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THE APPROVAL OF THE COMMITTEE ON OPINIONS

IN RE: THE 2019 MUNICIPAL GENERAL	:	SUPERIOR COURT OF NEW JERSEY
ELECTION FOR THE OFFICE OF THE	:	MONMOUTH COUNTY
TOWNSHIP COMMITTEE OF THE	:	LAW DIVISION, CIVIL PART
TOWNSHIP OF HOLMDEL, IN THE	:	
COUNTY OF MONMOUTH, IN THE	:	DOCKET NO. MON-L-4429-19
STATE OF NEW JERSEY	:	
	:	
CHIUNG-YIN CHENG LIU,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
HON. MARY DESARNO, in her official	:	
Capacity as Superintendent of Elections of	:	
the County of Monmouth; HON. CHRISTINE G.	:	
HANLON, in her official capacity as County	:	
Clerk of the County of Monmouth; WENDY	:	
PATROVICH, in her official capacity as	:	
Township Clerk of the Township of Holmdel;	:	
MONMOUTH COUNTY BOARD OF	:	
ELECTIONS; and PRAKASH SANTHANA,	:	
in his capacity as a Candidate for Township	:	
Committee of the Township of Holmdel, and	:	
JOHN DOES 1-5,	:	
	:	
Respondents	:	

Decided: KATHLEEN A. SHEEDY, J.S.C.

RICHARD SANVENERO, ESQ., Attorney for Petitioner
DOMINIC GIOVA, DAG, Attorney for Mary DeSarno as superintendent of
the Monmouth County Board of Elections,
RAJVIR GOOMER, ESQ., Attorney for Respondent Prakash Santhana
MATTHEW MONENCH, ESQ., Attorney for Respondent Wendy Patrovich,
Clerk of the Township of Holmdel
BRUCE PADULA, ESQ. Attorney for Christine Hanlon,
Clerk of Monmouth County

The Court conducted a Trial virtually via Zoom on the following dates:

September 21, 2020

September 22, 2020

September 24, 2020

The following witnesses testified:

Donna Carannante
Frank Luccarelli
Carol Balmer
Irene Kelly
John Amoscato
Peter Cerruto
Judith Pascucci
Jackie Charleston
Alana DiMaso
Karen Nici Talerico
George Budge, III
Rocco A. Pascucci

The attorneys submitted written summations on October 2, 2020.

The following exhibits were admitted into evidence:

Joint Exhibits

1. Donna Carannante –
 - a. J1- Donna’s Ballot envelope that was rejected for indeterminate postmark.
 - b. J2- Michael Carannante’s accepted ballot envelope
 - c. J3- Notification of ballot rejection for Indeterminate postmark from BOE dated November 13, 2019.
2. Frank Luccarelli –
 - a. J4- Dolores Luccarelli’s ballot envelope/certification
 - b. J5 – Vote by mail application of Dolores Luccarelli
 - c. J6-Sample signature of Dolores Luccarelli

3. Carole Balmer –

- a. J18-Monmouth County filed Deed from 96 Middletown Road, Holmdel, NJ 07733
- b. J19-Extended Stay America
- c. J20-Car Insurance
- d. J21-Deed for 5 Douglas
- e. J22-Google Maps between leased premises and 5 Douglas
- f. J23- <https://law.justia.com/cases/new-jersey/tax-court/2019/014488-15.html>
- g. J24- Addendum to Sales Contract dated June 27, 2019

4. Alana DiMaso –

- a. J26- Wedding Website [not stipulated to by Defendant/Respondent]
- b. J27- Driver's License issued April 12, 2017
- c. J28- W-2 from 2019
- d. J29- Geico Auto Insurance Drivers Summary
- e. J30- Juror Summons for Monmouth County dated September 16, 2019
- f. J31- Mail in Ballot for July 7, 2020 primary
- g. J32- Confirmation of no address change by Postmaster
- h. J33- Letter from Jeffrey Gale in response to subpoena dated July 9, 2020

