

FILED

December 29, 2021

Hon. Thomas Daniel McCloskey, J.S.C.

The Hon. Thomas Daniel McCloskey, J.S.C.

Superior Court of New Jersey
Law Division, Middlesex County
Middlesex County Courthouse
56 Paterson Street, 3rd Floor - Chambers 305
New Brunswick, New Jersey 07903-0864

PREPARED BY THE COURT:

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IN THE MATTER OF THE CONTEST :
OF THE NOVEMBER 2, 2021 :
GENERAL ELECTION FOR THE :
OLD BRIDGE TOWNSHIP :
COMMITTEE, FOURTH WARD, :
: :
MARK RAZZOLI, PETITIONER. :
: :
: :
: :
-----X

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY
DOCKET NO. MID-L-6893-21

Civil Action

[Election Contest N.J.S.A. 19:29-1, et seq.]

ORDER FOR JUDGMENT

THIS MATTER, having come before the Court on December 22, 2021 as the date set for trial pursuant to N.J.S.A. 19:29-4, the Court’s initial “Case Management & Pre-Trial Order” entered on December 2, 2021 (the “December 2nd Pre-Trial Order”) and “Supplemental Order” entered on December 10, 2021 (the “December 10th Supplemental Order”) on the Verified Petition and Amended Petition in Support of an Application for an Election Contest in the Township of Old Bridge General Election of November 2, 2021 for the Old Bridge Township Committee, Fourth Ward (“Election Contest Petition”), filed by W. Timothy Howes, Esq., attorney for and on behalf of Petitioner, **Mark Razzoli** (“Petitioner” or “Mr. Razzoli”), a nominee of the Republican Party and incumbent candidate for the Old Bridge Township Committee, Fourth Ward (having

won the Republican Party nomination in the June 2021 primary election), pursuant to N.J.S.A. 19:29-1, et seq. (Mr. Howes, appearing), and against the Respondent, **Jill DeCaro** (“Respondent DeCaro” or “Ms. DeCaro”), a nominee of the Democrat Party and candidate for the Old Bridge Township Committee, Fourth Ward (having won the Democrat Party nomination in the June 2021 primary election) and declared winner of the seat for the Old Bridge Township Committee, Fourth Ward, in the 2021 General Election, and the Respondent, **Middlesex County Board of Elections** (“Respondent Board” or “Board of Elections”), as the agency established by statute to administer elections in Middlesex County and having administered the 2021 General Election in Middlesex County; and, in the presence of Daniel Antonelli, Esq. of the law firm of Antonelli Kantor, P.C., attorneys for and on behalf of the Respondent, **Jill DeCaro**, appearing opposition thereto; Andrew J. Bruck, Acting Attorney General of New Jersey (Debra A. Allen, Deputy Attorney General, appearing), attorneys for and on behalf of the Respondent, **Middlesex County Board of Elections** (“Respondent” or “Board of Elections”), and Niki Athanasopolous, Esq., First Deputy Counsel, County of Middlesex, for the Respondent, **Nancy J. Pinkin, County Clerk, County of Middlesex** (“Respondent” or “County Clerk”);

AND THE COURT, since the entry of its December 2nd Pre-Trial Order and December 10th Supplemental Order, having received:

- (i) the motion to dismiss of the Respondent DeCaro filed on December 15, 2021 seeking a dismissal of the original Petition pursuant to R. 4:6-2(e);
- (ii) the Amended Petition filed by the Petitioner on December 17, 2021, coupled with
- (iii) the motion for partial summary judgment filed by the Petitioner on December 17, 2021 seeking the grant of summary judgment on Count One of the Amended Petition pursuant to R. 4:46;
- (iv) the cross-motion for summary judgment of the Respondent DeCaro filed on December 20, 2021 seeking the grant of summary judgment in her favor on all counts of the Amended Petition pursuant to R. 4:46;

(v) the Certification of Deputy County Clerk, Deborah Braga (with Exhibit "A" annexed) filed on December 21, 2021 on behalf of the County Clerk;

(vi) the pre-trial letter brief filed on December 21, 2021 on behalf of the Board of Elections; and

(vii) the letter application of Petitioner's counsel filed on December 21, 2021 seeking leave of Court to voluntarily dismiss Count Two and Count Three of the Amended Petition pursuant to R. 4:37-1(b) (with the items in (i), (iii) and (iv) above being collectively referred to hereinafter as the "Cross-Motions");

AND THE COURT, at the request and with the consent of all parties, having determined to convert the scheduled trial of this date to a hearing and oral argument on the Cross-Motions in lieu of a trial, in the interest of judicial economy and in respect of the letter and the spirit of Title 19 of the New Jersey Election Laws;

AND THE COURT, having reviewed and considered the briefs submitted on behalf of the Petitioner, those submitted in opposition thereto on behalf of the Respondent DeCaro and the Respondent Board, those submitted on behalf of the County Clerk; having heard the oral argument of all counsel present at the hearing of this date; having further considered the documentary and other materials submitted in support of and in opposition to the Cross-Motion and admitted into evidence at the hearing;

AND THE COURT, for the reasons more fully set forth in the Court's written Opinion attached hereto, having determined that there are no genuine issues of material fact presented that would necessitate a trial on the issues joined or to preclude the grant of summary judgment in favor of the Petitioner on Count One of the Amended Petition; and, for good cause having otherwise been shown:

IT IS on this 29th day of **DECEMBER 2021, ADJUDGED AND ORDERED** that the Election Contest Petition of the Petitioner, Mark Razzoli, be, and the same hereby is **GRANTED**; and, more specifically, that Judgment, be, and hereby is entered as follows:

1. Re-iterating that, as confirmed on the record on the date of the hearing of December 22, 2021, the Petitioner, Mark Razzoli, has been granted leave to voluntarily dismiss Count Two and Count Three of the Amended Petition, and, therefore, the same are hereby **DISMISSED**, with prejudice.

2. That, insofar as the Motion of the Respondent DeCaro sought a dismissal of Count One of the original and Amended Petition pursuant to R. 4:6-2(e) for failing to state a claim upon which relief can or could be granted (with Counts Two and Three having been voluntarily dismissed), as ruled upon by the Court and for the reasons set forth on the record on the date of the hearing of December 22, 2021, that application has been **DENIED**.

3. That, insofar as the Cross-Motion of the Respondent DeCaro sought a grant of summary judgment in her favor to dismiss remaining Count One of the Amended Petition pursuant to R. 4:46 (with Counts Two and Three having been voluntarily dismissed), that application shall be, and hereby is, **DENIED**.

4. That, insofar as the Motion of the Petitioner sought a grant of summary judgment on remaining Count One of the Amended Petition pursuant to R. 4:46, and the Court, having found that there are no genuine issues of material fact that would preclude the entry of judgment for the relief sought on Count One, both as matters of fact and of law, summary judgment shall be, and hereby is, **GRANTED** in favor of the Petitioner, Mark Razzoli, on Count One of the Amended Petition; and more specifically, Judgment is hereby entered as follows:

A. Declaring that no person was duly elected to the Fourth Ward seat of the Old Bridge Township Committee in the 2021 General Election.

B. Voiding the results of the election for the seat on the Old Bridge Township Committee, Fourth Ward, in the 2021 General Election.

C. Annuling and revoking the Certificate of Election previously issued in favor of Respondent, Jill DeCaro, as a member of the Old Bridge Township Committee, Fourth Ward.

D. Declaring a vacancy in the office of the Old Bridge Township Committee, Fourth Ward;

E. Ordering that a special election be scheduled, *forthwith*, for the office of the Old Bridge Township Committee, Fourth Ward, to be noticed and conducted by the Board of Elections on a date to be fixed, in consultation with the County Clerk, that will not conflict with the Annual Fire Election to be held on February 19, 2021 in Old Bridge Township, the Special School Election scheduled for March 8, 2022 in Middlesex Borough, or any other Special Election that may be requested by other school boards by the current deadline of January 7, 2022 for such requests;

F. Directing the Board of Elections to immediately confer with the County Clerk (with their respective counsel) to ascertain and fix a date for the Special Fourth Ward election and report the same back to the Court (and counsel for the Petitioner and Respondent DeCaro) at the earliest opportunity. Once fixed and reported back to the undersigned, the Court will prepare and file a supplement to this Order to formally fix the date; and

G. Declaring that this is a final Order in all respects.

IT IS FURTHER ORDERED, that a copy of this Order shall be deemed served on all counsel of record and the parties hereto upon its posting by the Court to the eCourts case jacket for this matter.

SO ORDERED:

A handwritten signature in black ink, appearing to read "Thomas Daniel McCloskey". The signature is written in a cursive style with a large initial "T".

HON. THOMAS DANIEL McCLOSKEY, J.S.C.

(X) Opposed.

Pursuant to R. 1:6-2(f), the Court's written Opinion is attached hereto and made a part hereof.

NOT FOR PUBLICATION WITHOUT THE APPROVAL
OF THE COMMITTEE ON OPINIONS

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: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION
IN THE MATTER OF THE CONTEST : MIDDLESEX COUNTY
OF THE NOVEMBER 2, 2021 : DOCKET NO. MID-L-6893-21
GENERAL ELECTION FOR THE :
OLD BRIDGE TOWNSHIP :
COMMITTEE, FOURTH WARD, : Civil Action
: :
MARK RAZZOLI, PETITIONER. : [Election Contest N.J.S.A. 19:29-1,et seq.]
: :
: **OPINION**
: :
-----X

Tried/Argued: **December 22, 2021.**
Decided: **December 29, 2021.**

PARTY/COUNSEL APPEARANCES:

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Petitioner

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Nancy J. Pinkin, Middlesex County Clerk

McCLOSKEY, J.S.C.**I. Preface.**

This matter came before the Court on the scheduled trial date on the Election Contest Petition filed by and on behalf of the Petitioner, Mark Razzoli, pursuant to N.J.S.A. 19:29-4, the Court's initial "Case Management & Pre-Trial Order" entered on December 2, 2021 and "Supplemental Order" entered on December 10, 2021. Mr. Razzoli was the nominee of the Republican Party for Old Bridge Township Committee, Fourth Ward, having won the Republican Party nomination in the June 2021 primary election, and sought re-election to that seat in the 2021 General Election as the incumbent seat-holder for the Fourth Ward. The Respondent, Jill DeCaro, was the nominee of the Democrat Party for Old Bridge Township Committee, Fourth Ward, having won the Democrat Party nomination in the June 2021 primary election and was the challenger for the Fourth Ward Committee seat previously held by the Petitioner Razzoli.

The 2021 General Election was conducted pursuant to a major change to New Jersey Election Law – the third major change made in four (4) years and in the face of the previously declared state of emergency occasioned by the onset the COVID-19 global pandemic, which remained ongoing during the 2021 General Election. For the *first time* in New Jersey's history, a nine (9) day period of "early voting" was authorized in selected municipalities in each county from October 23, 2021 (the 10th day) through October 31, 2021 (the 2nd day) prior to the scheduled General Election held on November 2, 2021. During this period early voting was conducted using new electronic polling books and voting machines at designated early voting polling locations in each municipality. Specifically, in-person voting was conducted for early voting and voting on Election Day utilizing electronic poll books, which were connected to the Statewide Voter Registration System (SVRS) using Wi-Fi connections in each polling place. The new voting system was implemented for the General Election in all polling places in New Jersey without benefit or experience of pre-election testing or pilot programming.

