

# Are mail-in ballots identical to their voting machine ballot counterparts? A New Appellate Division Decision says Yes.

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Mail-in ballots are a focus of the current news cycle due to the coronavirus and the upcoming elections. Governor Murphy, cautious of the spread of the virus at polling locations, has put a greater emphasis on the use of mail-in ballots. New Jersey law requires that a mail-in ballot must be “as nearly as possible a facsimile of the election ballot”, but what does that language really mean? The New Jersey Appellate Division answered precisely this question in the case of City of Perth Amboy, a Mun. Corp. of the State of New Jersey v. Elaine M. Flynn, Middlesex Cty. Clerk, No. A-0926-19T4, 2020 WL 3041338 (App. Div. June 8, 2020).

## The City’s Argument: Mail-in Ballot Does Not Meet Near-Facsimile Standard

In the trial court and on appeal, the City of Perth Amboy (“the City”) argued that the mail-in ballot did not meet the “near-facsimile” standard because the public question, ballot instructions, and translations were printed on a separate page of the ballot. The City alleged that this format differed from the sample voting machine ballot, which included the translations and public question on the ballot face. The City’s original complaint sought to invalidate the results of the 2019 election regarding the public question and to place that question on the November 2020 ballot.

## Trial Court Dismissed City’s Complaint: Differed Only Due to Physical Space Constraints

The trial court dismissed the City’s complaint, stating that the ballots differed only due to physical space constraints uniquely associated with printing the mail-in ballot, and that the directions “Instructions on enclosed sheet” were printed in three different languages. The City appealed.

## The Appellate Division Affirmed: Mail-In Ballots Were Not Misleading

The Appellate Division affirmed the Trial Court's decision and found that "[t]he only difference between the mail-in ballots and the voting machine ballots is that all the information did not fit on one page for the mail-in ballots." In so affirming, the Appellate Division held that the mail-in ballots "were nearly as possible facsimiles of the voting machine ballots, complied with [the relevant statute], and were not misleading."

With social distancing now the norm, it is anticipated that mail-in ballots will increasingly be the voting method of choice in elections, including the upcoming Presidential election in November.