PREPARED BY THE COURT:

Margaret Nordstrom,	:	**SUPERIOR COURT OF NEW JERSEY LAW DIVISION MORRIS COUNTY**
Petitioner,	:	
v.	:	**DOCKET NO. MRS-L-1796-11**
William "Hank" Lyon,	:	
Respondent.	:	**CIVIL ACTION**
	:	**JUDGMENT ORDER**

THIS MATTER having been opened to the Court by way of Amended Verified Petition filed by Allan Zakin, Esq., counsel for petitioner Margaret Nordstrom, and by Answer and Counterclaim filed by Sean M. Connelly, Esq., counsel for respondent William "Hank" Lyon, and with the participation of Daniel W. O'Mullan, counsel for Morris County Clerk Joan Bramhall and Deputy Attorney General Alan C. Stephens, counsel for the Morris County Superintendent of Elections, Morris County Board of Elections and Morris County Board of County Canvassers, and the Court having conducted a trial and having heard oral argument, and reviewed the briefs filed in this matter; and for the reasons set forth on the record and in the attached Statement of Reasons; and for good cause shown;

IT IS ON THIS 13 DAY OF SEPTEMBER 2011, ORDERED AND ADJUDGED as follows:

1. Petitioner's Amended Verified Petition is granted;
2. Respondent's nomination as the Republican Party candidate for the office of Morris County Freeholder is hereby null and void, pursuant to N.J.S.A. 19:3-7; and
3. The Morris County Republican Committee shall select the candidate to fill such vacancy within three (3) days hereof.

THOMAS L. WEISENBECK, A.J.S.C.

Dated: September 13, 2011

September 13, 2011

Margaret Nordstrom v. William "Hank" Lyon
Docket No. MRS-L-1796-11
Statement of Reasons

This matter comes before the Court upon the Amended Petition for Contest of Election ("Amended Petition") filed by petitioner Margaret Nordstrom against respondent William "Hank" Lyon, alleging that (i) illegal votes were received and legal votes rejected in the Republican Primary Election of June 7, 2011 sufficient to change the result, per N.J.S.A. 19:29-1(e), thus requiring that the election be set aside, (ii) respondent accepted a campaign contribution in excess of $2,600 in violation of N.J.S.A. 19:29-1(h), requiring that the election be set aside, and (iii) respondent violated the Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (the "Act") by failing to file a forty-eight (48) hour Report, requiring that respondent's nomination be declared null and void. Respondent filed an Answer, denying the essential allegations, and a Counterclaim, asserting that a duly registered voter was disenfranchised when her ballot was marked as unregistered. Trial commenced August 18, 2011 and concluded on September 8, 2011. For the following reasons, the Court finds that petitioner has met her burden as to each of these violations, and further finds that respondent's nomination is null and void due to his failure to fulfill his responsibilities under the Election Laws.

Findings of Fact

Background

On June 7, 2011, an election was held to determine the Republican nominee for the Office of Freeholder in Morris County. The results of the election reflected

that petitioner received 12,261 votes and respondent received 12,271 votes. On June 9, 2011, provisional ballots were tallied by the Morris County Board of Elections (the "Board"), resulting in each candidate receiving nine (9) additional votes, resulting in 12,270 votes for petitioner and 12,280 votes for respondent. On June 10, 2011, Dale Kramer, Chief Deputy of the Morris County Superintendent of Elections notified the parties that seven (7) voters may have voted both by mail and by provisional ballots. On June 10, 2011, petitioner filed a Notice of Motion for Recount pursuant to N.J.S.A. 19:28-1, and on June 13, 2011, an Order was entered directing said recount, to commence on June 15, 2011. The final tally pursuant to the recount apportioned 12,264 votes to petitioner and 12,270 votes to respondent, or a difference of six (6) votes or .0002%.

There were a total of 1,249 vote-by-mail ballots cast in the Morris County Republican Primary. Of those, 676 or 54.12% were cast in Parsippany. The total number of vote-by-mail ballots that recorded votes in the Morris County Freeholder Primary was 1,092 or 4.45% of the total Freeholder votes. In Parsippany, however, the total number of vote-by-mail ballots cast for Freeholder was 576. Of those votes, 365 or 65.1% were cast for respondent and 201, or 34.9% were cast for petitioner. Of the total Parsippany Freeholder vote, 2,620 ballots were cast, 1,463 or 55.8% for respondent and 1,157, or 44.2% for petitioner. Thus, 21.9% of the Parsippany vote for Freeholder was cast by way of vote-by-mail ballots. Moreover 87.4% of the Countywide ballots recorded a vote for Freeholder, while 85.2% of Parsippany ballots recorded a vote for Freeholder.

Illegal Votes Received

Petitioner produced twelve (12) voters, all residents of the same senior citizens apartment building located at 111 Parsippany Boulevard, Parsippany. All of these voters are originally from India and, with one exception, utilized the services of Gujarati language interpreters who also assisted in translating some of

the election-related exhibits. Of these twelve (12) witnesses, all testified that they never received a vote by mail ballot even though, for the most part, they admitted signing and submitting an Application for a Vote By Mail Ballot ("Application") and in some instances, even signing a Certificate of Mail in Voter ("Certificate"), which states that they "marked and sealed this ballot and certificate in secret".

In addition, one of these voters testified that she did not vote this year, one voter testified that she has never voted at all, one voter testified that she has never voted in a Republican Primary and one voter testified that she is a Democrat. While many of the Applications and Certificates for those voters contained voter information that was completed by another person, it appears that with one exception, voter information was provided by a voter's spouse or neighbor who could read and write English, albeit without completing the required portion of the document identifying such spouse or neighbor as an "assistor". See, N.J.S.A. 19:57-23. In addition, four (4) of these voters cast provisional ballots at the polling place. While these voters all reside in the Nineteenth District in Parsippany, the Vote by Mail Ballots contain no designation as to the voting district within the municipality. There is no record evidence as to which district the other twenty (20) voters resided in.

Eleven of the Vote By Mail Ballots were brought to the Board of Elections by Jigar Shah ("Mr. Shah"). These 11 voters testified that they did not know Mr. Shah, a fact confirmed by Mr. Shah, who testified that he was assisting Team Parsippany, comprised of four Republican candidates for local council. The twelfth vote by mail ballot was brought to the Board by Rubin Shah, a person unknown to that voter. Mr. Shah claimed that he received ballots from his friends, including Rubin Shah, who had presumably collected them from voters. Mr. Shah testified that he never inspected the ballots and had no idea which candidates were selected by these voters. He admitted to completing the outside Vote by Mail

envelope (e.g., Exh. P-1) for each of these eleven voters, but not in their presence as required by law. It is uncontroverted that Mr. Shah transported thirty-two (32) ballots in this fashion. Exh. P-11 (a) – (h). Moreover, while petitioner supported Team Parsippany, there is no evidence that either she or respondent had any involvement with these illegal votes or with Mr. Shah.

Legal Votes Rejected

Petitioner contends that two (2) voters were disenfranchised. One voter testified that he was unable to vote because he was misdirected to Villa Walsh Academy ("Academy"), whereas the polling place, while on the grounds of the Academy, was actually "Villa Walsh Academy Lobby/Auditorium". This voter testified that he had moved to a different neighborhood within Morris Township and assumed that he could vote at the Hillside Fire House, where he saw "Vote Here" signage on his way to work the morning of the primary. Upon his return home, he stopped at the Fire House at around 6:00 p.m., but was advised that he should report to Villa Walsh Academy. This voter was familiar with Villa Walsh Academy, as he was employed as a local pharmacy deliveryman who brought prescriptions to Nanetta Hall, where the nuns reside and to the infirmary. He also was familiar with the Academy's main classroom building, as he had often picked up his employer's daughter from the Academy's high school. This voter was also previously employed as a Chief of Police of a local police department and as a Chief of Investigations for the County Prosecutor.