The Township of Old Bridge in Middlesex County is governed by a Mayor and Township Committee. The Township Committee is composed of three (3) members elected at large in Old Bridge, and six (6) members elected in each of six (6) delineated "wards" in Old Bridge. Terms on the Township Committee are for four (4) years. Prior to and as of the 2021 General Election, the Petitioner, Mark Razzoli, served as the incumbent member of the Township Committee, representing the Fourth Ward, and was running for re-election. The Respondent, Jill DeCaro, was the Democrat Party nominee and contestant for the Fourth Ward Committee seat against the Petitioner.

The Fourth Ward is comprised of nine (9) election districts who vote in four (4) separate polling places: Carl Sandburg Middle School (Districts 3, 6 and 9); Alan B. Shepard, Jr. School (Districts 1, 2, 4 and 5); Walter M. Schirra School (District 7); and the James A. McDivitt School (District 8).

The Fourth Ward borders the Second Ward. On one street, Cymbeline Drive, the homes on one side of the street are in the Fourth Ward, and the homes on the other side of the street are in the Second Ward. The even-numbered homes are supposed to be in the Fourth Ward, and the odd-numbered homes are supposed to be in the Second Ward. With one exception, the voters on the even-numbered side of Cymbeline Drive who received “vote-by-mail” (VBM) ballots received ballots for the Second Ward. It is alleged in this Petition that they should have received VBM ballots for the Fourth Ward. It is further alleged that voters on the even-numbered side of Cymbeline Avenue who voted in polling places were wrongfully directed to vote in the Second Ward.

In his Petition, Mr. Razzoli alleges that the morning of November 2, 2021 was chaotic in the polling places. Voters experienced delays in voting. Machines malfunctioned and the new electronic poll books malfunctioned. As the Petitioner described it, polling places with several machines and electronic poll books malfunctioned because the simultaneous use of too many electronic poll books overloaded the Wi-Fi connectivity in those locations. As a result, there were delays in facilitating the voting process in that, in this General Election, it was the first time that any of the district poll workers had used the new system. It was further alleged that in some cases, the district board workers used “emergency” ballots to accommodate voters waiting in line to vote in machines, while in other cases, the district board workers used “provisional” ballots to accommodate voters. It was specifically alleged that in the instance of at least fifteen (15) voters, the district board workers improperly used emergency ballots.

Specifically, Mr. Razzoli alleges that there were thirty-three (33) registered voters on the even-numbered side of Cymbeline Drive who were eligible to vote in the Fourth Ward Township Committee election who were denied that right. The original Petition alleged that those voters lived at: 4 Cymbeline Drive, 10 Cymbeline Drive, 14 Cymbeline Drive, 20 Cymbeline Drive, 22 Cymbeline Drive, 28 Cymbeline Drive, 30 Cymbeline Drive, 34 Cymbeline Drive, 36 Cymbeline Drive and 38 Cymbeline Drive.

The results for the Fourth Ward certified by the Office of the County Clerk for Middlesex County, and published on the website of the Middlesex County Clerk, reflected the following vote tallies:

Jill DeCaro (Democrat)	1,554
Mark Razzoli (Republican)	1,543

Thus, by an 11-vote margin, Ms. DeCaro was declared the apparent winner of the Fourth Ward Committee seat and a Certificate of Election to that effect was issued in her favor. This Election Contest Petition followed.

Prior to trial, pursuant to the Court’s initial “Case Management & Pre-Trial Order” entered on December 2, 2021, and the ensuing “Consent Case Management Order” entered by the Court on December 10, 2021, the parties were directed to (i) conduct accelerated discovery, (ii) exchange

and produce specified documents and other information sought in propounded written discovery requests by a specified date certain, and to (iii) file briefs and supporting affidavits on an expedited briefing schedule. The Court received briefs (and exhibits) from the Petitioner, Razzoli, on December 13, 2021 (which were later supplemented by submissions filed on December 17, 2021), and the briefs (and exhibits) in opposition submitted on behalf of the Respondent, DeCaro, and the Respondents, Board of Elections and County Clerk. Testimonial (via certification) and documentary certification of the results for the Old Bridge Township Committee, Fourth Ward, was provided to the Court at the hearing. The Court has taken judicial notice of the above-referenced election results compiled by the County Board of Elections and certified by the County Clerk. N.J.R.E. 201(b)(2), (3) and (f).

With respect to the Election Contest Petition and, as above noted, at the request and with the consent of all parties, and in lieu of trial, the Court conducted an in-person evidentiary hearing and heard the oral argument of counsel for the Petitioner and Respondent on each of the Cross-Motions, as well as the argument offered on behalf of the Respondents, Board of Elections and County Clerk.

II. The Petition & Amended Petition – Expedited Discovery - Pre-Trial Motions.

Mr. Razzoli’s original Petition contained three (3) counts. In Count One (“Legal Votes Rejected”), he alleges that the 33 voters who live in the Fourth Ward who were provided ballots to vote in the Second Ward were denied their right to vote in the Fourth Ward Township Committee election; and, therefore, all voters who were denied their right to vote in the Fourth Ward Township Committee election were legal votes wrongfully rejected pursuant to N.J.S.A. 19:29-1(e). The latter provides the grounds for the election contest at issue, i.e., “[w]hen illegal votes have been received, or legal votes rejected at the polls sufficient to change the result;” and, ultimately, under the statutory scheme and pursuant to N.J.S.A. 19:29-9, a remedy sought here (i.e., nullification of the Fourth Ward election results, a setting aside of the election, and the scheduling of a special election anew).

In Count Two (“Illegal Votes Accepted”), he alleges that fifteen (15) emergency ballots were accepted for the Fourth Ward Township Committee seat, and specifically contends the use of emergency ballots on November 2, 2021 was not legal and that, instead, provisional ballots subject to verification after the election by the Board of Elections should have been used (noting further that there were “material procedural defects in the use of the emergency ballots”). Because the use of emergency ballots was not legal – i.e., since district board workers were not able to verify the voters using the new electronic poll books due to Wi-Fi connectivity problems experienced at the polling places – N.J.S.A. 19:29-1(e) also provides authority for the Petitioner, as a candidate, to contest the results “[w]hen illegal votes have been received, or legal votes rejected at the polls sufficient to change the result.” In this regard, it is specifically alleged that the emergency ballot vote totals were tallied to reflect the following:

Jill DeCaro (Democrat)	12
Mark Razzoli (Republican)	3

And finally, in Count Three (“Illegal Vote-By-Mail Ballots Accepted”), it is alleged that numerous vote-by-mail (VBM) ballots were illegally accepted with voter addresses at 100 Ticetown Road in Old Bridge, which is the address for a high-density senior housing complex. It is contended that the illegally accepted VBM ballots were riddled with irregularities, such as, *inter alia*, (i) accepted VBM ballots were without signatures (with ballots with names handwritten in the signatures field being accepted), (ii) voters being assisted with their VBM ballots, but with the assistor fields not completed as required, and (iii) voters being assisted by a candidate contrary to the New Jersey mail-in ballot laws.

With discovery exchanged on an accelerated basis, the Petitioner filed an Amended Petition on December 17, 2021. Count One was amended to specifically identify and name seventeen (17) voters who resided on the even-numbered side of Cymbeline Drive who incorrectly voted in Ward 2, District 4; and, precisely the seventeen (17) of whom live in **Ward 4, District 3**, not in Ward 2, District 4, but who were provided ballots to vote in Ward 2, District 4 and thus wrongfully denied their right to vote in the Old Bridge Fourth Ward Township Council election. Count Three was amended to specifically allege that forty-three (43) vote-by-mail ballots were illegally accepted with voter addresses at the high density senior housing complex located at 100 Ticetown Road, with the irregularities in the accepted ballots specifically alleged to include, without limitation: (i) mail-in ballots accepted without signatures, fourteen (14) of which were accepted with handwritten names in the signature fields (namely, ballots numbered in discovery as 10, 16, 19, 22, 23, 24, 26, 28, 29, 46, 63, 65, 66 and 73); (ii) mail-in ballots accepted without comparing signatures (namely, ballots numbered in discovery as 8, 11, 13, 14, 15, 18, 20, 21, 30, 31, 32, 35, 36, 37, 38, 45, 47, 51, 54, 55, 56, 58, 59, 62, 68, 72, 76 and 77); (iii) voters who were assisted with their mail-in ballots, but the assistor fields of the ballots had not been completed as required; and (iv) voters assisted by a candidate, contrary to the New Jersey mail-in ballot laws.

However, on December 15, 2021 and *prior* to the exchange of discovery, Respondent DeCaro moved to dismiss the original Verified Petition pursuant to R. 4:6-2(e). She claimed that “Count One-Legal Votes Rejected” contained a fatal flaw in that it failed to identify by name any of the 33 registered voters who the Petitioner claimed were denied their right to vote in the General Election for the Old Bridge Township Committee, Fourth Ward, because they were provided ballots to vote in the Second Ward but were eligible to vote in the Fourth Ward. Thus, contrary to case law and, specifically, the Supreme Court’s holding in In re Contest of Nov. 8, 2005 Gen. Election for Off. of Mayor of Twp. of Parsippany-Troy Hills, 192 N.J. 546 (2007), Ms. DeCaro claimed that the original Verified Petition was defective and should be dismissed under R. 4:6-2(e). As above noted, though, this argument was rendered moot by virtue of the Amended Petition filed by the Petitioner two (2) days later on December 17, 2021, pursuant to R. 4:9-1, in which each of seventeen (17) allegedly disenfranchised voters in the Fourth Ward were, in fact,

specifically identified by name based upon the information that was disclosed in the parties' discovery exchanges.¹

With respect to "Count Two-Illegal Votes Counted", the Respondent argued that this count should be dismissed since, the alleged, illegally accepted fifteen (15) "emergency ballots" were not, as Petitioner argues, improperly counted due to Wi-Fi connectivity issues that prevented district board workers from verifying registration status and that provisional ballots should have been utilized instead, the Respondent contending that to reject those votes would disenfranchise those voters through no fault of their own. Similar to Respondent's position as to Count One, this argument was rejected by the Court under a R. 4:6-2(e) analysis since, accepting the allegations as true for the purposes of the motion, Count Two did state at least a "fundament" of a claim upon which relief could be granted under N.J.S.A. 19:29-1(e), Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989), sufficient to withstand dismissal abiding pleading amendment and/or the proofs at trial. This was especially necessary given the issue of first impression presented by the district board's use of the new, but untested electronic polling books and voting machines pursuant to the provisions of the 2021 Early Voting Act. Those electronic polling books replaced the old paper polling books but could not be accessed to verify voter registration status and/or voter signatures due to the malfunctions created by the overload and lost Wi-Fi connections at the polling place on Election Day.

