

**“Every Vote Counts”:**  
**A survey of elections where just a few votes separate victory and defeat**

**By the New Jersey Department of the Public Advocate**

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**I. INTRODUCTION**

Close elections are more common than many people think. While most people who follow civic affairs can point to a few elections with narrow margins of victory that received a great deal of media attention, this article illustrates that this phenomenon occurs more frequently, and more widely, than most voters believe.

We identify 8 New Jersey elections in the last year where just one vote could have been outcome-determinative, meaning that it could have resulted in a different winner or different public question outcome. We also identify 66 New Jersey elections in the last year where the margin of victory was less than one percent, meaning that just a few additional votes for one candidate or one side of a public question could have changed the result.

This study therefore confirms the popular view that “every vote counts.” The choice by one or just a few voters to abstain from voting can change and has changed election outcomes. As a result, every eligible voter in New Jersey ought to register by the October 13, 2009, deadline for the November election, when voters will choose a Governor, Lieutenant Governor, all members of the Assembly, and dozens of county and local offices. Eligible voters should then take the time to actually cast a ballot, either at the polls or by mail, ensuring that they have first learned their rights and responsibilities under the voting laws, so that the voting experience is as easy as possible.

**II. CLOSE ELECTIONS**

The results for a majority of elections are publicly known soon after the polls close on Election Day. Still, a substantial number of elections are close enough that they result in recounts or court challenges, with the results going unknown for weeks or sometimes even months. In November 2000, for example, the narrow margins separating the winning and defeated Presidential candidates in Florida (537 votes out of over 5.9 million cast) resulted in weeks of uncertainty, tension, and multiple court cases that were ultimately resolved by the United States Supreme Court.<sup>1</sup> More recently, following the November 2008 Minnesota senatorial election between Al Franken and Norm Coleman, Minnesota election officials certified that Franken won the race by just 225 votes out of over 2.4 million votes cast.<sup>2</sup> The courts affirmed Franken’s victory only after eight months of recounts and hearings.<sup>3</sup>

It has been 27 years since New Jersey had such a close election for *statewide* office. In the 1981 general election, Thomas Kean defeated James Florio by 1,797 votes out of over 2.3 million votes cast, or 0.0759 percent. In that year, voters waited from the election on November 3, 1981, until the final recount report was issued on December 22, 1981, to learn the election's ultimate outcome.<sup>4</sup>

The passage of time may dim these unpleasant memories of government systems in turmoil. But what about close elections that might not generate such a media frenzy? By compiling in one place a recent history of close elections in New Jersey, we hope to remind voters and election officials that we live with close electoral contests every time voters go to the polls and therefore, how important it is for voters to cast a ballot.<sup>5</sup>

### III. FINDINGS

We identified 66 New Jersey elections held in and after November 2008 where the margin of victory was less than one percentage point. Four of them were tied, and another four were decided by a single vote. The specific findings are detailed in the attached table which is organized by county. They include one legislative primary and three races for county office where very thin margins separated the victor and the defeated candidate; the remainder were local races or questions.

The data we assembled in this report show that close elections occur in some jurisdictions virtually every time voters go to the polls. And these thin margins of victory and defeat occur throughout the election calendar and in all regions of the State. They affect general, primary, and nonpartisan elections (such as municipal or board of education elections), candidates from both major political parties, public questions, and of course, the voters electing the officials who will serve them.

### IV. CONCLUSIONS

The prevalence of close elections throughout New Jersey reveals an important lesson for eligible voters, which is that they should **register to vote and then cast a ballot in every election.**

Voter turnout rates continue to remain a vexing problem for election advocates. Despite near record levels of participation in the 2008 presidential election, out of an estimated total voting-eligible population ("VEP") of 5,844,477, only 66.9% of New Jersey voters cast ballots.<sup>6</sup> This exceeded the national average of 62.3% of VEP turnout nationally, and New Jersey's percentage ranked 19<sup>th</sup> overall in voter turnout in the United States.

While New Jersey fared better than the nation as a whole, the data still show that 1 in 3 eligible people in New Jersey failed to cast a ballot even in that important presidential election.

It is therefore important for all eligible voters – which means every adult U.S. citizen not incarcerated or on probation or parole for an indictable offense – to register to vote. Voters can obtain voter registration forms online or from a variety of government offices that are required to offer them, including county and municipal clerks, motor vehicle agencies, libraries, employment offices, and social service offices.<sup>7</sup> Various internet sites of the federal and state government, along with the websites of candidates and civic groups, also contain registration forms. The deadline to register to vote is 21 days before Election Day;<sup>8</sup> for this year’s general election, the deadline is October 13, 2009. Registering to vote is free, and voter registration forms come with a prepaid mailing, so voters do not even need to pay postage to register.