Upon arriving at the Academy, he observed no voting signage or any lights on in the classroom building or the main Academy building, which he referred to as the "Mansion". He then called his son, who lived nearby, believing that he would know the location of the polling place. He directed him to the Hillcrest School, but upon his arrival he noted that the building was closed. He then called a Board official known to him, who advised him that he should call the Board

directly, which he did. The voter testified that he had a very abrupt telephone conversation with an unidentified Board worker who directed him back to Villa Walsh Academy. He returned to the Academy, but was unable to find the polling place. He drove to Nanetta Hall, the nun's residence, but saw no activity there. Having spent a total of 30-45 minutes looking for his polling place, he went home.

On cross examination, the voter admitted that, while he notified the County of his new address, he had no recollection of seeing a sample ballot, which would have described the exact location of the polling place. He stated that he knew of five buildings on the campus, but that none of them were the polling place.

Dale Kramer, the Chief Deputy of the Superintendent of Elections ("Superintendent") for the past three and a half years, testified that this voter's polling place was identified on the sample ballot (Exh. D-1) as "Villa Walsh Academy Lobby/Auditorium", which had been a voting place for "many, many years". She further stated that in her thirteen and one-half years working for the Superintendent, no voters had complained that they experienced any difficulty in locating the polling place at Villa Walsh Academy.

The second voter, a Boonton resident, testified that when he arrived at his polling place between 6:45 and 7:00 a.m. he was able to vote right away. He also noticed the presence of "quite a few" election workers. After signing the poll book (Exh. D-17(A)) and the authorization slip which allows for entry into the voting booth (Exh. D-17(B)), the voter entered the booth, depressed the buttons to register his votes and then depressed the "Cast Vote" button. The voter noted that the lights on these buttons went off as soon as he removed his finger. Moreover, he did not hear any noise from the machine. He testified that he was unaware that the machine emitted an audible beep as the vote is cast.

About fifteen minutes later, as the voter was driving to work, he thought that "something's not right" about his experience in the voting booth. A few days later,

he spoke to an elected County official to report his suspicion. He admitted that he probably should have returned to the polling place that day to report his concern.

On cross-examination, the voter testified that he had voted twice before on similar machines and while he had read the sample ballot, he did not recall seeing any voting instructions. He was unable to recall where he previously voted, whether the lights on the buttons went off right away or stayed lighted until he cast his vote. Voting instructions are posted inside the voting booth. Exh. S-1.

Ms. Kramer testified that the Board workers at the polls are available to render assistance if a machine malfunctions and that no report was made to the superintendent that a vote did not register. In addition, George Coppola, the Operations Manager of the Superintendent's office who is responsible for the functioning of the voting machines, testified that when a vote is cast, the machine makes an audible "beep". He further testified that if a machine malfunctions, it will automatically shut down.

Campaign Act Violations

William "Hank" Lyon

Respondent was called as a witness by petitioner. He testified that he graduated from college in May 2010 and resides with his parents, Robert and Suzanne Lyon in Montville. He stated that he decided to run for Freeholder in November 2010 and filed his candidacy report on April 10, 2011 with the New Jersey Election Law Enforcement Commission ("ELEC"), (Exh. P-18, Form D-1, Single Candidate Committee – Certificate of Organization and Designation of Company Treasurer and Depository). Respondent's father, Robert was designated as the Treasurer. In addition, Respondent filed a Form DX with ELEC, designating himself as Deputy Treasurer. Exh. P-19.

After college, respondent began working full-time for his parents' businesses, which operated out of an office in East Orange. These companies

included four (4) restaurant franchises, two (2) ice cream parlor franchises and various real estate holdings. Respondent worked primarily in the office, but could be at any one of his family's business holdings on any given day, particularly M of Rockaway, LLC, a Maggie Moo ice cream parlor franchise. While he is not employed by any one company, he believes that he is an officer of one of the real estate companies. He also claims to have an ownership interest in M of Rockaway LLC, which interest he acquired after he decided to run for Freeholder.

Respondent testified that he completed each of the Form R-1s (Report of Contributions and Expenditures) filed by his campaign. The first Form R-1, signed May 10, 2011 and received by ELEC on May 13, 2011, was the 29-Day Pre-Election Report, which listed $2,000 as loans from his father on Schedule C (Exh. P-20). Respondent claims that he had read the ELEC Compliance Manual for Candidates (Exh. D-5) to state that loans are the same as contributions, thus he listed $2,000 as "Monetary Contributions" and the same $2,000 as "Loans" on page 1 of the report, which together with $800 in monetary contributions of $300 or less, totaled $4,800. The rest of the Report, however, correctly reflected deposits of only $2,000. Schedule 1(D) of the Report further reflected principal disbursements of $1,235.85 for "campaign brochures" and "door hangers". Thus, approximately four (4) weeks before the election, respondent had a closing balance of $676.88 in his campaign depository.

The next Form R-1 completed and filed by respondent was the 11- Day Pre-Election Report, signed May 26, 2011 and received by ELEC on May 31, 2011. Exh. P-21. This Report reflected an additional $1,000 loan from respondent's mother, Suzanne (again "double booked" as a monetary contribution on page # 2 of the Report), an expenditure of $1,840 for "signs" on May 10, 2011, and no other monetary contributions. Thus, respondent's campaign closing balance eleven days before the primary was $636.88.

Respondent's final Form R-1, the 20-Day Post-Election Report, was signed July 5, 2011 and received July 8, 2011. Exh. P-22. That Report reflected $450 in monetary contributions of $300 or less and a $16,000 loan from respondent's father (again, "double-booked" on page 1 as a "monetary contribution"). Schedule 1(D) reflects disbursements of $2,520.00 on May 28, 2011 for "signs" and $14,225.88 on May 31, 2011 for "mailings". The closing balance of the campaign depository was $291.00.

Respondent testified that, while he never formulated a campaign strategy, he had read a book entitled How to Win Local Elections, which stressed the importance of door-to-door campaigning. He claimed that he always planned on self-funding his campaign. Respondent further testified that although he and his father went door-to-door to about 5,500 homes, he knew by the end of May that he needed to inject funds for mailings and signs. He testified that he viewed the $16,000 loan as one from his company, M of Rockaway, LLC. He stated that his father signed the check, as he had check signing authority and as a general practice, respondent did not sign business checks. He further testified that he engaged the mailing vendor less than one week before he mailed it the check on May 31, 2011.

Respondent testified that the vendor sent out a total of 25,000 mailers among three (3) different brochures. One of the brochures, Exh. P-23 mentioned petitioner by name and was sent to 6,000 households in eleven (11) northeastern Morris County municipalities (which total may have been thirteen (13), as Boonton and Rockaway could also include the Borough and Township for each named municipality). Respondent stated that the purpose of this particular mailer was to "show Ms. Nordstrom's record on Open Space". The second page (or back) of this mailer states that petitioner believes "in redistribution of wealth". This page has four (4) columns, which list the same eleven (11) municipalities, the amounts

purportedly taxed by the County for Open Space, the money purportedly received by each municipality from the County for Open Space and the "money received from the County for Open Space (as &[sic] of amount taxed)". There is also a twelfth municipality listed, Washington Township, which is petitioner's hometown and which purportedly received 184.8% of Open Space money from the County that it paid for in Open Space taxes. The other eleven (11) municipalities are listed as receiving anywhere between zero percent and 67.5% of Open Space taxes paid. Moreover, next to these columns is a Google satellite map of the area adjoining petitioner's home, which reflects a large oval of "reserved [sic] Open Space" next to a large yellow star indicating "Margaret Nordstrom Home".