In regard to "Count Three-Illegal Vote-By-Mail Ballots Accepted", Respondent DeCaro argued that the mail-in ballots that were allegedly, illegally accepted at voter addresses at 100 Ticetown Road (the senior housing complex) due to "irregularities" were not improperly accepted and counted. The Vote-By-Mail Law, N.J.S.A. 19:63-1 to -28, granted all qualified voters at that location the right to vote using mail-in-ballots. She argues that under N.J.S.A. 19:63-26, the Petitioner failed to rebut the presumption accorded that an irregularity or failure in the preparation or forwarding of any mail-in ballot will not invalidate an election, and, that similar with the contention made with respect to Count One, the Petitioner failed to identify the names of such voters whose VBM's were allegedly illegally accepted or how many votes were allegedly illegally

¹ The Respondent DeCaro's premature claim that the original Verified Petition was defective by virtue of failing to identify allegedly disenfranchised voters specifically by name (despite that fact the original Petition identified them by street addresses of their places of residence, subject to discovery) was, at a minimum, rendered moot by the amended pleading that was filed by the Petitioner on December 17, 2021, as well as waived by the Respondent DeCaro upon committing to the Court's approval and entry of its "Consent Case Management Order" dated and filed on December 10, 2021 that sought and foreseeably would provide such information in the form of, *inter alia* "4. Voter registration records" and "6. Voter Profile from Statewide Voter Registration System (SVRS)." Such information was in turn provided in discovery by the Board of Elections and by the prescribed December 15, 2021 deadline. Thus, at the hearing, this argument was explicitly rejected by the Court under a R. 4:6-2(e) analysis since, accepting the allegations as true for the purposes of the motion, original Count One did state at least a "fundament" of a claim upon which relief could be granted under N.J.S.A. 19:29-1(e), Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989), and sufficient to withstand dismissal abiding a pleading amendment which, in fact, was made and filed on December 17, 2021 to specifically identify the allegedly disenfranchised voters by name.

accepted. Here again, this argument was similarly rejected by the Court under a R. 4:6-2(e) analysis since, accepting the allegations as true for the purposes of the motion, Count Three did state at least a “fundament” of a claim upon which relief could be granted under N.J.S.A. 19:29-1(e), Printing Mart-Morristown, supra, sufficient to withstand dismissal abiding pleading amendment and/or the proofs at trial. Moreover, the latter argument was rendered moot, in part, by virtue of the more specific allegations contained in the Amended Petition filed by the Petitioner on December 17, 2021 with benefit of discovery exchanged and identification of no less than forty-three (43) VBM ballots (and voters) with specificity.²

Finally, simultaneous with the filing of his Amended Petition, also on December 17, 2021 the Petitioner filed a motion for partial summary judgment on Count One arguing that the lack of any genuine issue of material fact would not and should not preclude him from the entry of judgment, as a matter of law, due to the 17 legal votes that were rejected but which exceeded the 11-vote margin of victory claimed by the Respondent DeCaro, which alone, warranted a nullification of the election, revocation of the Certificate of Election issued to her, and an Order directing a special election.

On December 20, 2021, the Respondent DeCaro filed a cross-motion for summary judgment seeking a dismissal of all three (3) counts of the Amended Petition. In turn, by letter request filed on December 21, 2021, the Petitioner formally sought leave of Court to voluntarily dismiss Count Two and Count Three of the Amended Petition pursuant to R. 4:37-1(b), and which the Court granted at the outset of the hearing conducted on December 22, 2021 without objection from any of the Respondents.

The Court has carefully reviewed the legal issues, the Early Voting Act establishing the early voting procedures and protocols, the statutory framework for an election contest, the case law on the subject, the evidence provided, and the arguments made by all parties. Having reviewed the briefs, certifications and submissions of the Petitioner, the Respondent DeCaro, and the Respondents, Board of Elections and County Clerk, having considered the documentary material and information presented at the hearing and admitted into evidence, and having heard and considered the arguments of counsel, the Court’s decision on remaining Count One of the Amended Petition now follows.

III. Organizing and Conducting Full and Fair Elections During the Continuing COVID-19 Pandemic Era & Implementation of Early Voting Changes Made for the 2021 General Election.

The common thread of this case and all similarly filed elsewhere in New Jersey both subsequent to the 2020 General Election and in the aftermath of the most recent 2021 General Election is the unprecedented public safety and health crisis that the State of New Jersey and the

² The parties identified these ballots by numbers ascribed to them in discovery for identification purposes with redactions of the private information therein contained.

nation as a whole have faced not only since March 2020, but also most recently due to the significant uptick in infections and “omicron” variant of the novel coronavirus (“COVID-19”). COVID-19 is a severe and potentially fatal respiratory illness that spreads rapidly through contact and by airborne transmittal between individuals. Back in March of 2020, the Governor of New Jersey, Phil Murphy, declared a Public Health Emergency and State of Emergency in New Jersey due to COVID-19. The Governor has since issued dozens of Executive Orders in order to combat the unprecedented spread of COVID-19. Similarly, since March 16, 2020, Chief Justice Rabner of the New Jersey Supreme Court has issued no less than eleven (11) separate “Omnibus Orders” in tandem with the Governor’s Executive Orders, the latter of which have resulted in specific directives for the adjustment or relaxation of certain deadlines imposed by Court rule and/or specified (and even unspecified) statute given the pervasive effect the COVID-19 pandemic has had on court operations and legal practice.

In the foregoing regard, as the spread of the COVID-19 virus began to subside, the 2021 Primary Elections saw a return to in-person voting, as did the 2021 General Election. The return to in-person voting in the 2021 General Election was coupled with the introduction of new, untested electronic poll books and machines being utilized as well as “early voting” being permitted for the *first time* in the history of New Jersey. The most significant change in the voting law required all New Jersey counties to provide polling places for voters to cast ballots for a 9-day period *before and leading up to* the November 2, 2021 General Election Day. Thus, pursuant to the newly passed “Early Voting Act” enacted by the Legislature on March 30, 2021, N.J.S.A. 19:15A-1, et seq., registered voters were permitted to cast a ballot “at a specially designated polling place before the day of certain primary and general elections in this State. This procedure shall be known as early voting.” N.J.S.A. 19:15A-1a. For the November General Election, the early voting period began on the 10th calendar day before the general election (i.e., Saturday, October 23, 2021) and continued thereafter and ended on the 2nd calendar day before the general election (i.e., Sunday, October 31, 2021). N.J.S.A. 19:15A-1a(3).

Each early voting site in a county or municipality opened for early voting on Monday through Saturday from at least 10 A.M. to 8 P.M., and on Sunday from at least 10 A.M. to 6 P.M. N.J.S.A. 19:15A-1c. Significantly, operational changes for this election cycle saw issues arising from new voting machines that were in place that had never been used before; the replacement of paper polling books with new, untested electronic polling books; electronic polling books on Early Voting Act days as well as the November 2nd General Election day covering many polling places in one “book”; and provisional ballots being permitted to be printed on-site rather than pre-printed.

The Court acknowledges the monumental challenges that were once again presented to local officials, the County Clerk, and the Middlesex County Board of Elections in conducting, expanding and administering the new early voting process, with new electronic poll books and machines, and continuing vote-by-mail processes in the middle of the ongoing global pandemic. This was also the first time in our State’s history where conducting early voting and in-person voting on Election Day with new electronic poll books and machines was authorized and implemented. Not only did this place the State in uncharted waters but, clearly, imposed immense

pressure on local election officials to conduct elections smack in the middle of the on-going public health crisis, and yet, with in-person voting resuming as in the pre-COVID-19 era and with a 9-day early voting period. As it turned out, the pandemic that had subsided in the spring of 2021 began to resume with the onset of the new “omicron” variant of COVID-19 rearing its ugly head just prior to the General Election, further complicating the introduction and use of new electronic poll books and machines without benefit of prior testing, with infection rates and COVID-19 related issues rising again during the both the early and regular vote canvassing and counting processes here. The confluence of these unanticipated circumstances presented even greater, unprecedented challenges and on the eve of the actual General Election Day as well as during the post-election canvassing and counting of votes. The Court tips its hat in recognizing and complimenting the Board of Elections and the County Clerk for best efforts made in confronting head-on, and navigating the election processes through, this maze of yet another set of new conditions in this election cycle for the benefit of the electorate in Middlesex County.

In New Jersey, the Secretary of State, the Middlesex County Board of Elections and Middlesex County Clerk are statutorily charged with conducting elections in the fullest and fairest process. In their representative capacities, they are statutorily vested with authority to exercise appropriate discretion in conducting a full, fair, and impartial election. The statutory framework provides an appropriate level of safeguards on how members of the Board of Elections will conduct their decision-making. Each member is required to take an oath before taking the position under N.J.S.A. 19:6-23. The Board of Elections consists of two members from both political parties, building into the framework appropriate safeguards and checks and balances.

Consequently, providing specific guidance and resources to local Boards of Elections to perform their statutory and legal responsibilities to conduct fair elections is even more essential and paramount during not only a pandemic, but also, for 2021, in permitting early voting for the designated 9-day period and the and utilization of new but untested electronic machinery (enabled, connected, and thus dependent upon functional and uninterrupted Wi-Fi connections to the Statewide Voter Registration System).

Thus, as in the lead-up and conduct of the 2020 General Election and the changes made (and attendant issues) to the pandemic-driven full vote-by-mail process, so, too, did the Early Voting Act changes and resort to the utilization of new electronic polling books and voting machines bring the potential for unanticipated and unprecedented issues arising during both the early voting period and on Election Day for in-person voting. The original and Amended Verified Petition in this matter implicates issues and irregularities that were directly attributable to the new early voting procedures, electronic polling books and voting machinery, together with access to (and apparent errors in) the Statewide Voter Registration System.

IV. The Court's Analyses and Discussion of Applicable Law.

It is against the foregoing backdrop, and legal context, that the Court addresses the application of the Petitioner Razzoli here.

The Right to Vote & The Right to Contest

As the Petitioner compellingly argues, the right to vote in the United States has had a long and difficult history. The right to vote a citizen's "sword and shield". Other rights, even the most basic, are illusory if the right to vote is undermined. New Jersey Democratic Party, Inc. v. Samson, 175 N.J. 178 (2002) (quoting Wesberry v. Sanders, 376 U.S. 1, 17 (1964)). It is the keystone of a truly democratic society, and the right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. Samson, 175 N.J., supra, at 187.³

Most recently, in regard to election contests specifically, Judge Mawla (writing for a unanimous panel), in the Appellate Division's published decision in In re Election for Atl. Cty. Freeholder Dist. 3 2020 Election, 468 N.J. Super. 341 (App. Div. 2021), poignantly summarized the standards in this fashion:

As a general proposition, "election laws are to be liberally construed to the end that voters are permitted to exercise the franchise and that the will of the people as expressed through an election is heard." [citation omitted]. "A citizen's constitutional right to vote for the candidate of his or her choice necessarily includes the corollary right to have that vote counted 'at full value without dilution or discount.'" [citation omitted]. "The fundamental purpose of an election contest is 'to ascertain the true will of the electorate.'" [citation omitted].

"Our election laws provide . . . the framework within which our Legislature has directed an election contest must proceed," including "both the grounds on which an election may be contested, and the manner in which the contest may be brought and decided." [citation omitted]. A judge hearing a contest petition, following a trial "similar to those in a civil action so far as practicable . . . under the control and direction of the court," must pronounce judgment whether the incumbent or any contestant was duly elected." N.J.S.A. 19:29-5; N.J.S.A. 19:29-8. **"If the judge finds that no person was duly elected, the judgment shall be**

³ As was noted by Chief Justice Poritz in Samson, in writing for a unanimous Court, the right of choice as integral to the franchise itself, unlike universal suffrage, is grounded in the core values of the democratic system established by the framers of our Federal Constitution when this country was founded. Id., quoting Powell v. McCormack, 395 U.S. 486, 547 (1969) ("A fundamental principle of our representative democracy is, in Hamilton's words, that the people should choose whom they please to govern themselves. 2 Elliot's Debates 257. As Madison pointed out at the Convention, this principle is undermined as much by limiting whom the people can select as by limiting the franchise itself").

that the election be set aside.” N.J.S.A. 19:29-9. **“A judge may not speculate as to the voter’s intent in order to validate a ballot . . .”** [citation omitted].

Id. at 353 (emphasis added).

The Standards of Review.