5. Rocco A. Pascucci/Judith Pascucci –

- a. J34-Deed from Rocco & Phyllis Sale
- b. J35- Pascucci Property Tax Card
- c. J36- Letter from Jeffrey Gale in response to subpoena dated July 8, 2020
- d. J37- Rocco's driver's license issued April 21, 2018
- e. J38-Rocco's Farmers Insurance Auto Insurance declaration page

- f. J39- Rocco's Form 1040 Tax Return for 2019
 - g. J40- Judith's driver's license issued April 27, 2016
 - h. J41-Judith's Form 1040 Tax Return for 219
6. Judith Charleston
- a. J42- 2018 Survey at Village Grande
7. Karen Nici
- a. J45- Vanguard monthly transaction statement dated November 30, 2019
 - b. J46-Wells Fargo Statement of Accounts dated November 21, 2019
 - c. J47- Capital One Visa Signature Account Statement for period of October 17, 2019 through November 16, 2019
 - d. J48- Marriot Bonvoy Statement for period of October 23, 2019 through November 22, 2019
 - e. J49- NJ Division of Consumer Affairs License information for Karen Nici, CPA
 - f. J50- Merck Earning Statement for pay date of November 8, 2019
 - g. J51- Form 1040 Tax Return for 2019
8. Det. George A. Burdge, III
- a. J56-Investigative Services Summary
9. Carole Balmer (additional exhibits)
- a. J57- Certification of Carole Balmer
 - b. J58- Patch Articles by Carole Balmer dated October 15, 2019, October 17, 2019, October 19, 2019 and November 4, 2019/Post history [not stipulated to by Defendant/Respondent]
10. John Amoscato – Superintendent of Elections Investigator.

- a. J60- Investigation report of John Amoscato dated June 17, 2020 and June 18, 2020.
11. Rocco A. Pascucci/Judith Pascucci –

- a. J61 – 2018 Census Form for 24 Hyacinth Court, Holmdel, NJ

- P1 Guaranteed Subpoena – Alana DiMaso
- P2 Guaranteed Subpoena – Karen Nici a/k/a Talarico
- P3 Guaranteed Subpoena – Rocco F. Pascucci
- P4 Guaranteed Subpoena – Rocco A. Pascucci
- P5 Email to Alana DiMaso
- P6 Voter Information for David J. Talarico

STIPULATIONS

The parties agree to the following stipulations that the Court finds were well supported by the evidence:

1. On November 5, 2019, a General Election was held for, among other offices, the Township Committee for the Township of Holmdel.
2. At the time and place of the election, Petitioner was one of two officially recognized Republican candidates for election to the Township Committee. The other Republican Candidate was Eric Hinds.
3. At the time and place of the election, Prakash Santhana and Cathy Webber were the two officially recognized Independent candidates for election to the Township Committee.
4. On the day of the election, ballots were cast in several voting machines in several voting districts within the Township. Voting was also cast via mail-in ballot and provisional ballot.
5. Following the counting of provisional ballots after the election, Monmouth County BOE

released the unofficial and uncertified report of machine votes, mail-in ballots and provisional ballots in the election. Said unofficial and uncertified report demonstrated that the following votes were cast:

Chiung-Yin Cheng Liu	2,082
Eric Hinds	2,063
Cathy Webber	2,164
Prakash Santhana	2,079

6. In other words, following the General Election, Liu had three more votes than Santhana.
7. Pursuant to Court Order, on December 5, 2019, the Monmouth County BOE conducted a recheck of machine votes and recount of mail-in ballots and provisional ballots. As a result of the recount, the official and certified results of the election were:

Chiung-Yin Cheng Liu	2, 085
Eric Hinds	2, 066
Cathy Webber	2, 170
Prakash Santhana	2, 087

8. All mail is considered to be an authentic document.
9. Dolores Luccarelli passed away in 2020.
10. All property records, such as the deed and survey for Pascucci and Balmer are considered to be government records.

FACTUAL BACKGROUND

This matter involved a challenge to the November 5, 2019 election results from Holmdel Township. Chiung-Yin Cheng Liu (Petitioner) was one of two republican candidates running for election. The other Republican candidate was Eric Hinds. Respondent-Counterclaimant Prakash Santhana (Respondent) and Cathy Webber were independent candidates running for the same two seats.