When asked how respondent came to the conclusion that petitioner resided next to so much property funded by Open Space tax dollars, respondent stated that he drove to petitioner's home and saw approximately ten (10) signs on her road depicting "Open Space". He stated, however, that he did not intend to suggest that all land depicted within the oval was Open Space. Respondent stated that while petitioner is an Open Space advocate, he is not in favor of "giant open space acquisitions". He further stated that it was not his intention to deprive petitioner of an opportunity to respond to this mailer, but that towards the end of his campaign his days were "long and disorganized" and that he did not focus on the mailings until the end.

When respondent was questioned further about the fact that, because his father signed the M of Rockaway, LLC check and that pursuant to ELEC, his father would be considered the contributor, he answered that it was his intent that he, as an LLC member, would be the contributor. He further stated that while he read the ELEC Manual, he did not recall it stating that it was illegal to donate in the name of another. He admitted knowing, however, that when a contributor who is an LLC member does not sign the donation check, the LLC must issue a letter to

the campaign to reflect which member should be considered the donor. He stated that no such letter has been issued by M of Rockaway, LLC.

Respondent further acknowledged that there was a $2,600 limit on third-party campaign contributions, but claimed that the $16,000 check was intended to be his personal funds. Respondent also admitted that his interest in M of Rockaway, LLC, which purportedly amounts to ten percent (10%), was not reduced to writing until after this litigation commenced. Respondent acknowledged filling out the M of Rockaway, LLC check (Exh. P-24), including the word "Contribution" on the memo line, but stated that his father signed it because that was "the practice". Indeed, respondent testified, "I don't ever sign checks". Respondent testified that he "wasn't thinking" about how to report this contribution.

Respondent claimed that he was unaware about the need to file a 48 Hour Report (Form C-1). In response to questions from his counsel, respondent testified that he read the ELEC Manual in January 2011, and understood it as a guide in following the election laws. He claims that this reporting requirement "didn't stand out in [his] mind." He also stated that he believed that he did not have to report the $16,000 in a 48 Hour Report, as they were his funds. He stated that this is the first time he has run for elected office and has never before served as a treasurer or deputy treasurer.

He insisted that he was a member of M of Rockaway, LLC when the $16,000 check was signed. Thus, he believed that as a member of the LLC, he could honestly represent at campaign events that he paid property taxes if he was so challenged. Respondent testified that he debated with petitioner generally about the Open Space issue at a municipal event, but admitted that he did not then raise the criticisms reflected in the mailer (Exh. P-23). On re-direct, he testified that he did not know he had to comply with the 48 Hour Report. He claims he was

"confused", because he believed that since he did not have to report expenditures of his own money during the thirteen day period, he also did not have to report contributions.

Robert Lyon

Robert Lyon was also called as a witness by petitioner. He testified that he owns "about a dozen" different companies, all of which are LLCs. He stated that while his son has had an interest in politics "for quite some time", he first discussed his son's interest in running for Freeholder in the Fall of 2010. He testified that he agreed to become the Campaign Treasurer after others had declined and that his son developed his own campaign strategy.

He further testified that at Christmas 2009, he began to contemplate transferring ownership interests in his and his wife's LLCs to his sons due to his age, a medical condition and his reduced energy level, but that nothing came of it until about six months before the election. At that time, he and respondent were considering the types of questions that might be put to him in the campaign. One of their concerns was respondent's inability, if challenged, to relate to the payment of property taxes. As a result, Mr. Lyon decided to convey a 10% interest in M of Rockaway, LLC, an entity he had formed in about 2005. Mr. Lyon could not recall whether M of Rockaway, LLC had an operating agreement, and none was produced at trial. While this conveyance was also made to respondent because he was not taking a salary from any of the businesses since graduating from college, the timing of the conveyance was prompted by this campaign strategy. While Mr. Lyon has three other sons, only one of them works in the business. Neither that son, who is paid a competitive salary, nor his other two sons have "received" an interest in any of the LLCs.

As to his campaign treasurer responsibilities, Mr. Lyon stated that while he opened up a depository account, he has no recollection of making any deposit to

open it. It was understood between Mr. Lyon and respondent that, given his employment responsibilities, Mr. Lyon was not going to do a lot in the campaign and that respondent would have to do the "brunt of the work". While he reviewed the ELEC Manual "a little bit" sometime before his son declared his candidacy in April 2011 (but not again until after the litigation), he claimed to understand the concept of his duties as Treasurer. As to the ELEC Forms, he knew that there were criminal penalties if they were improper. He admitted that his son filled out all the Forms, but that he looked each Form over, that is "glanced at it" and signed it. He has no recollection of any discussions with respondent concerning any confusion he might have had about the campaign finance laws. He also has no recollection of reading or having any discussions about having to file a 48 Hour Report within thirteen days of the election.

Mr. Lyon testified that he was aware of the campaign's expenditures. He also knocked on about 1,000 (of the 5,500) doors and attended about one-third to one-half of the candidate's meetings. He stated that in or about April 2011, his son engaged a campaign firm in Georgia to do mailings.

While Mr. Lyon was unable to attribute either a dollar value to respondent's 10% interest in M of Rockaway, LLC and thus to the entity itself, he stated that his son told him he wanted to contribute $20,000 towards his own campaign and that "we agreed that Hank would have ten percent of the company". He further testified that "in concept, we always thought it would be a loan and that we'd be repaid" if the campaign ever received other funding. Mr. Lyon insisted that the $16,000 was "Hank's money".

He testified that he recalled seeing the $16,000 contribution that his son made and, having now read the ELEC Manual after the litigation commenced, knows that the check from M of Rockaway, LLC was attributable to whomever signed the check. He also was aware of the $2,600 limit on donations by third

parties and acknowledged that the contributions attributed to him "appear inappropriate". He claims that this was a "reporting error" and that the Form R-1s should have reflected his son's name as the contributor. At the time he signed the checks, however, he believed that his signature was "required" and that the ELEC Manual further required that the signator of the check must be named as the contributor on the Form R-1. While he admitted that at the time these checks were written, his son had check writing authority for M of Rockaway, LLC, he stated that he was not sure whether that authority was limited to those times when he was out of town or sick. He testified that he "wanted to know what's going on at the company." He stated that there was an average account balance of $50,000 in the LLC's checking account.

Mr. Lyon testified that he knew about the mailing critical of petitioner's stance on Open Space, Exh. P-23, but had not seen the actual brochure before trial. He stated that he accompanied his son when he drove out to petitioner's home and saw "many, many signs" regarding "preserved Open Space" both approaching and leaving her neighborhood. While he acknowledged that he was unaware whether, in fact, these "Open Space" properties were private or preserved, he opined that, "in a practical sense", he did not know how a candidate would be able to respond to such a mailing given that it took "three to four weeks" for his son to arrange for the printing and distribution of the mailings. He admitted, however, that he was familiar with the concept of "robo" (or automatic) telephone calling by candidates. He also stated that he was unsure whether the Open Space campaign issue was a positive one for his son, as the only specific response received from a voter was one "who took offense" to this mailer. In addition, Mr. Lyon stated that although more people voted for his son than petitioner in the towns that received the mailer, those were also the towns that he and his son campaigned door-to-door.