A. The Summary Judgment Standard.

R. 4:46-2 governing the standard for summary judgment presently provides, in relevant part, that summary judgment shall be rendered forthwith “if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or Order as a matter of law.” R. 4:46-2(c).

In applying R. 4:46-2, New Jersey’s courts have long recognized that the summary judgment procedure is an important tool of jurisprudence designed to determine quickly and inexpensively whether a claim presents any genuine issue of material fact and to ferret out those claims which do not present a genuine issue of material fact requiring a determination at trial. See Maher v. New Jersey Transit, R.O., 125 N.J. 455, 477 (1991); Ledley v. William Penn Life Insurance Company, 138 N.J. 627, 641-42 (1995) quoting Judson v. People’s Bank & Trust Company of Westfield, 17 N.J. 67, 74 (1955). The standard for summary judgment is to be “applied with discriminating care so as not to defeat a summary judgment if the movant is justly entitled to one.” Henschke v. Borough of Clayton, 251 N.J.Super. 393, 398 (App. Div. 1991).

The New Jersey Supreme Court again revisited this application of the summary judgment standard in Brill v. The Guardian Life Insurance Company of America, 142 N.J. 520 (1995) holding that when deciding a motion for summary judgment under R. 4:46-2, the determination whether there exists a genuine issue with respect to a material fact challenged requires the motion judge to consider whether the competent evidential materials presented, when viewed in a light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the nonmoving party. Id. at 523.

In so holding, Brill noted that the plain language of R. 4:46-2 dictates that where a party opposing summary judgment points only to disputed issues of facts that are of an insubstantial nature, the proper disposition is summary judgment. Id. at 529. The Court further instructed, “[t]he import of our holding is that when the evidence **is so one-sided that one party must prevail as a matter of law**, the trial court should not hesitate to grant summary judgment.” Id. at 540 (citations omitted).

Summary judgment should be granted when the motion evidence before the court “[s]hows that there is no genuine issue as to any material fact challenged and that the moving party is entitled

to a judgment or order as a matter of law” R. 4:46-2(c). The trial court must first determine whether there is a genuine issue of fact. Walker v. Atl. Chrysler Plymouth, 216 N.J. Super. 255, 258 (App. Div. 1987). The motion judge is required to determine “whether the evidence presents sufficient disagreement to require submission to a jury or whether it is so one-sided that a party must prevail as a matter of law.” Liberty Surplus Ins. Corp., Inc. v. Nowell Amoroso, P.A. 189 N.J. 436, 445-46 (2007) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J., supra at 536 (1995)). In addition, the motion judge shall review the facts in the light most favorable to the party opposing summary judgment. Globe Motor Co. v. Igdalev, 225 N.J. 469, 479 (2016) (citing Bhagat v. Bhagat, 217 N.J. 22, 38 (2014)).

R. 4:46-5(a) further provides that once a motion for summary judgment is made and supported as provided in the Rule, an adverse party may not rest on the mere allegations or denials of his pleadings, but his response by affidavits or otherwise must set forth specific facts establishing that there is a genuine issue for trial. “Bare conclusions in the pleadings, without factual support and tendered affidavits will not defeat a meritorious application for summary judgment.” U.S. Pipe & Foundry v. American Arbitration Association, 67 N.J. Super. 384, 399-400 (App. Div. 1961). Thus, while the Court must view the factual record in a light most favorable to the opponent of the motion and resolve all doubt against the movant, Ruvolo v. American Gas Company, 39 N.J. 490, 499 (1963), the New Jersey Supreme Court has long held that summary judgment is justified where the party opposing “offers . . . only facts which are immaterial or of an insubstantial nature, a mere scintilla, fanciful, frivolous, gauzy or merely suspicious.” Judson at 67; see also Maher at 477-78.

B. As to an Election Contest.

As noted, this is an election contest brought pursuant to N.J.S.A. 19:29-1, *et seq.* N.J.S.A. 19:29-1 provides the legal grounds for an election contest. N.J.S.A. 19:63-26 establishes a rebuttable presumption that an irregularity or failure in forwarding of any mail-in ballot will not invalidate an election, however, a contestant may rebut the presumption by asserting one or more of the grounds under N.J.S.A. 19:29-1 as a basis to invalidate an election. In re Election for Atl. Cty. Freeholder Dist. 3 2020 Election, 468 N.J. Super. 341, 360 (App. Div. 2021).

In this case, the Petitioner specifically seeks such relief under sub-section “e” of N.J.S.A. 19:29-1, and inferentially under sub-section “g”, which in pertinent part provide as follows:

“§ 19:29-1. Grounds stated.

The nomination or election of any public office or party position, or the approval or disapproval of any public proposition, may be contested by the voters of this State or of any of its political subdivisions affected thereby upon 1 or more of the following grounds:

* * *

e. When illegal votes have been received, or legal votes rejected at the polls sufficient to change the result.

* * *

g. For any other cause which shows that another was the person legally elected.”

And, an election shall be set aside if the trial judge concludes the contestant has proved a basis to do so under N.J.S.A. 19:29-1 by a *preponderance of the evidence* and the judge finds that no person was duly elected, as per N.J.S.A. 19:29-9. Ibid. at 360-361.

In actions alleging that either illegal votes were received, or legal votes were rejected, the following requirements apply:

“When the reception of illegal or the rejection of legal voters is alleged as a cause of contest, the names of the persons who so voted, or whose votes were rejected, with the election district where they voted, or offered to vote, shall be set forth in the petition, **if known**.”⁴

In In re Election for Atl. Cty. Freeholder Dist. 3 2020 Election, supra, the Atlantic County Clerk sent voters within the Third Freeholder District 328 ballots without the Third District Freeholder race on the ballot. The trial court found that 328 of those 335 voters were “legal votes rejected” as defined in N.J.S.A. 19:29-1(e). Because the legal votes rejected exceed the margin of victory, the trial court vacated the election results, and ordered a new election. Dr. Witherspoon, the putative winner, appealed. The Appellate Division affirmed, opining that:

“ Parker [the contestant] met the burden of proof under N.J.S.A. 19:29-1(e) because the ballots sent to numerous voters in the Third District were defective, rendering voters in capable of voting for County Commissioner. Because 328 voters were prevented from voting and the number exceeded Witherspoon’s 286-vote margin of victory, Parker proved the missing votes were sufficient to change the result.”

In so ruling, in its affirmance of the trial court the Appellate Division held that “[a] petitioner contesting the outcome of an election based on the rejection of legal votes ‘need not identify for whom the rejected voted or would have voted, only that the rejected votes were sufficient in number that, if all were credited to him, the results of the election would change. [citation omitted]’”. In re Election for Atl. Cty. Freeholder Dist. 3 2020 Election, 468 N.J. Super., supra at 354.

⁴ The Respondent DeCaro duly noted that “w]hile the Legislature has revised the election contest statute several times, the reference to names being set forth in the petition, “if known”, has remained in the statute since 1876. See Petition of Clee, 119 N.J.L. 310 (Sup. Ct. 1938).

When legal votes have been rejected, the contestant does not have the burden of showing specifically for whom the votes were cast; rather, the contestant's burden would be met by a demonstration that had the votes been cast for him, the result would have been different. Application of Moffat, 142 N.J. Super. 217, 224 (App. Div.), certif. den., 71 N.J. 527 (1976). Importantly, that proposition was later re-iterated in In re Petition of Gray-Sadler, 164 N.J. 468, 486 (2000), where our Supreme Court held that courts cannot require candidates contesting the election to prove that the votes not cast due to irregularities such as defective ballots would have voted for the candidate challenging the election. That is, the court cannot speculate as to which candidate the disenfranchised voters may have cast their ballot. Rather, the petition need only show that enough qualified voters were denied the right to cast votes to affect the outcome of the election. As the Supreme Court has stated:

“Simple deviance from statutory election procedures, absent fraud or malconduct, will not vitiate an election unless those contesting it can show that as a result of irregularities ‘the free expression of the popular will in all human likelihood has been thwarted.’ “

Gray-Sadler, 164 N.J. at 482 (quoting Wene v. Meyner, 13 N.J. 185, 196 (1953). And, “[i]n determining whether certain irregularities rise to a level which requires nullifying an election . . . [i]t is only where the irregularities at an election are such that the court cannot with reasonable certainty determine who received the majority of the legal vote, that an election will be set aside.” In re Mallon, 232 N.J. Super. 249, 262 (App. Div. 1989).

Six (6) years after it decided Gray-Sadler, the Appellate Division held that a party contesting an election based on the number of rejected votes need only show “the rejected votes were sufficient in number that, if all were credited to him [or her], the results of the election would change.” In re Contest of Nov. 8, 2005 Gen. Election for Off. of Mayor for Twp. of Parsippany-Troy Hills, 388 N.J. Super. 663, 677 (App. Div. 2006) (“Parsippany I”), aff'd as modified on other grounds by In re Contest of Nov. 8, 2005 Gen. Election for Off. of Mayor for Twp. of Parsippany-Troy Hills, 192 N.J. 546 572 (2007) (“Parsippany II”) (the court in Parsippany I explaining that “[w]hen the wrongfully disenfranchised voter is able to be identified, he cannot be compelled to disclose for whom he did or would have voted.”).

Most recently, in In re Election for Atl. Cty. Freeholder Dist. 3 2020 Election, supra, the Appellate Division succinctly summarized the standard as follows:

A vote has been “rejected” under N.J.S.A. 19:29-1(e), in “any situation in which qualified voters are denied access to the poll,” Gray-Sadler, 164 N.J. at 475 (quoting In re Maple Shade Gen. Election, 203 N.J. Super. 563, 590 (Law Div. 1985), or who, “through no fault of their own,” have been “prohibited from voting for a specific candidate by some irregularity in the voting procedures,” Gray-Sadler, 164 N.J. at 476. “The essential question is whether voters were denied the opportunity

to vote for a candidate of their choice. Ibid. A successful election contesteer “must prove by a preponderance of the evidence that illegal votes were received or legal votes were rejected. . . .” In re Nov. 2, 2020 Gen. Election for Off. of Mayor in Borough of S. Amboy, 423 N.J. super. 190, 200 (App. Div. 2011).

468 N.J. Super., supra, at 355.

As to Remaining Count One of the Amended Verified Petition.

Specifically, the Petitioner here contends that, through no fault of their own, Fourth Ward voters were deprived of the right to vote for their own representatives to the Old Bridge Township Council. The Respondent, Ms. DeCaro, was declared and certified the winner with an 11-vote margin over the Petitioner, Mr. Razzoli. Where, as here, it is alleged that legal votes have been rejected, the contestant does not have the burden of showing specifically for whom votes were cast. Application of Moffat, 142 N.J. Super., supra, at 224 (citing In re Fifteen Registered Voters, Sussex Cty., 129 N.J. Super. 296 (App. Div. 1974), certif. den., 65 N.J. 577(1974)). The contestant’s “burden would be met by a demonstration that had the votes been cast for him, the result would have been different.” Ibid. Nor does the law does require the Petitioner to prove intent.

Put simply, the proofs adduced in the motion record showed that there were **27** registered voters on the even-numbered side of Cymbeline Drive who were eligible to vote in the Fourth Ward Township Committee election, but who were erroneously directed to vote in Ward 2, District 4. Seventeen (17) legal voters of those 27 registered voters who actually voted in this 2021 General Election and live on the even-numbered side of Cymbeline Drive in Ward 4, District 3 were provided ballots to vote in Ward 2, District 4 and, it is argued, were thus denied their right to vote in the Old Bridge Fourth Ward Township Council election through no fault of their own.