Following the counting of the provisional ballots, the County Clerk certified the results of the election as follows:

Chiung-Yin Cheng Liu	2,082
Eric Hinds	2,063
Cathy Webber	2,164
Prakash Santhana	2,079

Pursuant to Court Order, on December 5, 2019, the Monmouth County Board of Elections conducted a recheck of machine votes and a recount of mail-in ballots and provisional ballots.

As a result of the recount, certified results of the election changed to the following:

Chiung-Yin Cheng Liu	2,085
Eric Hinds	2,066
Cathy Webber	2,170
Prakash Santhana	2,087

The certified winners of the election were Cathy Webber and Prakash Santhana.

PROCEDURAL HISTORY

Petitioner filed suit on December 12, 2019 and amended that Complaint on February 21, 2020. The Court held a Case Management Conference in April 2020, allowing for discovery and scheduling the Trial for June 2020. The parties requested additional time for discovery and to file dispositive motions. As a result, the Trial was rescheduled to August 2020 and dispositive motions were to be filed in July of 2020. Orders for Summary Judgment as to certain disputed votes were decided on August 19, 2020. The parties again requested additional time to prepare for Trial and notify witnesses. That Trial was held virtually in late September 2020.

On August 19, 2020, the Court ruled on competing Summary Judgment Motions leaving only the 7 votes in dispute as to whether those votes should be accepted or rejected by way of

a Trial.

The following voters' votes were rejected, Donna Carannante, Dolores Luccarelli, and Petitioner sought to include the votes in those counted.

The Petitioner challenges the ability of the following voters to vote in Holmdel, alleging these voters were not eligible to vote because of where they lived:

Carole Balmer
Alana DiMaso
Rocco A. Pascucci
Judith Pascucci
Karen Nici

The Trial was conducted via Zoom remotely due to the Covid 19 pandemic. Trial was conducted on September 21, 2020, September 22, 2020 and September 24, 2020. The Court heard the testimony of 12 witnesses. Because of Zoom technology, the Court viewed and heard each witness and had the ability to judge the credibility of each witness. Written summations were simultaneously submitted on October 2, 2020.

The Board of Elections, the County Clerk and the Holmdel Township Clerk were all named by the petitioner as defendants in the matter. All three entities, through their attorneys, fully participated in the Trial. Since no allegations of wrongdoing were lodged against any of these entitled, they take no position in the matter.

FINDINGS OF FACT and CONCLUSIONS OF LAW

Many of the votes in dispute in this contest involved the use of the mail-in ballot procedure. N.J.S.A. 19:63-3 allows any qualified registered voters in New Jersey to use a mail-in ballot for any election held in the State.

Voter qualifications are set forth in N.J.S.A. 19:31-5

- 1) The voter must be 18 by the next election;
- 2) A US citizen; and
- 3) A resident of the County for 30 days.

Election laws themselves are to be liberally construed and not construed so as to deprive voters of their franchise or so as to render an election void for technical reasons. Kilmurray v Gilfort, 10 N.J. 435 (1952). A Court must, however, always be mindful of the legislative intent “that not only the voter but the process of exercising the vote be secure from the opportunity for fraud.” In re: Petition of Battle, 190 NJ Super. 232, 245 (App.Div. 1983) aff’d as modified 95 NJ 63 (1984). Procedural deficiencies must be considered in light of the overall legislative scheme and “in a common-sense way which accords with the legislative purpose. In re: Application of Langhaum, 201 NJ Super. 486, 489 (App.Div. 1985).

The petitioner challenged the residence of five voters, Carole Balmer, Alana DiMaso, Rocco Pascucci, Judith Pascucci, Karen Nici, alleging that those voters did not live in Holmdel and were therefore not eligible to vote in the November, 2019 Holmdel election.