Mr. Lyon also testified that a Form R-1 was signed on August 8, 2011 to correctly attribute the $16,000 contribution to respondent, but he was unaware whether it had been filed with ELEC (Exh. P-25). Respondent's counsel, however, stipulated that this Form R-1 has not been filed with ELEC. Mr. Lyon also testified that, since the litigation commenced, M of Rockaway, LLC, has documented the $16,000 contribution as attributable to respondent.

Mr. Lyon also acknowledged that page 1 of the ELEC Manual has a section captioned "Help with Using this Manual", but insisted that "this is a fairly complex set of rules, like an abbreviated version of the IRS Code." While he admitted that he does his own corporate taxes, he stated that his accountant prepares his personal tax returns.

On cross-examination, Mr. Lyon stated that the campaign spent $14,000 on three mailings and that the mailing in question, Exh. P-23, cost $2,800. He did not know how many copies of this mailer were distributed.

Margaret Nordstrom

Petitioner testified that she has resided in Washington Township for twenty-seven years. She holds a Masters Degree in Political Science and became active in her community in response to municipal efforts to widen her street, which contains many older homes. She was then asked to become a member of the local Historic Preservation Council, in which she served for three years. She then ran for Township Committee, but lost the election. She ran again and was elected to office twenty-one years ago. She spent twelve years on the Township Committee, to include second and third years as Vice-Mayor followed by six years as Mayor. The position of Vice-Mayor and Mayor are selected by the five person Township Committee, and her six year term as Mayor has yet to be replicated.

Petitioner successfully ran for an open seat on the Freeholder Board during her sixth year on the Township Committee and has since been re-elected three

times, each term being three years. After her third year as Freeholder, she stopped working as a ballet instructor at age fifty-five for medical reasons. She has served as Deputy Director of the Freeholder Board for two years and as Director for three consecutive years, the only time anyone has been so selected. She also serves as chairperson of three County-wide boards/committees, and as a board member of Head Start, the Arts Council of Morris, the Dean's Advisory Board of Rutgers New Brunswick and the State Historic Sites Council. She has received several awards for her public service and her candidacy has always been endorsed by local newspapers.

Petitioner testified that after last year's primary, she decided to run again this year. While she had heard rumors about respondent's potential candidacy after the 2010 General Election, she did not know for certain his intentions until the April 2011 filing deadline. She further stated that she did not anticipate any personal attacks in the primary election campaign.

Petitioner started speaking at Republican Clubs in January. She also started to consider raising campaign funds, having heard that respondent's father had "a lot of assets" and was going to contribute his personal funds towards his son's campaign. Petitioner developed an initial plan ("Plan A") to distribute county-wide mailings to two out of four Republican voters, or 25,000 households, plus another mailing to three out of four Republican voters, or 14,000 households. (One out of four voters is a designation for voters who only vote in a Presidential Election and three out of four voters is a designation for voters who vote in three out of four primaries.) In addition, petitioner initially planned to employ robo-calling.

Petitioner held a fund raiser at a Morristown restaurant that netted $10,000 for her campaign. While petitioner had some funds remaining from a previous campaign, she believed that she still needed to raise additional funds. She also

held meetings with her Campaign Finance Committee. While she had a number of campaign pledges, she was not confident she could raise all the funds she needed, in which event she would have to use her own funds.

Petitioner testified that it is a common practice to review the opponent's campaign finance reports. When she reviewed respondent's 29-Day Pre-Election report (Exh. P-20), she noted that his total campaign receipts were $4,800 (albeit $2,000 was duplicative as noted above). She also noted that respondent's father had loaned $2,000 to his son's campaign and thus believed that he could only contribute another $600. Petitioner had been told by others that they had advised both respondent and his father of the $2,600 contribution limit by non-candidates. She further noted that respondent had expended only $1,215.85 for campaign brochures and door hangers.

Petitioner thus concluded that respondent was not spending the kind of money that she had anticipated he would. Consequently, when she disclosed these facts to her finance committee and to her other financial supporters, she was told that there was no need then to seek further contributions because she did not need additional monies to meet respondent's expenditures. Consequently, Petitioner scaled back "Plan A" and instead sent out mailings to four out of four Republican voters (7,000 households), two out of four Parsippany Republican voters (2,000 households) and 3,000 mailers to Republican voters in seven municipalities with heavily contested races. Thus, instead of sending out 25,000 mailers, petitioner only sent out 12,000 mailers. Petitioner felt confident in this approach, as respondent's campaign balance of $676.88 was not enough to cover even one mailing. Petitioner also told her supporters that she was monitoring respondent's ELEC filings.

Petitioner also reviewed respondent's 11-Day Pre-Election Report (Exh. P-21), and noted that respondent had received an additional $1,000 loan from

Suzanne Lyon, had expended $1,840 for "signs" and had a balance of $636.88 in available campaign funds as of May 26, 2011. Petitioner testified that she visited ELEC's website everyday thereafter to monitor whether respondent had reported any contributions in excess of $1200. She stated that if she saw any money coming into respondent's campaign, she was prepared to implement "Plan B". This Plan included mailings to three out of four households, which mailings could be accomplished in three (3) days. This would cost her campaign $10,000 and she would speak to her Finance Committee and her husband, if needed, to raise the funds.

Petitioner testified that she was "upset" when she saw respondent's 20-Day Post-Election Form (Exh. P-22) about two weeks after July 4th, because "the reporting requirements of ELEC" had not been followed regarding the "48 Hour Rule". She stated that she had been "bamboozled" and that the "election laws had been violated."

Petitioner further testified that when she first saw respondent's mailer, Exh. P-23, a few days after the election, she was "furious". She stated that, contrary to the allegation in the mailer, she does not believe in the "redistribution of wealth". Petitioner was also upset over the depiction of her home alongside large tracts of purported "Reserved [sic] Open Space", as it gave "the impression that County Open Space funds went to my own private Shangri La." She stated that she is "pretty familiar" with the properties depicted on the mailer. She testified that many of these tracts were either not preserved, including the 78 acre George Dufford Tract and set asides from a private development, such as Blue Crest Farms, or were preserved with State versus County funds, such as the Farrand Family Tract. Petitioner further stated that Morris County's Open Space funding is applied for by municipalities, not-for-profits and individuals, not by the County. The Open Space Commission then reviews applications and makes

recommendations to the Freeholder Board, which has always accepted those recommendations. She testified that information concerning the parcels depicted in Exh. P-23 is publicly available and "pretty accessible" through local libraries and in the municipal master plan.

On cross-examination, petitioner testified that she spent about $28,000 on this election. She further stated that she believes in preserving Open Space and in historic preservation, and that she understood that defendant objected to funding for Open Space, but not to Open Space per se. She further acknowledged that she campaigned door-to-door with the Team Parsippany candidates "a couple of times", attended one of the Team Parsippany fund raisers and donated to it. She stated she had no involvement in any Team Parsipany "get out the vote" efforts, but had heard that one of its coordinators was involved in Vote by Mail efforts.

On re-direct examination, petitioner testified that she was "clobbered" in the Parsippany Vote by Mail count by a ratio of two to one, or by a "couple of hundred votes." She further testified that the mailer, Exh. P-23 was the first time that respondent had accused her of either favoring a "redistribution of wealth" or claimed that she lived alongside County-funded Preserved Open Space. She further stated that advocating for Open Space is not in conflict with lower taxes, because preserving Open Space means less housing and "suburbanization", which requires greater expenditure of tax revenues. On re-cross examination, petitioner added that when land is preserved, it is not removed from the tax rolls unless it is acquired by a municipality or the County, which rarely happens in Morris County.