Thus, in her Certification dated and filed on December 20, 2021, Deborah Braga, Deputy County Clerk for Middlesex County, verified in pertinent part as follows:

5. The County Clerk’s official duties include, but are not limited to, the preparation and furnishing of official ballots for voting machines for all elections, as set forth in N.J.S.A. 19:49-1 & N.J.S.A. 19:49-2.

6. There are five (5) ballot types which include: Machine, Mail-in, Provisional, Emergency, and Sample ballots.

7. The deadline for preparation of the Official General Election Ballots for printing was Monday, September 13th, 2021, per N.J.S.A. 19:14-1.

8. The deadline for commencement of mailing the ballots for the General Election was Saturday, September 18th, 2021, per N.J.S.A. 19:63-5 and N.J.S.A. 19:63-9.

9. In preparation for the mailing of the ballots, the Office of the County Clerk relies on the information provided in the Statewide Voter Registration System (SVRS) to generate the municipality, ward, and district correspondent to each voter for the mailing of ballots. This information is also relied upon to generate the sample ballot lists and to generate the pollbooks by the Commissioner of Registration.

10. **According to the SRVS, there are 27 active registered voters on the even side of Cymbeline Drive in the Township of Old Bridge. The SVRS printout is generated as an Excel Spreadsheet, setting forth the status of the 27 active registered voters, which is attached hereto and marked “Exhibit A.” Column “G” and the abbreviations at the bottom of the Attached SVRS spreadsheet was added by me to track the status of voters in the 2021 General Election.**

11. **The Office of the County Clerk does not have the necessary permissions or authorizations in the SVRS to change, alter or move a voter’s Municipality, Ward, or District.**

12. **Of the 27 active registered voters on the even side of Cymbeline Drive, 26 of the voters are listed on the Statewide Voter Registration System (SVRS) as residing in Ward 2, District 4.** The other remaining voter is listed on the SVRS as Ward 4, District 3; however, this voter was not registered to receive Mail-In-Ballots for [the] 2021 General Election.

(Emphasis added).

“Exhibit A” referenced in paragraph 10 of Ms. Braga’s Certification – the SVRS printout – is replicated below in full and herein referred to as *Figure 1*. This list shows those registered voters residing in Ward 4, District 3 on the even-numbered side of Cymbeline Drive, but who were errantly provided ballots to vote in Ward 2, District 4. The voters residing in odd-numbered homes located on the opposite side of Cymbeline Drive were on the other side of the ward boundary line and thus located in Ward 2, District 4. *See Figure 2 and Figure 3* below. Recall that it is the Fourth Ward Township Committee seat that is at issue in this Election Contest.

SVRS PRINTOUT "EXHIBIT A"

ID	Ward No.	Ward Name	Area Name	Lat Name	Ward Area	2011 Census	2011 Census	2011 Census	2011 Census	Party	Reg Date	County	Notes
0000000000	01	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE				
0000000000	02	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE				
0000000000	03	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE				
0000000000	04	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE				
0000000000	05	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE				
0000000000	06	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE				
0000000000	07	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE				
0000000000	08	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE				
0000000000	09	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE				
0000000000	10	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE				
0000000000	11	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE				
0000000000	12	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE				
0000000000	13	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE				
0000000000	14	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE				
0000000000	15	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE				
0000000000	16	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE				
0000000000	17	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE				
0000000000	18	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE				
0000000000	19	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE				
0000000000	20	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE	BRIDGE				

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Figure 1.

Importantly, as Petitioner’s counsel pointed out, the ward lines are re-drawn after each decennial census pursuant to New Jersey’s “Municipal Ward Law”, N.J.S.A. 40:44-9, et seq.; specifically, N.J.S.A. 40:44-13c. The ward lines are drawn by a ward commission, which is comprised of the members of the Board of Elections and the municipal clerk. N.J.S.A. 40:44-11. The report of the ward boundaries is published pursuant to N.J.S.A. 40:44-16. The ward lines are not arbitrary lines that can be ignored, nor can they be adjusted by the County Clerk or anyone *other than* the ward commission, pursuant to provisions of the Municipal Ward Law (*see, e.g., N.J.S.A. 40:44-11, -13, -14 and -15*).

In discovery, counsel for the Board of Elections produced a copy of the official map of “Election Wards & Districts” for Old Bridge Township. The map shows the ward boundaries as adopted by the ward commission that re-drew the lines after the 2010 census. A copy of the same was annexed as “Exhibit B” to the Certification of W. Timothy Howes, Esq. dated/posted on December 17, 2021 (“Howes 12/17 Certif.”). During oral argument, a colorized copy of the Election Ward & District Map was provided to the Court by Respondent’s counsel, with the consent of Petitioner’s counsel, and confirmed as such by counsel for the Board of Elections. The map was marked as Court’s exhibit “C-1” for reference bearing the yellow-highlighted circle placed by Respondent’s counsel on the document for the Court’s benefit to zero in on the area in

question. “C-1” was admitted into evidence for the purposes of this hearing with the consent of all counsel. It is replicated in its entirety here as *Figure 2* below.

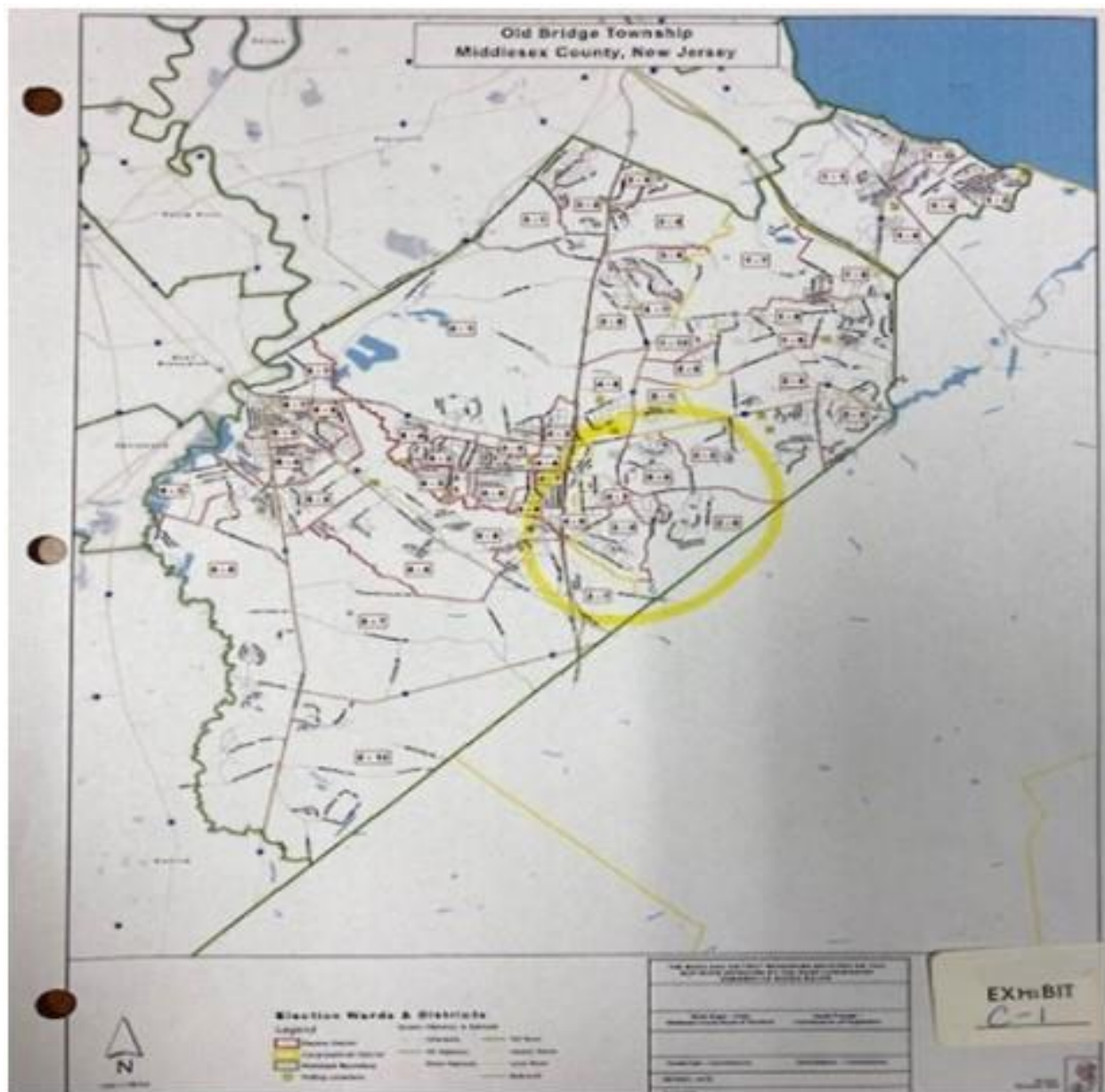


Figure 2.

Further, a blow-up of the yellow-encircled area of *Figure 2* was also prepared by Respondent DeCaro’s counsel and presented for the Court’s benefit and reference – as well exchanged in discovery – and with consent of Petitioners’ counsel. It was marked as Court’s exhibit “C-2” and admitted into evidence for the purposes of this hearing with the consent of all counsel. It is replicated in its entirety here below as *Figure 3*.