In 1840, in the case of Cadwalader v. Howell and Moore, 18 N.J.L. 1387, 144 (Sup.Ct. 1840), the Court determined that the statutory residence requirement in the election law is actually one’s “domicil”, which is one’s fixed or permanent home to which, whenever temporarily absent, he has the intention of returning.

Although the New Jersey Constitution and election statutes speak in terms of residence requirements, it has long been held that the normal test of voter qualification is that of a domicile maintained in the State and voting district. See *State v Benny*, 20 N.J. 238, 252-255 (1955); *State v. Atti*, 127 N.J.L. 39, 41-42 (Sup.Ct. 1941), aff’d 128 N.J.L. 318 (E.A. 1942). And where a person has and maintains a permanent home in the voting district he has the right to vote in that district despite his temporary absence therefrom, provided that he does not vote elsewhere and the factual context reveals his intention to return to that home as his permanent abode. See *Cadwalader v. Howell*, 18 N.J.L. 138 (Sup.Ct. 1840); *In re McCarthy*, 18 N.J. Misc. 5 (Cir.Ct. 1939); *Schweitzer v Buser*, 15 N.J. Misc. 217 (Cir.Ct. 1936); *Thompson v Emmert*, 242 Ky. 415, 46 S.W.2d 502 (Ct.App. 1932); *Groves*

v Committee of Rutherford Cty., 180 N.C. 568, 105 S.E. 172 (Sup.Ct. 1920); *Kreitz v Behrensmeyer*, 125 Ill. 141, 195, 17 N.E. 232,253 (Sup.Ct. 1888).

In Re: Petition of Hartnett, 163 N.J. Super. 257 (App.Div. 1978).

Two of the voters, Alana DiMaso and Rocco A. Pascucci, share similar circumstances. In November 2019, both Ms. DiMaso and Mr. Pascucci were medical residents completing their training outside the State of New Jersey. Both testified that they are matched with a hospital where they conduct their residency. They each had a limited license to practice medicine in the State where they were completing their training but voted in Holmdel because that's where their home was. Both witnesses testified that they return to their Holmdel homes as much as their training schedule allows.

ALANA DiMASO

Ms. DiMaso's driver's license is a New Jersey driver's license (Ex J27) listing her Holmdel address. Her 2019 W2 (Ex J28) has her Holmdel address. She was called for jury service at her Holmdel address (Ex J31) and her auto insurance lists her Holmdel address (Ex J29). She has not registered to vote anywhere else and is still in the education phase of her training. I found Ms. DiMaso to be a credible witness. She answered questions directly and clearly, maintaining eye contact throughout her questioning and answering questions without hesitation.

Petitioner urged that Ms. DiMaso was evading service and refusing to testify. I do not find that she was evading service. The petitioner didn't properly subpoena Ms. DiMaso. Ms. DiMaso readily appeared when I compelled her testimony despite the short notice to do so.

I do find that Ms. DiMaso was eligible and properly voted in the November 2019 Holmdel election since the evidence presented overwhelmingly demonstrated that Ms. DiMaso was domiciled in Holmdel, NJ and her residence in Massachusetts is merely as a result of her training and education. I find Holmdel, New Jersey is Ms. DiMaso's domicile and Massachusetts is not.

I should also note that petitioner's investigator, George Burdge, was unable to find any information to dispute that Ms. DiMaso's Holmdel residence was not her domicile. In addition, the Superintendent of Elections Investigator, Mr. Amoscato, concluded that Ms. DiMaso was a valid voter of Holmdel (Ex J60).

ROCCO A. PASCUCCI

Similarly, Rocco A. Pascucci was completing his training and residency in New York. Mr. Pascucci at all times maintained a New Jersey driver's license (Ex J37), car insurance (Ex J38) and his 2019 taxes (ExJ39) all list a Holmdel address. Petitioner raised the issue that the address on the driver's license was that of his parents' former address and that petitioner never sought a change of address from MVC. That issue was not dispositive of the fact that Mr. Pascucci always maintained a Holmdel New Jersey address on his identifying documents.

