secret ballot” will be verified by a neutral outside party. However, in keeping with the ambitiously ambiguous nature of the Notice, the identity of this “neutral outside party” is conspicuously absent. The Chair cannot reasonably have expected that members would simply accept the involvement of an unidentified third party in the business of the Committee without being provided with important details such as this party’s name, its principals, how it is being paid for its services, etc., whether candidates for the election have participated in discussions with them (thus calling into question neutrality) and the like.

²<https://docs.google.com/forms/d/e/1FAIpQLSfVhRbEYbmAGIE1PDB130mgZGrTD3mNdBv h-dhe5O Xy7T6Q/viewform>, accessed Jul 23, 2020.

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This total lack of transparency must be addressed and corrected prior to the Committee taking up its important business. Thus, the July 28 Meeting must be postponed, and answers must be provided to the foregoing issues to all committee members and candidates.

3. The Chair Cannot Effectively Change Longstanding Voting Procedures to a System Not Provided for in the Bylaws.

There can be no doubt that the Meeting Notice purports to set forth a voting process for the Meeting (despite it being fatally defective). While we understand that there may have been some vote of the Committee to conduct the meeting in this manner, it has come to our attention that this vote was done at the strong recommendation and insistence of the Chair, with little or no opportunity for debate. Without the more robust and detailed procedures required for such a meeting, the Chair is absolutely prohibited from amending – in the fine print of the Meeting Notice – the express provisions of the Bylaws by substituting such an unprecedented and novel voting procedure. This action by the Chair is particularly troubling in these uncertain and frankly dangerous times, when Committee members and citizens alike are already confronted by substantial threats to institutional norms. The democracy that we all cherish requires the participation of all interested parties, a principle that finds its expression in the Committee’s Bylaws. Pursuant to Art. VIII, any amendment to the Bylaws, which undeniably includes a change to the ordinary voting procedures of the Committee, must be voted on and approved by a 2/3 majority of the Committee members in attendance once a quorum has been established.

Moreover, it is incompatible with common sense and basic fairness for the Chair to baldly presume that a legitimate secret ballot can be secured through an exclusively telephonic medium, where no real assurances are given to Committee members that confidentiality will be maintained. This is particularly true here when the Meeting Notice neither specifies the “secure” system to be used, nor identifies the company offering such a service. It is insulting to the intelligence of all members for the Chair to foist upon the Committee a specific voting procedure for which there is no provision or allowance in the Bylaws, and to which membership have not voiced their position through debate and separate vote. Nor can allowance for this novel procedure be found in the plain language, or fair inferences drawn therefrom, of Robert’s Rules of Order (“Robert’s Rules”), which pursuant to Art. VII, Sec. 5 of the Bylaws, shall control the conduct of all meetings of the Committee.

Art. VIII, Sec. 46 of Robert’s Rules explains that voting by secret ballot is specially used in matters, such as elections, where “the question is of such a nature that some member might

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hesitate to vote publicly their true sentiments.” While the Meeting Notice pays lip service to the idea that the Chair’s preferred method for voting will somehow effectuate a secret ballot and assumes, without assurance, the confidentiality of each Committee member’s vote, such an unsubstantiated conclusion is a poor substitute for the ordinary procedure of secret paper ballots, which could easily be achieved – and has been used by other political committees in our current pandemic – should the Chair actually wish to solicit the input of the Committee.

4. The Reorganization Meeting Cannot Proceed as Planned and the Committee Must Amend its Bylaws to Proceed.

The Chair has failed to adhere to the processes regarding the reorganization meeting, as detailed in the Bylaws. Art. II, Sec. 3 of the Bylaws states, “[t]he biennial reorganization meeting of the county committee shall be held on the First Tuesday following the primary election in even numbered years in the manner provided in Title 19 of the Revised Statutes.”³ Further, Art. VII, Sec. 1 states, “[t]he first meeting of the County Committee shall be the Biennial Organization Meeting to be held on the first Tuesday following the Primary Election in even numbered years in accordance with these bylaws and the Revised Statutes of the State of New Jersey.” Because of the set date of the meeting, notice is not normally required well in advance. Nonetheless, because of the unique circumstances here, advance notice of not only the meeting, but detailed procedures were required and appropriate.

There can be no doubt that the Meeting Notice is insufficient to set forth procedures for the meeting due to the lack of detail and because such procedures would ostensibly, as currently composed require an amendment to the Bylaws. However, the Meeting Notice does not allow for an amendment to the Bylaws at the Meeting on July 28, 2020 because a statement of the proposed amendment must be included in the meeting notice and sent to all members at least ten days prior to the meeting. (Art. VII, Sec. 1). Further, the July 28, 2020 meeting cannot include an amendment to the Bylaws as the ten-day notice has since lapsed and should have been sent no later than July 18, 2020.

³ To the extent that Governor Murphy’s Executive Order 164 (“EO-164”) attempts to regulate and set the date for the annual meetings for county party committees, those portions of EO-164 are unconstitutional. The Governor does not have the authority to regulate the time and method of the internal affairs of a county party. See *Eu v. San Francisco Cty. Democratic Cent. Comm.*, 489 U.S. 214 (1989). As such, your reliance on N.J.S.A. 19:5-3, or any similar section, and EO-164 is improper and your decision must be based on the authority of the Committee’s Bylaws. The Committee must, therefore, amend the above provisions of the Bylaws in order to hold the Biennial Organization Meeting, as the first Tuesday following the Primary Election, which was held on July 7, 2020, has since passed.



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Therefore, in light of the foregoing, my clients request that the Meeting presently scheduled for July 28, 2020 be postponed and rescheduled so that the Chair can appoint a Chair pro-tempore to manage the election in consultation with the Committee and in a manner consistent with the MCDC Bylaws, including addressing the serious flaws and issues raised herein. Please contact me by July 25, 2020 before 5:00 p.m. to discuss possible avenues by which we might resolve this matter. Should you fail to commit and announce the adjournment of the Reorganization Meeting and otherwise comply with the mandates of the Bylaws, my client will be forced to initiate an action by way of order to show cause to enjoin the July 28, 2020 meeting from proceeding.

We are looking forward to working with you on this matter.

Very truly yours,

GENOVA BURNS LLC

/s/ Angelo J. Genova
ANGELO J. GENOVA

AJG:CZ:tc

c: Robin Bridges Johnson (via electronic mail)
Gregory Johnson, Esq. (via electronic mail)
Charles E. Geter

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