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November 6, 2007

Honorable Judges of the Appellate Division
Appellate Division of New Jersey
Richard J. Hughes Justice Complex
25 Market Street, 5th Floor
P.O. Box 006
Trenton, New Jersey 08625

**Re: In the Matter of the Applications of Farouk Sheikh and
Amber Sheikh for an Order to Vote in the 2007 General Election**

**Farouk Sheikh and Amber Sheikh, Appellants v. Board of
Elections, Bergen County, Respondent**

Dear Judges:

Please accept this letter-brief in lieu of a more formal
brief, on behalf of Appellants Farouk and Amber Sheikh,
("Applicants") in this matter.

This case is about Applicants' constitutional right to vote. Applicants were denied an opportunity to register to vote for this election. Disregarding the "bedrock" principle that election laws "must be liberally construed in favor of the enfranchisement of voters," Afran v. County of Somerset, 244 N.J. Super. 229, 232 (App. Div. 1990), the trial court held that Applicants should suffer disenfranchisement from this election as a penalty for the government's failure to extend them statutory registration rights.

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PROCEDURAL HISTORY AND
STATEMENT OF FACTS

On November 6, 2007, the County Board of Elections for Bergen County denied Applicants the right to vote at their local polling place. Pursuant to N.J.S.A. 19:15-18.3, Applicants appealed this decision to the Law Division earlier today.

The undisputed facts presented to the Law Division show that Applicants were denied their rights to register to vote through the Motor Vehicle Commission ("MVC"). Applicants are a married couple currently residing at 141 Teaneck Road, Teaneck, New Jersey 07666. Amber Sheikh testified that, shortly after moving to Teaneck, Bergen County, from Secaucus, Hudson County, in May 2006, she changed her address with the MVC. She had previously been registered to vote at her Secaucus address. Then, on September 20, 2006, Applicant Amber Sheikh went in person to an agency of the Motor Vehicle Commission ("MVC") located in Lodi, New Jersey, for the purpose of obtaining a renewal license. Mrs. Sheikh offered the trial court a copy of her driver's license, which bore this date of issue.

Applicant Farouk Sheikh became a naturalized citizen of the United States late in 2005. Like his wife before him, Mr. Sheikh went to an MVC office, located on Route 23 in Wayne, and

obtained a renewal license on June 25, 2007. He, too, presented his license to the trial court showing its date of issue.

Under the National Voter Registration Act ("NVRA"), 42 U.S.C. § 1973gg-3, as well as implementing state law, P.L. 103-31, § 13, Applicants should have been given voter registration forms when they renewed their licenses with the Motor Vehicle Commission, and Mrs. Sheikh's change of address with the MVC should have counted as a change of address for the purpose of voter registration.

The uncontradicted testimony in the trial court showed that MVC failed to fulfill its statutory mandate.¹ Each Applicant

¹ Applicants' testimony about not being offered a voter registration opportunity at MVC is consistent with federal statistics that show that New Jersey's current system for compliance with the NVRA does not work. See United States Election Assistance Commission, The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2004-2006 (June 30, 2007) (hereinafter "2007 EAC Report") at 30, 34. In New Jersey from 2004-2006, 92,890 voter registrations were received through motor vehicle agencies, or 11.5 percent of the total of 808,794. In contrast, 45.7% of all registration/change of address forms received nationally came through motor vehicle agencies during the same period. New Jersey has one of the lowest rates of registration through motor vehicle agencies in the nation. Id. Since January 2004, MVC has required every renewal licensee to visit an MVC office in person to switch to a digital license - including some 3 million people in 2005 and 2006 alone. See New Jersey Motor Vehicle Commission 2006 Annual Report at p. 14 (available at <http://www.state.nj.us/mvc/pdf/About/Sept302006-AnnualReport.pdf>). Given this volume of driver's license applicants, it is difficult to ascribe this strikingly low percentage of voter registrations through motor vehicle agencies to anything other than a failure of the system.

credibly testified that MVC did not provide him or her with the voter registration opportunity mandated by law. Applicants further testified that they would have registered to vote if MVC had offered the mandated opportunity. Because this State agency defaulted in its obligation to offer them a voter registration opportunity, Applicants' right to vote has been improperly denied.

At the time of their MVC visits, and today, Applicants possess all of the qualifications to vote:

- Each Applicant is at least 18 years old as of today;
- Each Applicant is a U.S. citizen;
- Each Applicant is a resident of New Jersey and has been a resident of Bergen County for 30 days or more prior to this election.
- Applicants are not incarcerated for, or on probation or on parole following a conviction for, an indictable offense.
- There is no court order purporting to disqualify Applicants from voting based on incapacity.