The laws on voter registration affect some populations in unique ways.

First, a citizen who will be 18 years old by Election Day can register to vote even if he or she is not 18 when completing the voter registration application.

Second, in New Jersey, persons convicted of an indictable offense are allowed to vote after they complete their sentence, including any period of probation and/or parole. When such persons complete a sentence, and are otherwise qualified to vote in accordance with legal requirements (U.S. citizenship, age 18 or older, and resident of the county for 30 days), they have the right to register and to vote once registered.<sup>9</sup> In contrast, people convicted of a disorderly persons offense or an ordinance violation, or jailed for civil matters (e.g., nonpayment of child support) or who are awaiting trial, do *not* lose their voting rights.

Third, the law imposes very stringent limits on disqualifying voters on the grounds of incapacity. Disqualification can only occur when a court of law specifically finds after a hearing that a person lacks the ability to understand the act of voting.<sup>10</sup> A person is *not* disqualified merely because he or she is the subject of an order of guardianship or conservatorship that does not expressly mention voting rights, is a patient in a psychiatric hospital or a resident in a developmental center, or is receiving government services on account of a mental or intellectual disability.<sup>11</sup>

Finally, university or college students have the right to register at either the address of their dormitory or off-campus apartment or at a home address such as their parents’ residence.<sup>12</sup>

Once registered, **voters should actually cast a ballot.** New Jersey polls are open for 14 hours (from 6am to 8pm) for general elections in the State. Voters may choose instead to procure a ballot and vote by mail, in advance of Election Day, for any reason.<sup>13</sup> Our system of government places power in the hands of the people and affords substantial opportunities for the people to exercise their right to vote. While enhanced registration or turnout does not necessarily mean fewer close elections, it is clear that just a few people’s decision not to register and vote could have turned the actual outcome of the elections we identified above. All eligible voters should participate because a single vote can make and has made the difference in multiple elections in the State.

Lastly, **voters should know their rights when casting a ballot.** Some of the most important rights are the following:

- Voters have the right to vote free of threats, intimidation, obstructions, or duress.<sup>14</sup>
- Voters who have a physical, mental, or intellectual disability, or cannot read English well enough, have the right to assistance in completing a ballot from a person of their choosing (other than their employer or an official in their labor union), or from two poll workers at their polling place.<sup>15</sup>
- If the voting machine is not working at their polling place, voters have the right to vote by an emergency paper ballot.<sup>16</sup>
- Most voters do not need to show identification (ID) to vote on Election Day. However, a few voters casting a vote for the first time, and whose information provided during registration could not be verified, may have to show ID. Only those voters marked in the poll books as needing identification will have to show ID. If such a voter lacks ID, he or she can vote provisionally and bring acceptable ID to the county board of elections within 48 hours.
- A voter who has recently moved within a county but has not changed his or her address with voting officials is entitled to vote by provisional ballot, which will be reviewed after the close of elections. Likewise, voters who have registered but whose names do not appear in the poll books for any reason can also cast a provisional ballot.<sup>17</sup> The ballot will be counted if officials can locate that voter's registration information somewhere in the county; otherwise, the ballot will not be counted.<sup>18</sup>
- Voters who are denied the right to vote on Election Day, or who think they have been wrongfully required to vote on a provisional ballot instead of in the voting machine, may go before a Superior Court judge that day, with or without a lawyer, and without filing a written complaint. The judge will then decide whether the voter is entitled to vote.

### **A Note on Methodology and Reporting**

To assemble the data in this report, we looked primarily at official county clerk reports for each county in New Jersey. We also examined governmental websites such as the State Department of Education's school election results pages. Some county clerk websites did not report official results, and not all county clerk websites published all results for all elections during the study period. As a result, we supplemented this research with other resources such as newspapers articles available on the Internet or through a LexisNexis database. This supplemental research, along with placing calls to

responsible public officials, helped us list election data where we could not find conclusive final results from governmental websites. Where reports indicated that recounts and/or court cases followed these tight races, we made additional inquiries to determine the final results of the recounts and litigation.

Because of county clerks' decisions about what to publish on their online sites, news organizations' editorial decisions, and the limitations of our online access, we cannot say that we identified *every* single election with a less than one percentage point margin since November 2008. Our findings about the frequency of close elections, nevertheless, are well supported by the evidence. We also note that for some elections where county clerks failed to post final official data, vote totals in the attached tables may not match the final results reported by county canvassing boards, which represent the official vote totals.