At the time of his trial testimony, Mr. Pascucci had completed his training and returned to his Holmdel address (his parents' home) to live, obtained his New Jersey medical license since his training was completed and obtained employment at a medical practice in Middletown. Clearly, Mr. Pascucci's intent had always been to return to his Holmdel home after his training was completed. I also found Mr. Pascucci to be a credible witness who answered questions without hesitation. I also find he was not evading service of the untimely issued subpoena and readily appeared at my request on short notice. The Court doesn't find, as the petitioner urged, that the lack of listing his car on a condo form was dispositive of the issue of his domicile, nor does the Court find that listing the prior address in Holmdel on his driver's license demonstrate that he was unqualified to vote in Holmdel.

This Court finds that Rocco A. Pascucci was domiciled in Holmdel, New Jersey at the time

of the November 5, 2019 general election and was a valid voter.

JUDITH PASCUCCI

The Petitioner also urged the Court to reject the vote of Judith Pascucci primarily because she was never registered on a form in the condominium development as a resident of her parent's household. Ms. Pascucci credibly testified that she was residing with her parents in November 2019. She testified that she purchased a home in Wall, N.J. and moved there in June, 2020 but until then had resided in Holmdel with her parents. Her testimony was confirmed by John Amoscato, the Board of Election's investigator. Ms. Pascucci presented her driver's license with her Holmdel address (Ex J40) and her 2019 taxes with her Holmdel address (Ex J41). In addition, Ms. Pascucci's car was listed as an automobile kept at the Pascucci Holmdel residence in the survey presented by petitioner as proof that she did not reside there (Ex J42). The Court notes that the condominium form relied upon by the petitioner, did not require a listing of residents of the condominium. (Ex J61)

The evidence and testimony clearly demonstrate that Ms. Pascucci was domiciled in and a resident of Holmdel, N.J. in November 2019 and properly voted in the election.

KAREN NICI

The Petitioner challenged the validity of the vote of Karen Nici asserting that she did not reside in Holmdel at the time of the November 2019 election. Petitioner's challenge of Ms. Nici focused on the fact that she also maintains a residence in Hoboken, N.J. Ms. Nici's driver's license lists her Hoboken address and her husband, David Talerico, registered to vote in Hoboken (Ex P6). In addition, the Petitioner relies on the testimony of a private investigator, George A. Burdge, III,

to establish that Ms. Nici voted illegally in the November 2019 election.

Mr. Burdge testified that he performed a search that revealed that Ms. Nici used a Hoboken address on her driver's license for at least twelve years (Ex J56) and used a Hoboken address to apply for her marriage license. He further testified that he had a conversation via intercom with Ms. Nici and recorded the same. He asked if the woman he was speaking to was Karen. She responded "Yes, who is this"? He replied "Detective George Burdge III, can you come down and talk to me?" She responded "no" and he responded "OK, thank you very much."

The Court doesn't find this evidence to be persuasive. During the Trial, Ms. Nici testified on short notice (approximately one hour notice) from her Holmdel residence. She was a credible witness who explained why her driver's license lists her Hoboken address and why she may have responded to Mr. Burdge the way she did. It is clear to the Court that Ms. Nici maintains two residences. One in Hoboken and one in Holmdel.

Ms. Nici testified that she lists her Hoboken address in order to obtain a parking permit in Hoboken. She also credibly testified that the intercom is connected to her cell phone and while she didn't specifically recollect the conversation with Mr. Burdge, it was likely she was not in Hoboken and answered the intercom remotely from another location. Thus explaining why she couldn't "come down" and speak to Mr. Burdge

Ms. Nici clearly indicated she considers Holmdel her primary residence and Hoboken her secondary residence. She presented a number of documents from the November 2019 period that lists Holmdel as her address. Those documents include:

J45 – Vanguard statement dated November 30, 2019

J46 – Wells Fargo statement dated November 21, 2019

J47 – Capital One statement for October 17, 2019 through November 16, 2019

J48 – Marriot Bonvoy statement for October 23, 2019 through November 22, 2019

J49 – NJ Division of Consumer Affairs License

J50 – Merck Earning statement November 8, 2019

J51 – Form 1040 Tax Return for 2019.