Based on the foregoing, Applicants now ask that this court reverse the lower court decision, and grant Applicants an order permitting them to vote on a machine before the polls close at 8 p.m. this evening.

LEGAL ARGUMENT

The plain language of the National Voter Registration Act ("NVRA") mandates that the MVC grant applicants for new or renewal motor vehicle licenses a simultaneous opportunity to register to vote. It is not enough for the MVC to make the forms available; the agency must affirmatively seek to register new voters. In addition, the statute makes clear that a change of address for MVC purposes counts as a change of address for voter registration unless the applicant expressly declines to have the address change transmitted to elections officials.

In an effort to increase voter registration, the United States Congress passed the National Voter Registration Act in 1993, making the law's provisions effective in New Jersey on January 1, 1995. P.L. 103-31, § 13. Congress recognized the lack of opportunities to register to vote. The purpose of the NVRA is to remove barriers to voting and increase the voting population by providing drivers with an opportunity to register to vote when they seek to obtain or renew a driver's license at a motor vehicle authority. H. Rep. 103-9 at 3-4.

The relevant provisions of the NVRA provide:

(a)(1) Each State motor vehicle driver's license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State

law shall serve as an application for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application.

(2) An application for voter registration submitted under paragraph (1) shall be considered as updating any previous voter registration by the applicant. . . .

(d) Change of address. Any change of address form submitted in accordance with State law for purposes of a State motor vehicle driver's license shall serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved unless the registrant states on the form that the change of address is not for voter registration purposes.

42 U.S.C. § 1973gg-3. Furthermore, "[e]ach State shall include a voter registration application form for elections for Federal office as part of an application for a State motor vehicle driver's license." 1973gg-3(c)(1).

Through the 1995 adoption of amendments to N.J.S.A. § 39:2-3.2, the Legislature codified these requirements into state law, making the NVRA's substantive requirements applicable in all New Jersey elections. When MVC fails to afford a voter registration opportunity, it violates both federal and state law, 42 U.S.C. § 1973gg-3; N.J.S.A. § 39:2-3.2, and deprives potential voters of their rights to a seamless registration process for all elections.

Aside from the plain and unambiguous text of the NVRA, its legislative history also makes clear that motor vehicle agencies must give a voter registration form to persons transacting business with MVC. "It would not be sufficient under the terms of this legislation for a State motor vehicles office merely to make a voter registration application available upon request to a license applicant or to simply put some forms on a table in the agency." S. Rep No. 103-6, at 6 (1993). Accord, Condon v. Reno, 913 F. Supp. 946, 958-59 (D.S.C. 1995) (holding that merely having voter registration forms available at an MVC office, or merely "mak[ing] a voter registration application available upon request to a license applicant" would be insufficient under the law).

According to H. Rep. No. 103-9, at 7 (1993), not only must motor vehicle agencies give an individual an application to register to vote, they must also receive a clear declination if the individual chooses not to register. The absolute minimum is a "box in either form for a registrant to check if he or she declines to register." The declination must be "in writing" or if the process is "fully computerized," "a record of the declination [must be] created and retained." Id. Similarly, all changes of address at MVC agencies automatically count as address changes for voting purposes unless "the registrant states on the form that the change of address is not

for voter registration purposes." 42. U.S.C. § 1973gg-3(d); see also NJSA 39:2-3.2(c).

In short, the NVRA and implementing state law require affirmative actions by MVC. In the instant case, the MVC offices did not extend Applicants an affirmative opportunity to register to vote. Furthermore, there is no evidence from MVC or otherwise indicating that the Applicants made an express declination, choosing not to register to vote.

It is undisputed that Applicants meet the constitutional requirements regarding age, citizenship, criminal history, and residency. They satisfy all of the legal requirements to vote today at the appropriate election district. Applicants should not have to bear the consequences of the government's failure to extend them a statutory right to register to vote. It is this court's duty to ensure that the citizens of this state do not pay the price when MVC falls short of its statutory mandate.

Because of the fundamental nature of the right to vote, and "the principle that election laws must be liberally construed to effectuate the overriding public policy in favor of the enfranchisement of voters," Afran v. County of Somerset, 244 N.J. Super. 229, 232 (App. Div. 1990), the lower court decision, denying Applicants the right to vote, should be reversed and this Court should enter an Order permitting the Mr. and Mrs.

Sheikh to vote today at the machines in the district where they reside.

Respectfully submitted,

By: CATHERINE WEISS
Director of the Division of
Public Interest Advocacy

Counsel for Appellants Farouk and
Amber Sheikh