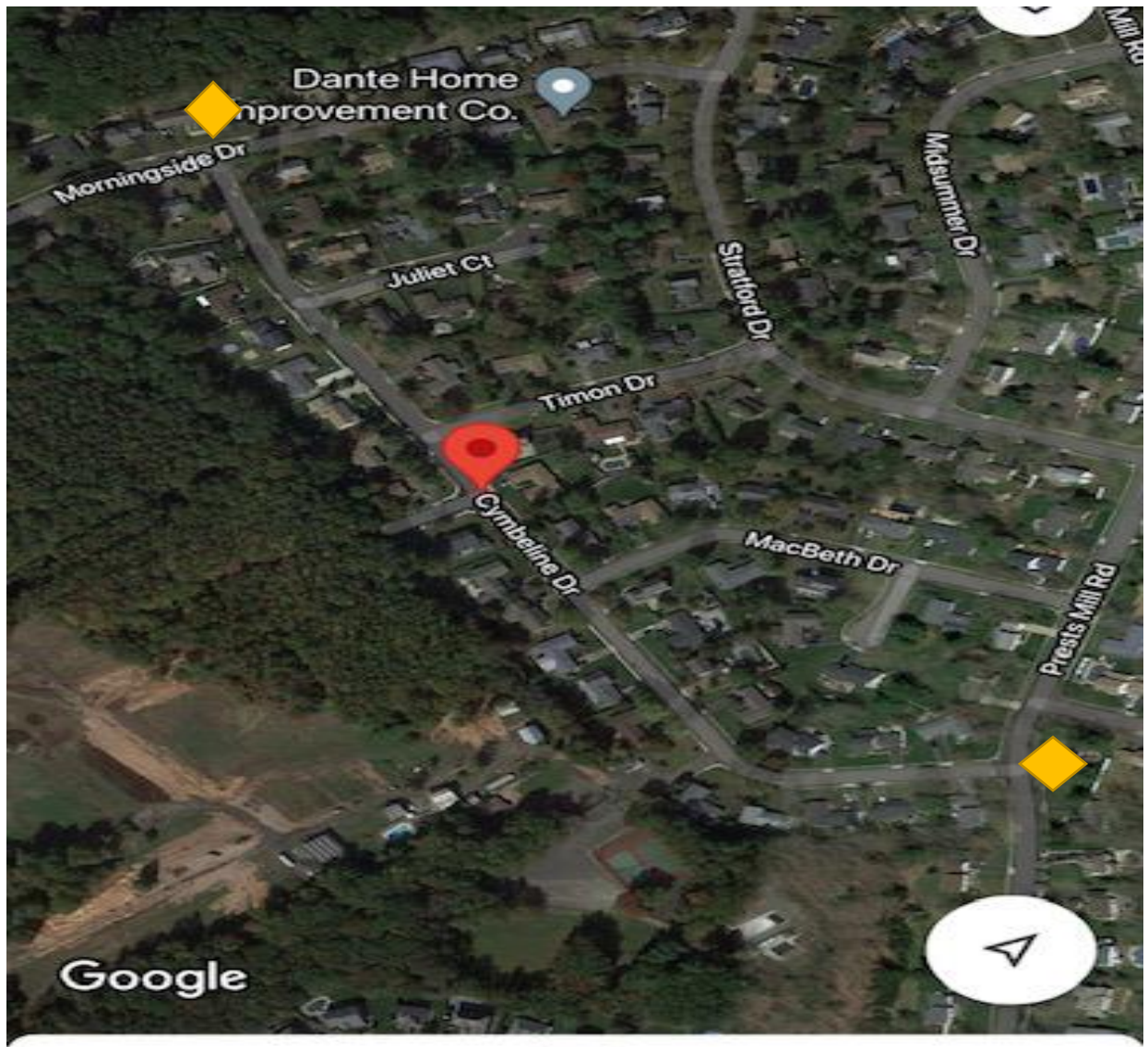
For illustration purposes here, the Court inserted a text box with two (2) blue arrows to specifically identify the location of “Cymbeline Drive”, which appears in its original red color taken directly from the official Election Ward & District Map (*Figure 1* above) and in this blow-up. Super-imposed in the text box of the exhibit are two (2) blue arrows to show the beginning and ending termini of Cymbeline Drive – specifically pointing to the beginning terminus at Morningside Drive and ending terminus at Prests Mill Road – as presented to the Court, described and agreed to by counsel for both the Petitioner and Respondent DeCaro at the hearing (without objection from counsel for the Board of Elections and County Clerk).



Figure 3.

Figure 3 clearly and unequivocally reflects that Cymbeline Drive is the official boundary line separating Ward 4, District 3 (*see* the box containing the reference “4 - 3”) from Ward 2, District 4 (*see* the box containing the reference “2 - 4”). As noted, the delineations identified at the blue arrows on *Figure 3* as the beginning and ending points of the ward boundary on, and of, Cymbeline Drive are consistent with, and match, that which was presented to the Court, described and agreed to by counsel for both the Petitioner and Respondent DeCaro at the hearing (without objection from counsel for the Board of Elections and County Clerk). They also are consistent with, and match, what a Google maps satellite image more clearly depicts in *Figure 4* embedded here below (*see* [Cymbeline Dr - Google Maps](#) -- last visited 12/27/21) as the beginning and ending termini of Cymbeline Drive - marked by the super-imposed yellow diamonds - and which, for illustration purposes only, the Court took judicial notice of. N.J.R. E. 201 (b)(2), (3) and (f). *See Figure 4* below.

Finally, the delineations are further consistent with the Google map exhibits attached to the Certification of Petitioner's counsel dated December 17, 2021 in the motion record which contained a screenshot showing the border between Ward 4, District 3 and Ward 2, District 4, as well as Google maps of the locations of each of the seven (7) addresses and residences of the seventeen (17) allegedly disenfranchised voters who reside on the even-numbered side of Cymbeline Drive. (*See* Howes 12/17 Certif., ¶5 at Exhibit “C”; ¶6.a through 6.g, at Exhibits D, E, F, G, H, I, J and K):



Cymbeline Dr
Old Bridge, NJ 08857

Figure 4.

No evidence was offered by the Respondent DeCaro or, for that matter, any of the Respondents in the motion record or at the hearing to refute that Cymbeline Drive was, and has been, the unaltered and standing boundary line between Ward 4, District 3 – the Township Committee seat for which ward and district in this election is the subject of this contest – and Ward 2, District 4, as adopted by the ward commission that re-drew the lines after the 2010 census and still in effect for the 2021 General Election.

Simply put, as can be readily gleaned from the above figures, the evidence presented was clear and convincing that of those 27 registered voters on the even-numbered side of Cymbeline Drive, 17 erroneously voted in Ward 2, District 4 (and not 33 as had been initially alleged by the Petitioner) through no fault of their own, when they in fact resided in Ward 4, District 3 and should have received ballots for that ward and district, but did not. Instead, they received ballots for Ward 2, District 4, but the race for the Township Committee seat between Mr. Razzoli and Ms DeCaro was for Ward 4, not Ward 2. The County Clerk relied upon what was and is clearly erroneous information contained in the Statewide Voter Registration System that neither reflected, nor was updated, to show that those 17 voters resided in Ward 4, District 3.⁵ As Deputy County Clerk, Deborah Braga, averred in her Certification, “[t]he **Office of the County Clerk does not have the necessary permissions or authorizations in the SVRS to change, alter or move a voter’s Municipality, Ward, or District.**” Hence, relying upon the erroneous information contained in the SVRS, 27 registered voters residing in the Fourth Ward, District 3 were, instead, provided with ballots by the County Clerk to vote in Ward 2, District 4 – literally located across the street of Cymbeline Drive, the centerline of which was the boundary between the two voting wards.

Consequently, those 17 voters on Cymbeline Drive (of the 27 registered voters) who actually voted in the 2021 General Election, through no fault of their own, were disenfranchised by virtue of the fact that they voted in the Second Ward instead of the Fourth Ward because they were issued the wrong ballots by the County Clerk – but through no fault of her own either. The evidence incontrovertibly revealed that eight (8) Cymbeline Drive voters voted via mail-in ballots (one of which was rejected), nine (9) Cymbeline Drive voters voted by machine on Election Day (two (2) voters of those nine voted by “EV”, or early voting), and all seventeen (17) of those votes were cast erroneously in the Second Ward, through no fault of the voters. The specific voters who voted incorrectly in Ward 2, District 4 were:

- Henry Halpern, 4 Cymbeline Drive (VBM)⁶
- Geraldine Halpern, 4 Cymbeline Drive (VBM)

⁵ It bears noting that at oral argument counsel for the Board of Elections and County Clerk indicated that the voter information contained in “Exhibit A” to Deputy County Clerk Braga (replicated in full at *Figure 1* above) was carried over from prior records for Cymbeline Drive voters in the Statewide Voter Registration System as part of a re-integration of the same into the SVRS conducted in 2019. In her cross-motion for summary judgment, counsel for Respondent DeCaro attached as “Exhibits A, B and C” true and accurate copies of the 2019, 2020 and 2021 Voter Registration Lists for those voters on Cymbeline Drive for elections conducted in those years, arguing that nothing had changed in this three (3) year period. However, based upon the foregoing, *but for* the present Election Contest, it is readily apparent that this blatant error in the SRVS for voters residing in homes on the even-numbered side of Cymbeline Drive has resulted in their receiving ballots for Ward 2, the wrong district, for the last three (3) election cycles (and perhaps more). **This needs to be corrected.**

⁶ Where referenced, per the SVRS Printout attached as Exhibit A to the Braga Certification, this is defined to mean: “VBM – a vote by mail was sent, returned to the BOE, and accepted.”

- Hyong Ki Lee, 10 Cymbeline Drive (Rejected VBM)⁷
- Lawrence Lee, 10 Cymbeline Drive (VBM)
- Jannette Crespo Lee, 10 Cymbeline Drive (VBM)
- Emille Lee, 10 Cymbeline Drive (VBM)
- Michael Tucci, 14 Cymbeline Drive (Machine)⁸
- Patricia Tucci, 14 Cymbeline Drive (Machine)
- Linda Miner, 20 Cymbeline Drive (VBM)
- Jeffrey Wewers, 20 Cymbeline Drive (VBM)
- Ronnie Chapman, 30 Cymbeline Drive (Machine)
- Arthur Chapman, 30 Cymbeline Drive (Machine)
- Joseph Shafran, 36 Cymbeline Drive (Machine-EV)⁹
- Dorothy Shafran, 36 Cymbeline Drive (Machine-EV)
- Stuart Shafran, 36 Cymbeline Drive (Machine)
- Maria Impoco, 38 Cymbeline Drive (Machine)
- Emanuele Impoco, 38 Cymbeline Drive (Machine)

As the statute and case law instruct, an election **shall be set aside** if the trial judge concludes the contestant has proved a basis to do so under N.J.S.A. 19:29-1 by a *preponderance of the evidence* and the judge finds that no person was duly elected, as per N.J.S.A. 19:29-9. In re Election for Atl. Cty. Freeholder Dist. 3 2020 Election, 468 N.J. Super., supra at 360-361. While contending seemingly *sua sponte* there was or is a factual dispute over the ward boundary separating the Fourth Ward and the Second Ward, the Respondent DeCaro has come forward with no evidence of any kind other than counsel's stated disagreement with the interpretation of what the official Election Ward & District Map admitted into evidence clearly depicts.

Contrari-wise, there is no dispute that the map that was produced in discovery on behalf of the Board of Elections and the County Clerk, and admitted into evidence in this motion record, is the official record of the delineated election wards and districts for Old Bridge Township that was in effect for the 2021 General Election. There was no evidence of any kind introduced or presented that the delineated boundary line separating the Fourth Ward and the Second Ward had been altered or changed by the ward commission since the last decennial; or, that Cymbeline Drive was not the boundary line in effect that bisected and separated the two election wards from one another such that registered voters residing in odd-numbered homes located on one side of Cymbeline

⁷ Where referenced, per the SVRS Printout attached as Exhibit A to the Braga Certification, this is defined to mean: "*VBM Rejected – a vote by mail was sent, returned to the BOE, and rejected.*" Despite this ballot having been rejected, apparently for lack of signature, it was nevertheless issued in error for Ward 2, District 4 *ab initio*.

⁸ Per the SVRS Printout attached as Exhibit A to the Braga Certification, this is defined to mean: "*Machine – a ballot was cast using the machines on Election Day.*"

⁹ Where referenced, per the SVRS Printout attached as Exhibit A to the Braga Certification, this is defined to mean: "*Machine EV – a ballot was cast using the machines during Early Voting.*"

Drive were eligible to vote in Ward 2, District 4, and that registered voters residing in even-numbered homes located on the opposite side of Cymbeline Drive were eligible to vote (not in Ward 2 but) in Ward 4, District 3. In the Court's view, the interpretation disagreement raised at oral argument was and is insubstantial, at best, and belated, unfounded and/or self-serving, at worst.¹⁰ In short, the Respondent DeCaro has failed to set forth specific facts to meet, or overcome, the preponderating evidence to the contrary presented by the Petitioner (as well as the Board of Elections and County Clerk) sufficient to establish that there is a genuine issue of material fact raised to preclude summary judgment and the relief sought, and/or to thereby trigger the consequent need for a trial.

As previously stated, the Supreme Court in Brill noted the plain language of R. 4:46-2 dictates that where a party opposing summary judgment points only to disputed issues of facts that are of an insubstantial nature, the proper disposition is summary judgment. Id. at 529. And, as the Brill Court further instructed, “[t]he import of our holding is that when the evidence **is so one-sided that one party must prevail as a matter of law**, the trial court should not hesitate to grant summary judgment.” Id. at 540. Based on the competent evidential material presented, considered and admitted into evidence in the motion record here, I cannot determine with reasonable certainty which candidate duly won the election for the Fourth Ward Township Committee seat for Old Bridge. Rather, I do find that no person was duly elected. N.J.S.A. 19:29-9.