Conclusions of Law

Illegal Votes Received

Petitioner contends that the twelve mail-in ballots attributed to the Parsippany "voters" who testified and the balance of the twenty (20) votes delivered to the Board by Mr. Shah, are all illegal and are thus sufficient to change

the result of the election. While respondent acknowledges that these votes are illegal, he argues that not only has petitioner failed to demonstrate for whom these votes were cast, but given petitioner's ties to Team Parsippany, it is more likely than not that they were cast for her.

N.J.S.A. 19:29-1 provides as follows:

> Grounds for contesting nomination, election or public proposition. The nomination or election of any person to any public office or party position, or the approval or disapproval of any public proposition, may be contested by the voters of the 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;

As noted by the Appellate Division in In the Matter of Mallon,

> In a challenge based on illegal votes, the contestant has "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 circumstance, for whom the illegal votes were cast." Application of Murphy, 101 N.J. Super. 163, 167 (App.Div. 1968), certif. den. 52 N.J. 172 (1968). See In re Bonsanto's Application, 171 N.J. Super. 356, 361 (App.Div. 1979); In re Petition of Hartnett, supra (163 N.J.Super. at 265-266); In re Application of Moffat, 142 N.J.Super. 217, 224 (App.Div.1976), certif.. den. sub nom. Princeton Township v. Bleiman, 71 N.J. 527 (1976).
>
> A respectable argument can be made for the view that where there are a sufficient number of illegal votes, if deducted from the winner's tally, to "change the result" the challenger should not also have the burden of proving that they were cast for his opponent. The case law, however, is well-settled, as recognized by the trial judge. Moreover, the Legislature is presumed to be aware of this consistent interpretation of the election laws since *Murphy* and may be deemed to have acquiesced therein.

In the Matter of Mallon, 232 N.J. Super. 249, 268-269 (App. Div. 1989). Here, petitioner has demonstrated that thirty-two (32) mail-in ballots were, at a minimum, not brought to the Board by a bearer who took the ballot directly from the voters, thus breaking the "chain of custody" and rendering these ballots illegal. N.J.S.A. 19:57-37.1 Petition of Krisco, 246 N.J.Super. 337, 342-45 (App.Div. 1994). This illegality is compounded by the testimony of the voters that (i) they never received a mail-in ballot, (ii) they resided in a senior citizens complex, (iii) three of these voters did not vote this year, (iv) one voter has never voted in a Republican primary, (v) one voter is a Democrat, (vi) one voter has never voted at all, and (vii) that all but one voter (who cast a provisional ballot) needed the services of a Gujarati interpreter and/or translator. Petition of Battle, 190 N.J.Super. 232, 242 (App.Div. 1983), aff'd, 96 N.J. 63 (1984) (invalidating ballots from nursing home residents "vulnerable to influence and pressure").

Petitioner, however, must also establish "to the extent possible under the circumstances, for whom the illegal votes were cast". Application of Murphy, supra. While no effort was made to produce all thirty-two voters, the twelve voters produced all testified that they did not cast these ballots. Petitioner thus claims she has satisfied the impossibility requirement. The Court agrees. As the Appellate Division stated in In Matter of Mallon,

> While the burden of proof is on the contestant in a section e contest to establish not only the illegality of a vote, but in addition how the voter voted, an exception has developed in the case law where the challenger cannot establish to the extent possible under the circumstances for whom the illegal vote was cast. In re Bonsanto's Application, supra (171 N.J.Super. at 360). We interpret this to mean that it must be shown that it is not possible to locate the person who cast the illegal vote or if located, to compel the voter under Evid.R. 31 to disclose how he or she cast the illegal vote. For that exception to apply, however, the challenger must show the exercise of reasonable diligence in attempting to find the challenged voter and that, despite such

> diligence, he or she could not be found. The exception cannot mean merely that it is impossible to determine how the person voted or the language of the statute requiring that it be "sufficient to change the result" (N.J.S.A. 19:29-1e) would have not meaning. The challenger has to carry both prongs of the burden established in Murphy and its progeny and, in addition, prove that despite diligent effort the illegal voter could not be found or refused to disclose his vote.

232 N.J.Super. 269 (footnote omitted) (emphasis added). The Court is satisfied that petitioner has undertaken all reasonable efforts to determine for whom these votes were cast.

Respondent argued at summation that these illegal votes would have been cast for petitioner, and proffers "three scenarios" which ostensibly support this thesis. Under the "first scenario", these voters never received their mail-in ballots and thus did not vote at all. Respondent claims, however, that because the "bearer", Mr. Shah, supported Team Parsippany and petitioner was aligned with those candidates, these votes would have been cast for her. In support of this proposition, respondent states that of the 118 mail-in ballots in which all four Team Parsippany candidates were selected, petitioner was selected in 75 of those ballots versus 27 for respondent, i.e., 63%. Petitioner, however, counters that only three out of four Team Parsippany candidates were elected and that if one instead analyzes the mail-in ballots where only one Team Parsippany candidate was selected, plaintiff received 194 votes versus 137 votes for respondent, or a much closer margin (58%). The Court rejects this first scenario, as fundamentally there is no record evidence to meaningfully support the inference that voters who selected one or more Team Parsippany candidates had any interest in or were otherwise directed to vote for petitioner.

Under the "second scenario", the illegal voters voted, but with assistance. Again, respondent argues that the only assistance they could have received would

have been from a Team Parsippany supporter. This position, however, is also rejected as it is based on sheer speculation, as there is no record evidence to indicate who assisted these voters. Respondent's "third scenario" is that the voters actually voted themselves. Consequently, respondent urges that the Court recall these witnesses, immunize them and compel them to "tell the truth". This scenario is also rejected. Aside from the fact that this request is out of time, the "discretionary power to grant immunity rests exclusively in the executive, and not the Judiciary". State v. Feaster, 184 N. J. 235, 283 (2005).

Because it is impossible to determine what, if any, votes were cast for respondent, there is no basis to deduct votes from either candidate's tally. See, Petition of Hartnet, 163 N.J.Super. 257 (App.Div. 1978); In re Township of Maplewood, 255 N.J.Super. 690, 744-45 (Law Div. 1992) (when one cannot determine for whom vote is cast, "there is no presumption that an illegal ballot is cast for the incumbent or the contestant"). There is authority, however, to set aside the election results in the impacted district of Parsippany. In In re 1984 Maple Shade General Election, 203 N.J.Super. 563 (Law Div. 1985), the court was confronted with voting irregularities in the Sixth District, which included seventy-nine (79) paper ballots "voted and transmitted in a manner not permitted by the Election Laws." Id. at 585. The court thoroughly reviewed the case law on the scope of the election set-aside and determined that as only the election in the Sixth District was challenged, "and no irregularities have been shown to have occurred in any other Maple Shade District", a new election would be limited to that district. Id. at 592. Were this matter "simply" about election irregularities, the Court would direct such an election and require that the Board determine if any of the other twenty (20) "voters" resided in other districts. If they did, the new election would involve such districts as well as the nineteenth. Moreover, to the extent appropriate, the Court would follow the new election procedures set forth in Maple

Shade. Id. at 593-596. This remedy, however, need not be further addressed due to the relief granted infra.