Ms. Nici further testified that she is only registered to vote in Holmdel and that she considers Holmdel to be her primary residence and domicile. Her testimony was supported by the documents she presented that clearly demonstrate that the Holmdel address is Ms. Nici's residence and domicile. The Court finds that Ms. Nici appropriately voted in November 2019 election in Holmdel, N.J. and will not invalidate her vote.

CAROLE BALMER

Petitioner next challenges the right of Carole Balmer to vote in the Holmdel November 2019 election. It is undisputed that Carole Balmer sold her Holmdel residence located at 96 Middletown Road in Holmdel, N.J. on June 27, 2019 (Ex J18 and J24). Pursuant to the addendum to the Contract (Ex J24), Ms. Balmer was to remain in her former home for 90 days, or until September 25, 2019. The property was condemned prior to the 90 days and she was evicted prior to September 25, 2019. Ms. Balmer testified that she moved in with a friend at 5 Douglas Dr., Holmdel and rented an extended stay for her cats from August 6, 2019 to September 20, 2019 (Ex J19). Ms. Balmer then leased 4 Spadley Lane in Middletown in September 2019 but that she didn't fully move until November 2019. Both Ms. Balmer and Ms. Long, the owner of 5 Douglass Dr., Holmdel, testified that Ms. Balmer lived at that address for approximately two weeks following her eviction. Neither could testify with any degree of certainty of the exact time period Ms. Balmer resided there.

N.J.S.A. 19:31-11(b) provides that if a voter moved within the County, but outside the election district where they were registered at any time before the election and failed to notify the commissioner of registration of the change of address, that voter votes in the election district of the current address by provisional ballot. (emphasis added)

Ms. Balmer could have and should have followed the procedure set forth in the statute when she leased her new home in September 2019. She could have and should have re-registered to vote in Middletown where her new home was located. Respondent's argument that if Ms. Balmer didn't vote in Holmdel, she would not have been able to vote anywhere is simply incorrect and not in accordance with New Jersey election law. Petitioner provides sufficient proof by a preponderance of the evidence to demonstrate that Carole Balmer was no longer domiciled in Holmdel as of September, 2019 and accordingly, should not have voted in Holmdel in the November 2019 election. Ms. Balmer's vote is therefore to be rejected.

Petitioner has asserted that two voters whose ballots were rejected should be included in the count of valid voters.

DONNA CARANNANTE

Donna Carannante's ballot was rejected because of an unclear or indeterminate postmark on her ballot.

Donna testified that she has lived in Holmdel for 23 years and has voted in every election. She further testified that she mailed her ballot and her son Michael's ballot by bringing both to the post office on November 4, 2019, the day before the election, and depositing both in the mail slot inside the post office around 11:00 a.m. She did not go to the window to get the ballot postmarked because she felt confident it would be postmarked the day it was dropped off.

She further testified that she was upset when she learned her ballot was rejected and filed a consumer report with the post office, asked if there was a camera to verify her actions and later learned she could have gone to the customer service area of the post office to get the ballot physically postmarked there to insure her vote would be counted.

It is the obligation of both the resident voter and the absentee voter to deliver his ballot to the proper election officials within the prescribed time, either in person or by mail. DeFlesco v Mercer Bd. Of Elections, 43 NJ Super 492, 499-500 (App. Div. 1957). That Court stated “Just as it has always been deemed necessary to designate a time for the closing of the polls to resident voters, so likewise is it expedient and practicable also to fix the time of closing of the polls to the absentee voters.” Id at 499.

N.J.S.A. 19:53-22 states in part that “every mail-in ballot that bears a postmark date of the day of the election and that is received by the county board within 48 hours after the time of the closing of the polls for the election that the ballot was prepared shall be considered valid and shall be canvassed.”