The irregularity of the misdirected ballots demonstrated that the 17 disenfranchised voters and residents of homes on the even-numbered side of Cymbeline Drive, through no fault of their own, were deprived of the opportunity to vote for the candidate of their choice.¹¹ Resultantly, the votes of those 17 disenfranchised voters constituted legal votes that were rejected per N.J.S.A. 19:29-1(e), and in an amount that was more than sufficient to affect the outcome. In other words, for the Petitioner Razzoli, “the rejected votes were sufficient in number that, if all were credited to him, the results of the election would change. [citation omitted]”. In re Election for Atl. Cty. Freeholder Dist. 3 2020 Election, 468 N.J. Super., supra at 354. And thus, as an inescapable consequence, the irregularity rose to the level “which requires nullifying an election . . .”, since,

¹⁰ As previously noted, “[b]are conclusions in the pleadings, without factual support and tendered affidavits will not defeat a meritorious application for summary judgment.” U.S. Pipe & Foundry v. American Arbitration Association, 67 N.J. Super., supra, at 399-400.

¹¹ Again, in re-iteration of that which is set forth in Footnote 5, supra, given the error in the SVRS data that this Election Contest has revealed here, coupled with the proofs provided by Respondent DeCaro's counsel in his certification submitted in support of Ms. DeCaro's cross-motion, it is more likely than not that the registered voters on the even-numbered side of Cymbeline Drive who voted in the earlier 2019 and 2020 elections may have been similarly disenfranchised in those elections as well. **This is a serious problem.** If anything, this Election Contest underscores the need for the SVRS to be updated and corrected, *forthwith*, in order to prevent this from happening again – **for both the Special Election being ordered here and for future elections.** The data needs to be corrected to reflect that those registered voters on the even-numbered side of Cymbeline Drive must be furnished ballots to vote in the Fourth Ward, District 3 – and not in the Second Ward, District 4 – in order to be consistent and compliant with the boundary line delineated on the official map for Election Wards & Districts especially in this area in Old Bridge.

as the Appellate Division has instructed, “. . . [i]t is only where the irregularities at an election are such that the court cannot with reasonable certainty determine who received the majority of the legal vote, that an election will be set aside.” In re Mallon, 232 N.J. Super., supra at 262.

As the Supreme Court in Brill instructs, where, after viewing the competent evidential material in the motion record in a light most favorable to the non-moving party (here, the Respondent Ms. DeCaro), in consideration of the applicable evidentiary standard, the evidence is insufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the nonmoving party, but instead, “is so one-sided” – as this Court finds it is here – the moving party “must prevail as a matter of law.” Here, after applying the applicable summary judgment standard under Brill, and the standards for an election contest re-iterated by the Appellate Division in In re Election for Atl. Cty. Freeholder Dist. 3 2020 Election, 468 N.J. Super., supra at 360-361, I find that the Petitioner, Mr. Razzoli, has more than met his burden of proof; and therefore, I further specifically find and hold that (i) all seventeen (17) voters who were denied their right to vote in the Fourth Ward Township Committee election were legal votes rejected pursuant to N.J.S.A. 19:29-1(e) and, thus, that (ii) since no person was duly elected, this election shall and must be set aside pursuant to N.J.S.A. 19:29-9.

Therefore, for all the foregoing reasons, the summary judgment motion of the Petitioner shall be and is hereby **GRANTED**. The Court having already denied the Respondent DeCaro’s Motion to dismiss remaining Count One pursuant to R. 4:6-2(e) at oral argument, Respondent DeCaro’s Cross-Motion for summary judgment on that count similarly shall be and is hereby **DENIED**. Since the 17 votes that were rejected exceed the 11-vote margin that the Respondent, Ms. DeCaro, was certified as having to win the Fourth Ward Council seat, the Court is incapable of determining who won the 2021 General Election for Old Bridge Township Council, Ward 4; and thus, the Petitioner, Mr. Razzoli, is entitled to judgment as a matter of law vacating the election results, revoking the Certificate of Election issued to Ms. DeCaro, and ordering a new election.

2. *As to Count Two of the Verified Petition (Albeit Dismissed).*

While the Petitioner is entitled to summary judgment on Count One for the reasons above stated, as was noted on the record at the hearing the Court was (and is) particularly troubled by what the evidence disclosed concerning the allegedly improper use of “emergency ballots”. Given the issue of first impression raised with the Early Voting Act’s introduction and mandated implementation of electronic poll books and machines, this concern is especially acute since future elections – including the special election being ordered in this instance - may be similarly disaffected and, in the process, the integrity of the voting process avoidably undermined. While not dispositive of the Cross-Motions given the dismissal of Count Two, and thus not binding here, in the interest of completeness the Court is impelled to observe and comment upon the allegations contained in Count Two, how they impacted on this election and, potentially, elections to come including the special election being ordered here - all in the hope of providing future guidance.

Had Count Two remained, in addition to the disenfranchised voters from Cymbeline Avenue, a separate group of fifteen (15) votes further called the result of this election into question. In stipulating to a voluntary dismissal of that count, Petitioner's counsel candidly noted in his reply letter brief filed on December 21, 2021 that:

“Those allegations were based upon observations of polling place challengers. The first round of discovery did not provide Petitioner with any sufficient information to proceed on Count Two. To proceed on Count Two would require more extensive discovery.”

Petitioner's letter brief dated December 21, 2021, at p. 1.

Given the newly implemented use of electronic poll books (or “e-books”), boards of election should take heed of this Wi-Fi connectivity issue for future elections and undertake specific measures to uniformly and properly instruct poll workers on the use of provisional versus emergency ballots if e-books lose Wi-Fi connections and access to the State Voter Registration System (SVRS) is thus pre-empted or precluded to verify a voter's eligibility status (in which instance, as the Deputy Attorney General here noted, requires the use of pre-printed provisional ballots or provisional ballots printed *in situ* at a polling site, and not emergency ballots). On the November 2nd General Election Day, Middlesex County and constituent municipalities were not the only counties (or municipalities) disaffected by the loss of Wi-Fi connections of e-books to the SRVS.¹²

To the foregoing end, as N.J.S.A. 19:29-1(e) explicitly provides, a candidate may also challenge an election result “when illegal votes have been received”. Here, in Count Two of the original and Amended Verified Petition – albeit since dismissed - the Petitioner contended that district board workers improperly used “emergency ballots”¹³ in the polling places on Election Day. With regard to an allegation that “illegal” votes were received, the contestant normally has

¹² This Court serves as the designated election judge for Middlesex County and in that capacity was privy to this issue occurring in several other counties on Election Day from reports received from the affected vicinage judges; and thus, for purposes of this non-binding commentary takes judicial notice of the same. It was startling to learn that neither the electronic polling books nor machines had been pre-tested or subjected to pilot programming so as to safeguard against at least the potential or foreseeable system glitches that could have – and did – have such a profound, adverse effect on the sanctity of the electoral process. By contrast, electronic filing systems in the New Jersey Judiciary came fully on-line in May 2017, *but only after* a methodic, serial roll-out of this electronic filing system, first, in certain counties designated for pilot programming and testing purposes, and thereafter serially rolled out in groups of counties at designated rollout dates until fully implemented state-wide. This a testament to the forward planning and testing that resulted in the virtually seamless – and seemingly flawless - transition for the courts, practitioners and litigants into the new age of electronic filing systems.

¹³ “Emergency ballots” and the procedures for their use are defined and regulated in N.J.S.A. 19:53B-1 through 19:53B-11.

“not only the burden of showing that illegal votes were cast in number sufficient to change the result if they had in fact been cast for the contestee, but also the burden of showing, to the extent possible under the circumstances, for whom the illegal votes were cast.” In re Mallon, 232 N.J. Super. 249, 271 (App. Div. 1989) (citing Application of Murphy 101 N.J. Super. 163, 167 (App. Div. 1968), certif. den., 52 N.J. 172(1968). The contestant is not required to establish for whom illegal votes were cast if he or she proves that “despite diligent effort the illegal voter could not be found or refused to disclose his vote.” In re Mallon, supra at 269.

The election statutes provide for the use of emergency ballots *if and when* a voting machine fails or is out of order. See N.J.S.A. 19:48-3.13;¹⁴ N.J.S.A. 19:48-7.¹⁵ See also In re 1984 Gen. Election for the Off. of Council of the Twp. of Maple Shade Burlington Cty. 203 N.J. Super. 563, 587 (Law Div. 1985) (finding use of emergency ballots was permissible when machine broke down and was unavailable for about three and a half hours). N.J.S.A. 19:53B-3 and N.J.S.A. 19:53B-5 govern the use of emergency ballots. They provide, in pertinent part, as follows:

¹⁴ Which provides: “§19:48-3.13. Ballots, type permitted. No ballots other than ballots required for use in voting machines, **emergency ballots for use if a voting machine fails to operate** and provisional ballots for use by certain voters who no longer reside at the place from which they are registered as provided in P.L. 1999, c.232 (C.19:53C-1 et al.), shall be prepared or used at any election in any election district.”

¹⁵ Which, in pertinent part, provides:

“§19:48-7. Inoperative voting machines; use of emergency ballots; statements. If any voting machine being used in any election district shall, during the time the polls are open, become damaged so as to render it inoperative in whole or in part, the election officers shall immediately give notice thereof to the county board of elections or the superintendent of elections or the municipal clerk, as the case may be, having custody of the voting machines, and such county board of elections or such superintendent of elections or such municipal clerk, as the case may be, shall cause any person or persons employed or appointed pursuant to section 19:48-6 of this Title to substitute a machine in perfect working order for the damaged machine. . . . **During any period when a voting machine is inoperative, emergency ballots made as nearly as possible in the form of the official ballot shall be used in accordance with the provisions of this amendatory and supplementary act, P.L. 1992, c.3 (C. 19:53B-1, et al.), received by the election officers and placed by them in an emergency ballot box as provided in this amendatory and supplementary act, P.L. 1992, c. 3(C. 19:53B-1, et al.), and shall be counted with the votes registered on the voting machines. The result shall be declared the same as though there had been no accident to the voting machine. The emergency ballots thus voted shall be preserved and returned with a statement setting forth how and why the same were voted.** The original statement shall be filed with the county or municipal clerk, as the case may be; a copy of the statement shall be filed with the commissioner of registration; and an additional copy o shall be placed in the emergency ballot box. * * * “

(Emphasis added).

§19:53B-3. Voting with emergency ballots.

a. **If for any cause a voting machine fails to operate, the district board shall use the supply of emergency ballots that are on hand** at the opening of the poll. The mode and manner of voting the emergency ballots shall in all respects conform as nearly as possible to the mode and manner of voting as herein described.

* * *

§19:53B-5. Procedure for voter use of emergency ballots.

After the district board ascertains that a voter is properly registered and qualified to vote, the member of the board charged with maintaining the signature copy register shall require the voter to sign the signature copy register and shall have the voter sign the part of the two-part perforated voting authority that shall remain bound in the pad. The member shall record the voting authority number in the proper column of the signature copy register, except that in a primary for the general election, the member shall also record the party primary in which the voter voted.

In the proper columns, the voter shall sign the reverse side of the signature copy register and the board member shall initial the signature of the voter.