Legal Votes Rejected

Petitioner claims that the Villa Walsh and Boonton voters were disenfranchised and should have their votes counted. The Court rejects this contention. As to the Villa Walsh voter, the Court finds that he was not prevented from voting. As a former voter who had notified the County of his change of address, he should have looked for the sample ballot mailed to him for the exact address of his polling place. While he did engage in some efforts to determine the exact location, he could have easily driven to the Board Offices (which are within one mile of the Hillside Firehouse) to resolve his dilemma. Here, the voter did not face any challenges, such as educational or communication differences, family responsibilities, employment exigencies, economics, or physical infirmities. See Kirk v. French, 324 N.J.Super. 548, 554 (LawDiv. 1998). Under the circumstances, the Court finds that this voter was not prevented from voting.

With regard to the Boonton voter, the Court finds that he too was not prevented from voting. There is no record evidence that this machine malfunctioned. Rather, this appears to be a case where the voter did not carefully follow the instructions in the voting booth. Moreover, there was nothing to prevent the voter from returning to the polling place once he questioned whether his vote had registered. Had he done so, the worker could have determined whether the authorization slips equaled the number of votes recorded on the machine in question and he could have applied for a provisional ballot. These facts do not warrant the status of a legal vote rejected contemplated by the legislature. Cf. In re Application of Moffat, 142 N.J.Super. 217 (App.Div), cert.den. sub nom. Princeton Tp. V. Bleisman, 71 N.J. 527 (1976) (record established first voting machine malfunctioned for one of the candidates after first vote cast).

Petitioner also seeks to void the Board's disqualification of a mail-in ballot that reflected a filled in oval for petitioner, and as well her name written in the space below as a write-in candidate, albeit misspelled as "Marget Nordstrom". (Exh. P-7) Board Chairman Hanley conceded in his testimony that this vote should not have been rejected. The Court agrees. See In re Monroe Tp. General Election, 245 N.J.Super. 70 (App.Div.1990) ("a voter should not be disenfranchised who punches a hole or places a mark next to a candidate's name and writes in the name of the same candidate for the same office").

In addition, the parties have stipulated that the registered voter, Marilyn Rath, referenced in respondent's Counterclaim should have her vote counted. As Ms. Rath voted for petitioner, the final tally is now 12,270 votes for respondent and 12,266 votes for petitioner, or a difference of four (4) votes, or .000163%.

Campaign Act Violations

The Court incorporates by reference the Statement of Reasons in support of its August 18, 2011 Order regarding jurisdiction. To the extent possible, the Court has sought to "apply the standards ELEC would apply if the case was before ELEC". In re Primary Election of June 3, 2003, 367 N.J.Super. 261, 285 (App.Div.2004).

Illegal Contribution

Petitioner contends that the $16,000 payment to respondent's campaign is attributable to Robert Lyon, not to respondent, and thus is in violation of N.J.S.A. 19:29-1(h), in that it is an excessive contribution, in violation of N.J.S.A. 19-44A.11.3 (imposing a $2,600 cap on contributions from third parties). Respondent contends that this contribution was from his funds in M of Rockaway, LLC. Similarly, respondent's father contends that these funds were from his son's interest in the LLC.

The Court finds that there was no legally cognizable conveyance or assignment of Mr. Lyon's interest in the LLC prior to the litigation and that, therefore, this contribution is attributable to Mr. Lyons. Indeed, the facts reflect that:

- Mr. Lyons was not sure if he ever had an operating agreement for M of Rockaway, LLC, and none was produced at trial. Such an agreement may reflect how one is assigned an LLC interest. N.J.S.A. 42:23-46. In the absence of an operating agreement, the provisions of the Limited Liability Company Act (LLCA) control. Union County Improvement Authority v. Artaky, LLC, 392 N.J.Super. 141,152-53 (App.Div. 2007). Those provisions provide that a person acquires an interest in an LLC after the time of the LLC's formation, and in the absence of an operating agreement, when "the person's admission is reflected in the records of the limited liability company." N.J.S.A. 42:2B-21(b);
- No records exist to reflect that Mr. Lyons conveyed or assigned any interest in the LLC to respondent, as required by N.J.S.A. 42:2B-21(b);
- Mr. Lyons and respondent discussed the $16,000 contribution before the check was written;
- Respondent filled out the check before his father signed it, even though respondent then had check writing authority;
- Contrary to Mr. Lyon's claim, the ELEC Manual is a concise and understandable document with a detailed Table of Contents, which states:

J. Contributions from a Partnership, a Limited Liability Partnership, or a Limited Liability Company 19

Neither Respondent nor Mr. Lyon complied with the ELEC mandate, which is set forth in its Manual at Page 19, as follows:

> **A partnership, limited liability partnership, or a limited liability company may not make contributions as entities.** A contribution drawn

on the account of a partnership, limited liability partnership, or limited liability company must be signed by a partner(s) or member(s) and is a contribution from the partner or member who has signed the check or written instrument. In the case of a currency contribution, the partner or member who makes the contribution will be considered to be the contributor.

If it is the intent of the contributor that any portion of the contribution drawn on the account of a partnership, limited liability partnership, or a limited liability company is to be attributed to a partner or individual who did not sign the check or written instrument, the following written information must be received and maintained by the treasurer:

1. Written instructions concerning the allocation of the contribution amount to a contributing partner, or among contributing partners; and

2. A signed acknowledgment of the contribution from each contributing partner who has not signed the contribution check or written instrument; and

3. Contributor information for each contributing partner (see the "Record Keeping" section of this Manual). (emphasis added)

In the face of these statutory and regulatory requirements which are clearly set forth in the ELEC Manual, the Court finds that the $16,000 contribution was from Mr. Lyon. As it is well beyond the $2,600 limit on campaign contributions, it is "in excess of the amount permitted by this title". N.J.S.A. 19:29-1(h). Indeed, to the extent Mr. Lyon intended to convey or assign an interest in the LLC, it never crystallized beyond an undocumented promise to transfer such an interest. Moreover, it is undisputed that these funds were used to underwrite 25,000 mailings just before the election. A portion of these funds paid for the mailing, Exh. P. 23. Petitioner's detailed, credible and unrebutted testimony establishes to the Court's satisfaction that the thrust of this mailer - - that Ms. Nordstrom favors redistribution of wealth and has steered Open Space funds to benefit herself - - was factually baseless. Thus, the Court is satisfied that the remedy sought by petitioner, i.e., setting aside the election, would be appropriate under all these

circumstances, were it not for the relief granted below. Moreover, while ELEC lacks the statutory authority to impose this remedy, the Court refers this matter to it to determine what, if any, regulatory action should be taken.

Failure to File Report

Petitioner contends that respondent failed to file the 48 Hour Report (annexed to the ELEC Manual as Form C-1), in violation of N.J.S.A. 19:44A-16(i), and thus his nomination must be voided, as required by N.J.S.A. 19:29-3-7. Respondent admits that he failed to file this report. He contends, however, that he was "confused" or mistaken over his need to disclose this contribution, because believing that these were his funds, he did not also believe he was required to do so, as the ELEC Manual does not require disclosure during this thirteen (13) day pre-election period of expenditures from a candidate's own funds. Respondent also contends that his conduct is excusable due to his age and campaign inexperience. The Court rejects these arguments.

Preliminarily, the Court notes that the purpose of the Campaign Contributions and Expenditure Reporting Act, N.J.S.A. 19:44A-1, et. seq. (the "Act") is unambiguous:

> It is hereby declared to be in the public interest and to be the policy of the State to limit political contributions and to require the reporting of all contributions received and expenditures made to aid or promote the nomination election or defeat of any candidate for public office or to aid or promote the passage or defeat of a public question in ay election **and to require the reporting of all contributions received, and expenditures made to provide political information on any candidate for public office**, or on any public question.