Ms. Carannante’s ballot had an indeterminate postmark and wasn’t received by the Board of Elections until November 7, 2019 (Ex J1). Ms. Carannante’s son’s ballot, which she testified she mailed at the same time, was received by the Board of Elections on November 5, 2019 at 7:30 am. (Ex J2). No evidence was submitted to indicate the post office erred in forwarding Ms Carannante’s ballot two days later than her son’s ballot. Ms. Carannante had an obligation to deliver her ballot within the prescribed time. She had many simple ways of doing so – the easiest of which would have been to have her ballot postmarked at the post office to demonstrate that it was mailed prior to election day. Without the postmark by election day and with the receipt of the ballot by the Board of Elections on November 7, 2019, the ballot must be rejected. The statute is

clear. The ballot must have a postmark on or before the date of the election and must be received within 48 hours of the closing of the polls for the ballot to be counted. Ms. Carannate's ballot did not meet the statutory requirements and no valid explanation was presented to demonstrate why her ballot was received by the Board of Elections two days after her son's ballot that she testified was mailed at the same time. Accordingly, pursuant to N.J.S.A. 19:63-22 the ballot was rightfully not counted in the November 5, 2019 General Election since it was not proven by a preponderance of the evidence that the ballot was mailed on or before the date of the election.

DOLORES LUCCARELLI

Petitioner also seeks to include the vote of Dolores Luccarelli which was rejected because of a non-matching signature. Unfortunately, Ms. Luccarelli died in March 2020, prior to the trial in this matter. Her son, Frank Luccarelli, testified that he not only assisted his mother with her ballot but actually signed her name to the ballot.

Frank Luccarelli properly completed the assister portion of the ballot (Ex J4). While family members and others can assist a voter in the completion of a ballot, the statute provides that the voter shall sign the ballot.

N.J.S.A. 19:62-11 sets forth the Criteria for a ballot to be counted. That statute provides in pertinent part that in order to be count the ballot: “the outer envelope is signed by the registered voter to whom the ballot has been issued; and the signature is verified as provided in subsection c. of section 3 of the act.” (emphasis added)

N.J.S.A. 19:63-16 (a) provides again that after completing the ballot, the “voter shall then fill in the form of certificate attached to the inner envelope, at the end of which the voter shall sign and print the voter's name. N.J.S.A. 19:63-16 (b) states: “No mail-in voter shall permit any person

in any way, except as provided by this act, to unseal, mark or inspect the voter's ballot, interfere with the secrecy of the voter's vote, complete or sign the certificate, or seal the inner or outer envelope, nor shall any person do so.”

In this case, it is not disputed that Dolores Luccarelli did not sign her own ballot. It was also not alleged that Ms Luccarelli lacked the ability to write.

“Although the legislative enactment here considered is to be liberally construed to effectuate the purpose of enabling a registered civilian absentee voter to cast his or her vote, the manner and method by which this shall be accomplished is subject to the valid legislative concern that not only the voter but the process of exercising the vote be secure from the opportunity for fraud.” In re: Battle, supra at, 238 (citations omitted)

Mr. Luccarelli testified that his mother completed the whole ballot by herself but that he signed it for her. Certainly, if she completed the entire ballot she could have and should have signed the ballot as the statutes require. Her ballot was properly rejected since her signature could not be verified and shall remain rejected and not counted in the November 2019 election results.

CONCLUSION

Based upon the foregoing principles of law and facts cited, the Court finds that the petitioner failed to sustain her burden of proof that the votes of Alana DiMaso, Rocco A. Pascucci, Judith Pascucci and Karen Nici were illegal and should be rejected under N.J.S.A. 19:29-11(e). The votes from each of these voters shall remain accepted and valid.

The Court further finds that the rejected votes, Donna Carranante and Dolores Lucarelli shall remain rejected and shall not be counted as petitioner failed to sustain the burden of proof.

As set forth in the Opinion, the vote of Carole Balmer is rejected as petitioner provided sufficient proof by a preponderance of the evidence, that Ms. Balmer was not a resident of Holmdel and that she had leased a residence in Middletown, NJ in September 2019 and pursuant

to N.J.S.A. 19:31-11(b) should have reregistered and/or voted by provisional ballot in
Middletown, New Jersey.

Dated: 12/1/2020

/s/ Kathleen A. Sheedy
KATHLEEN A. SHEEDY, J.S.C.