After the voter signs the voting authority, the member of the board in charge of the signature copy register shall give the voter the unsigned portion of the two-part voting authority. The voter shall return that portion to the district election board member in charge of the operation of the voting machine at that time. The member shall place each authority in consecutive order on a string or wire prior to furnishing a voter with an emergency ballot and a plain white single-hole punched envelope.

No emergency ballot shall be handed to a voter until there is a polling booth ready for occupancy or, if a booth is unusable, the area designated for voters to mark the emergency ballot is ready. If a voting area is used, the voter shall be provided with a privacy screen at the same time that the emergency ballot is provided.

(Emphasis added).

Before the most recent amendments to the New Jersey election law, the method of ascertaining that “a voter is properly registered” was through signature comparison in the paper poll book or ledger. With the advent of new, untested electronic polling books in this General Election, this was/is no longer possible. Electronic polling books are connected to the Statewide Voter Registration System with a connection enabled by Wi-Fi in the polling place. The voting machines themselves are also connected to the Wi-Fi. The Petitioner alleged in the instant case that voting machines failed due to a failure or overload of the Wi-Fi in the polling place. If there was/is a failure of Wi-Fi with one, then there was/is a failure of Wi-Fi with both. As a result, the district board workers could comply with N.J.S.A. 19:53B-5 and use emergency ballot by ascertaining if the voters were properly registered. **But because the Wi-Fi connections to**

electronic polling books failed due to a malfunction or overload of the Wi-Fi, the connection of the polling books to the Statewide Voter Registration System enabled by Wi-Fi also failed and precluded district board workers from “ascertain[ing] that a voter is properly registered.”

Accordingly, the use of emergency ballots was thereby not indicated and, instead, provisional ballots should have been used. This proposition has support from the Board of Elections. As the Deputy Attorney General argued in the letter submitted on behalf of the Board of Elections:

If, for any cause, the voting machine fails to operate at a polling site, the board workers shall use emergency ballots for voters **verified as eligible to vote in the e-poll book and shall use the supply of pre-printed provisional ballots for those voters. Ibid. If, for any cause, the e-poll book and the voting machine fail to operate, the board workers shall use the pre-printed supply of pre-printed provisional ballots for all voters. Ibid.** The provisional ballots were provided so that the voters whose eligibility is in question could vote in real time, after which the Board would conduct a review to determine the voter’s eligibility, rather than turning the voter away from the polls. See Lesniak v. Budzash, 133 N.J. 1, 7 (1993)
* *

Board of Elections brief, at 9-10. (Emphasis added).

Here, the certified results showed that the canvassed emergency ballots favored Ms. DeCaro by a nine (9)-vote margin, 12-3. If characterized as “illegal votes accepted”, those vote totals would be deducted from the parties’ vote totals. If that were done, as the Petitioner urged, Ms. DeCaro’s adjusted total would theoretically have been 1,554 minus 12 **or 1,542** and Mr. Razzoli’s adjusted total would have been 1,543 minus 3 **or 1,540** – *a mere 2-vote margin of “victory”*. That would have been *before* taking into consideration the impact of the 17 disenfranchised voters who resided on the Fourth Ward side of Cymbeline Drive who were errantly provided ballots and thereby directed to vote in the Second Ward side of Cymbeline Drive (and whose legal votes were not counted for the Fourth Ward, but rather, deemed legally rejected).

The point to be made is this. While standing alone the 17 or more disenfranchised voters for the Fourth Ward side of Cymbeline Drive was sufficient to change the certified outcome of the 11-vote margin in favor of Ms. DeCaro. But when combined with the use of the “illegally accepted” emergency ballots, as adjusted, most certainly would have been sufficient to do so since the adjusted margin of victory would have been a mere two (2) votes – i.e., 1,542 to 1,540 – and thus, a significantly greater margin of 17 disenfranchised voters sufficient to affect the outcome of a **2-vote margin**, rather than the standing 11-vote differential presented here.

The potential far-reaching and adverse effect(s) of district board workers erroneously utilizing pre-printed “emergency ballots” instead of pre-printed provisional ballots (or provisional ballots capable of being printed *in situ*) at the polling place if, as or when Wi-Fi enabled connections for new electronic polling books are now foreseeably and/or interminably lost to the State Voter Registration System needed to verify voter registration status either during “early

voting” or on election day for those voting in-person – or inordinately delayed – cannot be overstated or overlooked. The integrity of the electoral process, as well as the sanctity of one’s right to not only vote but to have his/her voted actually counted, demand that appropriate instructions be given, and that additional safeguards and preventative measures be implemented in the face of these recent changes in our election laws in order to avoid such consequences. Voters deserve nothing less.

V. Conclusions and Decision.

In our system of government, the right to vote is sacrosanct. Consequently, the courts vigilantly enforce our election laws to safeguard and ensure that no one who is lawfully registered to vote is disenfranchised of that right and precluded, through no fault of their own, from casting a vote for the candidate of his/her choice. As Chief Justice Poritz wrote on behalf of a unanimous Supreme Court in Samson, and as a reminder to all of us who serve in the judiciary:

When this Court has before it a case concerning the New Jersey election laws, **we are directed by the principle and precedent to construe those laws so as to preserve the paramount right of the voters to exercise the franchise.** We have understood our Legislature, in establishing the mechanisms by which elections are conducted in this State, to intend that the law will be interpreted “to allow the greatest scope for public participation in the electoral process, to allow candidates to get on the ballot, to allow parties to put their candidates on the ballot, **and most importantly to allow the voters a choice on Election Day.**” [citation omitted].

Samson, 175 N.J., supra, at 190 (emphasis added).

Yet, as sure as night follows day, mistakes can and do happen in the election processes. The proofs adduced in this election contest have demonstrated that proposition to this Court clearly and convincingly – and beyond the applicable statutory preponderance of evidence standard. To the point, they demonstrated that *but for* this particular election contest, at least one serious mistake would not have been – and might not ever have been - uncovered.

Succinctly stated, the County Clerk did nothing wrong here. She relied upon what information was in the SRVS to issue ballots to those registered voters residing on the even-numbered side of Cymbeline Drive who were entitled to vote in Ward 4, District 3, and despite the fact that the SVRS directed they be issued ballots to vote in Ward 2, District 4 - where, ironically, neither Mr. Razzoli nor Ms. DeCaro were running. Yet, under the Municipal Ward Law, the County Clerk was without legal authority to cure or rehabilitate this error to accommodate those voters by actually issuing them ballots for Ward 4, District 3. Had she done so she would have, in effect, improperly altered or changed for their benefit and without authority the boundary line of Cymbeline Drive that was previously drawn by the ward commission to separate Ward 4 from Ward 2 in Old Bridge Township as a result of the 2010 census, which had not since been

changed by the ward commission that drew it, but which was within the exclusive province and domain of the ward commission to do. See N.J.S.A. 40:44-9, *et seq.*¹⁶

In other words, even if the County Clerk had noted this error, she could not simply or unilaterally issue ballots to those registered voters residing in Ward 4 on the even-numbered side of Cymbeline Drive since the erroneous information contained in the SVRS directed they be issued ballots for Ward 2, District 4. Only the ward commission retained authority to alter that boundary line. Put simply, the data in the SVRS concerning those registered voter-residents residing on the even-numbered side of Cymbeline Drive was and is wrong – and must be corrected to conform and synchronize it with the currently fixed Cymbeline Drive boundary line that separates Ward 4 from Ward 2 and registered voters residing in each (and, on opposite sides of Cymbeline Drive).

Therefore, through no fault of either the voters, the County Clerk, or the Ward 4 Township Committee seat candidates themselves, the legal votes cast by those seventeen (17) voters residing on the even-numbered side of Cymbeline Drive were, indeed, wrongfully rejected in violation of N.J.S.A. 19:29-1(e). Because of this fatal flaw and error, the Court is unable to determine with certitude who won the election for the Fourth Ward Township Committee seat in Old Bridge. In such an instance, as the Appellate Division has made crystal clear and instructs:

In construing election laws, we bear in mind their fundamental purpose. ‘Because the right to vote is the bedrock upon which the entire structure of our system of government rests, our jurisprudence is steadfastly committed to the principle that election laws must be liberally construed to effectuate the overriding public policy in favor of the enfranchisement of voters.’ Afran v. Cty. of Somerset, 244 N.J. Super. 229, 232 (App. Div. 1990).

In re Election for Atl. Cty. Freeholder Dist. 3 2020 Election, 468 N.J. Super., *supra* at 358.

Fortunately, our election laws provide a remedy, and one that balances the interests of each candidate and, at the same time, protects the sacred right to vote thereby advancing – instead of inadvertently or with unknowing complicity undermining - the integrity of the electoral process. For lack of a better term, the remedy can be more simply described in layman's terms as - the proverbial "do-over".

For all of the foregoing reasons, then, the Court will enter an Order and judgment providing as follows:

1. That, insofar as the Motion of the Respondent DeCaro sought a dismissal of Count One of the original and Amended Petition pursuant to R. 4:6-2(e) for failing to state a claim upon which relief can or could be granted (with Counts Two and Three having been voluntarily dismissed), and as was stated on the record at the hearing, that application has been **DENIED**.

¹⁶ As was stated in ¶11 of the Certification of the Deputy County Clerk, Braga: “*The Office of the County Clerk does not have the necessary permissions or authorizations in the SVRS to change, alter or move a voter’s Municipality, Ward, or District.*”

2. That, insofar as the Cross-Motion of the Respondent DeCaro sought a grant of summary judgment in her favor to dismiss remaining Count One of the Amended Petition pursuant to R. 4:46 (with Counts Two and Three having been voluntarily dismissed), that application shall be, and hereby is, **DENIED**.

3. That, insofar as the Motion of the Petitioner sought a grant of summary judgment in his favor on remaining Count One of the Amended Petition pursuant to R. 4:46, and the Court finding that there are no genuine issues of material fact that would preclude the entry of summary judgment for the relief sought on Count One, as matters of both fact and of law, summary judgment shall be, and hereby is, **GRANTED** in favor of the Petitioner, Mark Razzoli, on Count One of the Amended Petition; and more specifically, judgment shall be entered

A. Declaring that no person was duly elected to the Fourth Ward seat of the Old Bridge Township Committee in the 2021 General Election;

B. Voiding the results of the Old Bridge Township Committee (Fourth Ward) in the 2021 General Election;

C. Annuling and revoking the Certificate of Election previously issued in favor of Respondent, Jill DeCaro, as a member of the Old Bridge Township Committee, Fourth Ward;

D. Declaring a vacancy in the office of the Old Bridge Township Committee, Fourth Ward;

E. Ordering a special election to be held, *forthwith*, for the office of the Old Bridge Township Committee, Fourth Ward, which shall be noticed and conducted by the Board of Elections on a date to be fixed, in consultation with the County Clerk, that will not conflict with the Annual Fire Election to be held on February 19, 2021 in Old Bridge Township, the Special School Election scheduled for March 8, 2022 in Middlesex Borough, or any other Special Election that may be requested by other school boards by the current deadline of January 7, 2022 for such requests.

F. Directing the Board of Elections to immediately confer with the County Clerk (with their respective counsel) to fix a date for this Special Fourth Ward Election and report back to the Court (and counsel for the Petitioner and Respondent DeCaro) at the earliest opportunity. Once fixed and reported back to the undersigned, the Court will prepare and file a supplement to this Order to formally fix the date; and

G. Declaring that this is a final Order in all respects.

An appropriate Order implementing the Court's decision is attached to this Opinion.

SO ORDERED.