N.J.S.A. 19:44A-2 (emphasis added). Thus, the clear intent of the Act is to promote financial transparency of political campaigns.

It is also noteworthy that the Act, ELEC Regulations and Manual make abundantly clear the distinction between reporting "contributions" and

"expenditures". Specifically N.J.S.A. 19:44A-16 sets forth the reporting requirements during the period commencing thirteen days before the election and on election day, as follows:

> i. Each campaign treasurer of a candidate committee or joint candidates committee shall file written notice, with the commission of a contribution in excess of $500 received during the period between the 13th day prior to the election and the date of the election, and of an expenditure of money or other thing of value in excess of $800 made, incurred or authorized by the candidate committee, or joint candidates committee to support or defeat a candidate in an election, or to aid the passage or defeat of any public question, during the period between the 13th day prior to the election and the date of the election, provided that a candidate shall not be required to file written notice pursuant to this subsection of an expenditure made to support his or her own candidacy, or to support or defeat a candidate for the same office in an election.[1]
>
> * * *
>
> The notice of a contribution shall be filed in writing or by telegram within 48 hours of the receipt of the contribution and shall set forth the amount and date of the contribution, the name and mailing address of the contributor, and where the contributor is an individual, the occupation of the individual and the name and mailing address of the individual's employer. The notice of an expenditure shall be filed in writing or by telegram within 48 hours of making, incurring or authorization of the expenditure and shall set forth the name and mailing address of the person, firm or organization t whom or which the expenditure was paid and the amount and purpose of the expenditure. (emphasis added)

N.J.S.A. 19:44A-16.

Thus, the statute clearly requires reporting of all contributions in excess of $500 (now $1,200) and any expenditure in excess of $800 (now $1,200) during the

[1] The changes from $500 and $800 to $1200 are attributable to periodic adjustments by ELEC, as authorized by N.J.S.A. 19:44A-7.2.

period in question, unless it is an "expenditure made to support his or her own candidacy, or to support or defeat a candidate for the same office in an election". Id. (emphasis added)

It is important to note that neither respondent nor Mr. Lyon ever read the statute, which is the only legal resource where "contribution" and "expenditures" are even discussed in the same section. Had they read ELEC's Regulations, they would have readily observed the distinction between reporting "contributions" and "expenditures", as follows:

19:25-8.6 Contributions received immediately before an election

(a) A campaign treasurer of a candidate committee, or joint candidates committee, shall file a report (Form C-1) or other written notice of any contribution in excess of $1,200 or any aggregate contributions from a contributor, which total in excess of $1,200 received on or after the 13th day preceding the date of an election in which the candidate, or joint candidates, is or are seeking election, and received up to and including the date of the election, which report shall contain:;

1. The name of the recipient candidate committee, or joint candidates committee;
2. The date the contribution was received;
3. The amount of the contribution;
4. The name and mailing address of the contributor; and
5. If the contributor is an individual, the occupation of the individual and the name and mailing address of the individual's employer.

(b) The report or written notice described in (a) above shall be filed with the Commission within 48 hours of receipt of the contribution, and shall be signed by the campaign treasurer or a candidate. Use of electronic facsimile transmission (that is, fax) to file the report or written notice is permitted.

19:25-8.6A Expenditure made immediately before an election

(a) A campaign treasurer of a candidate committee, or joint candidates committee, shall file a report (Form E-1) or other written notice with the Commission of an expenditure of money or other thing of value in excess of $1,200 or aggregate expenditures that total in excess of $1,200 made, incurred or authorized by the candidate committee or joint candidates committee to support or defeat a candidate in an election, or to aid the passage or defeat of any public question, during the period of time between the 13th day prior to the election and the date of election.

(b) The report or written notice described in (a) above shall be signed by the campaign treasurer and filed with the Commission within 48 hours of the making, authorizing or incurring of the expenditure, or aggregate expenditures, and shall include the following:

1. The name of the candidate or joint candidates making the expenditure;
2. The name of the person, firm or organization to whom or which the expenditure was paid; and
3. The amount and purpose of the expenditure.

(c) Use of electronic facsimile transmission (that is, fax) to file the report or written notice described in (a) above is permitted.

(d) <u>There shall be no obligation to file the report or other written notice in (a) above if an expenditure has been made by a candidate to support his or her own candidacy</u> or by joint candidates to support their own candidacies, or to support or defeat a candidate for the same office in the same election. For the purposes of this subsection, the offices of member of the Senate and member of the General Assembly shall be deemed to be the same office in a legislative district; the offices of member of the board of chosen freeholders and county executive shall be deemed to be the same office in a county; and the offices of mayor and member of the municipal governing body shall be deemed to be the same office in a municipality (emphasis added).

While neither respondent nor his father testified that they read the Regulations, a review of the ELEC Manual which they claimed to have read could not be more clear in describing in plain language the reporting distinctions between "contributions" and "expenditures". Initially, the Manual lists a detailed Table of Contents at pages 2-4, which includes: **"Contributions . . . 14."** "Paragraph T" in the Table of Contents reads as follows: "Reporting of a Contribution of more that $1,200 from One Source Received Just Before the Election or on Election Day . . . 23."

Page 23 of the Manual thus provides:

> **T. Reporting of a Contribution of more that $1,200 from One Source Received Just Before the Election or on Election Day**
> If a contribution in excess of $1,200 in the aggregate from one source is received the 13th day before the election up to and including the day of the election, the contributor's name and address, the date of receipt, and amount of the contribution, along with the name of the recipient committee, must be reported in writing within 48 hours of its receipt (48 hour contribution notice). If the contributor is an individual, report the contributor's occupation and the name and address of his or her employer. To report the contribution use Form C-1 or other written means. The candidate or treasurer must sign the report.
>
> Note that a 48 hour contribution notice may be faxed to the Commission. The contributions reported on the 48-hour contribution notice are reportable again on the 20 day post-election report. The following fax numbers may be used to report 48-hour contribution notices:
>
> (609) 292-7662 (609) 292-7664
> (609) 292-4301 (609) 292-4416

Thus, the Manual clearly provides without exception that all contributions, irrespective of source, must be reported so long as they exceed $1,200 from any one source. Notably, the ELEC Regulations – which candidates and treasurers are

encouraged at Page 1 of the Manual to obtain -- track the Statute in this regard and provide further identical guidance. See N.J.A.C. 19:25-8.6.

The Manual's discussion regarding **expenditures** over $1,200 within the period in question is contained in a separate section in the Table of Contents captioned "EXPENDITURES", and starts at page 27. A reader is directed to sub-paragraph "F" at page 28 for information concerning "making an expenditure of more than $1200 just before the election or on election day."

> F. **Making an expenditure of More than $1,200 Just Before the Election or on Election Day**
>
> If a candidate or committee makes, incurs, or authorizes an expenditure to support or defeat a candidate or public question, in excess of $1,200, starting with the 13th day before the election up to and including the day of the election, a "48 hour expenditure notice" must be filed. Note that a candidate is **not** required to report a 48-hour expenditure notice if the expenditure is made to support his or her own candidacy, or to support or defeat a candidate for the same office within the same legislative district in an election, or to the same offices within the same political subdivision of this State in an election (the offices of mayor and member or the municipal governing body, or the offices of county executive in a county and members of the board of chosen freeholders in the same county).
>
> A 48-hour expenditure notice must be reported in writing, or on Form E-1, "Supplemental Expenditure Notice" within 48 hours of the making, incurring, or authorizing of the expenditure. The notice must contain the name and mailing address of the person, firm, or organization to whom or which the expenditure was paid and the amount and purpose of the expenditure. The candidate or treasurer must sign the notice.
>
> A 48-hour expenditure notice can be faxed to the Commission. If a candidate or committee is filing Form R-1, the 20-day post-election report must contain all expenditures reported on the 48-hour expenditure notice. (emphasis added)

These two distinct sections dealing with "contributions" and "expenditures" are written in straightforward lay terms and are separated by five (5) pages. Thus, the Court rejects as implausible respondent's testimony concerning his "confusion" or mistake i.e., that he believed he did not have to report his own contribution.

