

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

May 2, 2011

ECO-040

No. 11-2109

Frederick Carlton Lewis,  
Appellant

v.

Kim Guadagno, et al.

(D.N.J. No. 11-cv-02381)

Present: SCIRICA, AMBRO and VANASKIE, Circuit Judges

1. Motion for Emergent Relief by Appellant, including a Request that the Decision of the Secretary of State be Stayed.
2. Response in Opposition by Appellees Secretary of State and Attorney General
3. Response in Opposition by Intervenor-Appellees
4. Reply in Support of Emergent Relief by Appellant
5. Letter Submissions by County Clerks
6. Letter by Appellant, dated May 2, 2011, Advising Court of Decision of Appellate Division
7. Letter Response by Appellees Secretary of State and Attorney General
8. Letter Response by Intervenor-Appellees
9. Letter by Intervenor-Appellees, dated May 4, 2011

---

ORDER

---

The motion for emergent injunctive relief is granted, as the factors for such injunctive relief are met on the as applied federal constitutional challenge; as such, it is hereby ordered that the ballots at issue in this appeal include the name of Appellant. This

case is remanded to the District Court for a determination on the merits of the foregoing as applied challenge. We leave it to the District Court's discretion whether to defer action on remand pending the conclusion of proceedings in the New Jersey Supreme Court on that issue. This Panel will consider any future appeal in this matter.

By the Court,

/s/ Anthony J. Scirica  
Circuit Judge

Dated: May 5, 2011  
tyw/cc: Christopher A. Orlando, Esq.  
William M. Tambussi, Esq.  
Donna Kelly, Esq.  
Joshua A. Friedman, Esq.  
Howard L. Goldberg, Esq.  
Peter H. Nelson I, Esq.  
James T. Dugan, Esq.  
Mark D. Sheridan, Esq.  
Mark C. Errico, Esq.



**A True Copy**

*Marcia M. Waldron*

Marcia M. Waldron, Clerk  
Certified order issued in lieu of mandate.