We used a conservative method to determine the percentage of a margin of victory. Specifically, we computed the margin of victory by calculating the number of votes separating the winning and defeated candidates (or "Yes" or "No" votes in the case of a public question) and dividing that figure into the sum of the respective votes. We did not divide them into the total turnout for the election (which is necessarily a larger number than the sum of the winner's and loser's votes); as a result, the percentage margin of victory listed in the tables is slightly higher than the percentage of victory that would be derived from counting total turnout.

Finally, where voters were choosing more than one candidate for office (e.g., electing three members of a town council), our report specifies only the difference between vote totals for the lowest successful candidate (whose name is listed in the report) and the highest unsuccessful candidate. Vote totals for successful candidates with higher vote totals or unsuccessful candidates with lower vote totals are not reported.

## ENDNOTES

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- <sup>1</sup> Fed. Elections Comm'n, *2000 Presidential General Election Results by State* (available at <http://www.fec.gov/pubrec/fe2000/2000presge.htm>) (last visited July 27, 2009); *Bush v. Gore*, 531 U.S. 98 (2000).
- <sup>2</sup> Minnesota Secretary of State Recount Summary, [http://www.sos.state.mn.us/docs/recount\\_summary\\_with\\_ab.pdf](http://www.sos.state.mn.us/docs/recount_summary_with_ab.pdf) (Jan. 3, 2009).
- <sup>3</sup> *Sheehan v. Franken (In re Contest of General Election)*, 767 N.W.2d 306 (Minn. 2009).
- <sup>4</sup> *Ballot Recount Shows Kean and Florio Gain*, N.Y. TIMES (Dec. 23, 1981).
- <sup>5</sup> Last year, the Public Advocate published an article similar to this one, recounting close elections that occurred between November 2006 and June 2008. The article can be found at <http://www.state.nj.us/publicadvocate/public/pdf/close%20elections%20article%20v6.pdf> and the supporting data can be found at <http://www.state.nj.us/publicadvocate/public/pdf/ByCountyCloseElections.pdf>. In this year's study, we examine elections held between November 2008 and June 2009.
- <sup>6</sup> See [http://elections.gmu.edu/Turnout\\_2008G.html](http://elections.gmu.edu/Turnout_2008G.html) (last visited Jul. 27, 2009).
- <sup>7</sup> N.J. STAT. ANN. §§ 19:31-6.3 and -6.11; see also 42 U.S.C. §§ 1973gg-3 and -5. To obtain a form online, visit [www.njelections.org](http://www.njelections.org) and click on "How and Where to Register." For a list of social services agencies where you can register to vote please visit [http://www.njelections.org/nvra\\_agencies\\_doe.html](http://www.njelections.org/nvra_agencies_doe.html).
- <sup>8</sup> N.J. STAT. ANN. § 19:31-6.
- <sup>9</sup> NEW JERSEY PUBLIC ADVOCATE, RESTORING YOUR RIGHT TO VOTE IN NEW JERSEY, [http://www.nj.gov/publicadvocate/public/pdf/restore\\_voting080915.pdf](http://www.nj.gov/publicadvocate/public/pdf/restore_voting080915.pdf).
- <sup>10</sup> N.J. CONST., art. II, § I, ¶ 6 ("No person who has been adjudicated by a court of competent jurisdiction to lack the capacity to understand the act of voting shall enjoy the right of suffrage.").
- <sup>11</sup> See, e.g., N.J. STAT. ANN. § 30:4-24.2a.
- <sup>12</sup> *Worden v. Mercer Co. Bd. of Election*, 61 N.J. 325 (1972).
- <sup>13</sup> P.L. 2009, c. 79 (to be codified at N.J. STAT. ANN. §§ 19:63-1 to -28). Voters can obtain an application to vote by mail from the county clerk's office or through the Internet. To obtain a request form online and to learn the address to which to send it, visit [www.njelections.org](http://www.njelections.org) and click on "Voting Options."
- <sup>14</sup> N.J. STAT. ANN. §§ 19:34-6, 28, -29.
- <sup>15</sup> N.J. STAT. ANN. §§ 19:31A-8, 19:50-3.
- <sup>16</sup> N.J. STAT. ANN. § 19:53B-3.
- <sup>17</sup> N.J. STAT. ANN. § 19:53C-3.
- <sup>18</sup> During the 2008 presidential election, 73,874 provisional ballots were cast, of which 55,164 were counted. See <http://www.njelections.org/2008results/08generalelection/provisional-ballot-summary.pdf> (last visited September 14, 2009).