The issue then becomes the remedy for this conduct. N.J.S.A. 19:29-3-7 provides as follows:

> 19:3-7. **Office forfeited for failure to file oath or statement, etc.** If any candidate for nomination for or election to any public office or party position, or his campaign manager, shall fail to file any statement or oath required by this Title to be filed, at the time, place and in the manner required by this Title, and duly verified as herein required, or shall file any false statement, the nomination or election of such candidate, if nominated or elected at the primary or other election concerning which such statement shall have been filed, shall be null and void. (emphasis added)

N.J.S.A. 19:29-3-7. "The use of the words 'candidate' or 'campaign manager' indicates the nature of the required statement or oath referred to therein, to wit; . . . R.S. 19:44-1, verified statement of campaign manager setting forth itemized statement of all contributions received . . ." Fiscella v. Nulton, 22 N.J.Super. 376, 377-78 (App.Div. 1952).

There are certain circumstances, which if present, save such nomination from the mandatory forfeiture required by N.J.S.A. 19:29-3-7. These circumstances are set forth in N.J.S.A. 19:29-3-9, as follows:

> **19:3-9. Circumstances under which office not void.** When upon the trial of any action or proceedings instituted under this Title for the purpose of securing a determination that any nomination for or election to any public office or party position is null and void, it shall appear from the evidence that the offenses complained of was not committed by the candidate, or with his knowledge or consent, to prevent the commission of any such offense, or that the offenses complained of were trivial or unimportant, and that in all respects his candidacy and election were free from all illegal acts, or that any act

> or omission of any candidate complained of arose from accidental miscalculation or from some other reasonable cause of like nature, and in any case did not arise from any want of good faith, and under the circumstances it seems to the court or judge to be unjust that the candidate shall forfeit his nomination, position or office, then the nomination or election of such candidate shall not by reason of such offense complained of be void.

N.J.S.A. 19:29-3-9. There are only a few cases which discuss N.J.S.A. 3-7 and 3-9, and none are apposite. The Court shall thus interpret these sections by reference to their plain meaning. State v. Hoffman, 149 N.J. 564, 578 (1997). A parsing of this Section reflects the following individual circumstances:

> 1. the offense was not committed by the candidate or with his knowledge or consent; or
> 2. the offense complained of was trivial or unimportant, and that in all respects his candidacy and election were free from all illegal acts; or
> 3. that any act or omission of any candidate complained of arose from accidental miscalculation or from some other reasonable cause of like nature and in any case did not arise from any want of good faith, and under the circumstances it seems to the court or judge to be unjust that the candidate shall forfeit his nomination.

The first circumstance is clearly inapplicable, as respondent, not his father, undertook the responsibility of filing the ELEC forms. While the second circumstance has not been asserted by respondent, it cannot fairly be argued that this Report, under these circumstances, was "trivial or unimportant". Aside from the fact that it is required by Statute and ELEC Regulation and clearly echoed in the Manual, the nature of this omission was most significant. The $16,000 contribution equaled seventy-nine percent (79%) of all receipts for respondent's campaign. This last infusion was a transformative event in respondent's campaign, as it allowed him to reach a far broader audience, i.e. 25,000 households, than he was previously able to accomplish by door-to-door campaigning and attendance at

local candidate events. Moreover, petitioner's testimony revealed how significantly this failure to file impacted her campaign strategy. Finally, given the excessive contribution from respondent's father, it cannot be said that "his candidacy and election were free from all illegal acts."

The third circumstance, "accidental miscalculation or for some other reasonable cause of like nature," is also inapplicable. A "miscalculation" is defined as a "mistake in calculation" and is synonymous with "miscount". Webster's Seventh New Collegiate Dictionary, 541 (G&C Merriam Company 1967 ed.). Thus, an example of an accidental miscalculation would be a mistake in tallying contributions on an ELEC Form. It cannot be said, however, that respondent's conduct in reading the Manual once in January 2011, five months before the first Form R-1 was due, was an "accidental miscalculation" or "other reasonable cause of like nature". Nor, under these circumstances does it reflect a "good faith" effort to comply with the Election Laws. Indeed, respondent knew that the responsibility to comply with the ELEC's filing requirements was his, as opposed to his father's. His failure to familiarize himself in this regard is unjustifiable.

In essence, respondent is asking the Court to condone the failure of a candidate to be familiar with the clear mandates of Election Laws and Regulations, even in the face of the ELEC Manual, which in a straight -forward manner sets forth a candidate's responsibilities to file such a Report. The Court is simply unwilling to do so. To ignore this omission would create an unjustifiable excuse from the statutes and regulations which require transparency in the reporting of campaign contributions. Ignorance of the law simply cannot excuse compliance with this clear statutory and regulatory scheme. See Kalogeras v. 239 Broad Ave. LLC, 202 N.J. 349, 366-67 (2010) ("ignorance of the law, however, is not a sufficient basis to excuse compliance with the requirements of an established rule

of law.") (citing to Circle Chevrolet Co. v. Girodano, Halleran & Ciesla, 142 N.J. 280, 302-03 (1995)); In the Matter of William G. Kovalsky, 195 N.J.Super. 91, 98 (App.Div. 1984) ("to permit . . . an ignorance of the law to be alleged as the foundation of rights or an excuse of omission of duty, or for privation of rights of others, would lead to the most serious mischief, and would disturb the entire fabric of social order.") (citing to Magniac v. Thompson, 56 US (15 How.) 281, 300 (1854). Moreover, while the Court acknowledges respondent's young age and campaign inexperience, these are not mitigating factors recognized by the Legislature when it enacted N.J.S.A. 19:29-3-9.

Moreover, respondent's argument in his brief at pages 10-11 – that he could have "willfully desired to skirt his responsibilities ... [by] inject[ing] the complained of money into his campaign at a point closer to the eve of the election" – ignores the fact that these funds were deposited at a time when they would benefit respondent's campaign. Moreover, there is no record evidence to suggest that respondent acted with fraudulent intent. If there was proof to that effect, respondent could face criminal charges under N.J.S.A. 19:44A-21. The fact remains, however, that his failure to file the 48-hour Report materially impacted petitioner's campaign strategy to her significant disadvantage. Respondent's conduct here is sufficient "to warrant the relief sought." Wene v. Meyner, 13 N.J. 185, 197 (1958).

For these reasons, the Court finds it just under these circumstances to declare that respondent's nomination is null and void. See In re Keogh-Dwyer, 106 N.J.Super. 567, 573 (Law Div.1969) aff'd o.b. In re Petition of Walter C. Keogh-Dwyer, 54 N.J. 523(1969). ("the legislature recognized the harsh result in the voiding of an election and intended it to eventuate only in the case of an 'offense' proscribed and not justified"). Consequently, a "vacancy" for freeholder candidate has now been created. See N.J.S.A. 19:29-3-25. Because this vacancy has

occurred "not later than the 51st day before the general election", the candidate shall be "selected by the county committee". See N.J.S.A. 19:13-20(c). Such selection shall occur within three (3) days of this Judgment Order to allow the Morris County Clerk to comply with her statutory mandates.