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ROBERT FUHRMAN, MATTHEW LINDENBERG, CONSTANCE LOSCALZO, DEBORAH STEINBAUM, AND SIOBAHN CRANN WINOGRAD,

Plaintiffs/Respondents,

v.

HEATHER MAILANDER, IN HER OFFICIAL CAPCITY AS THE VILLAGE CLER FOR THE VILLAGE OF RIDGEWOOD, AND THE COUNTY CLERK FOR BERGEN COUNTY,

Defendants/Appellants.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO.: A-000080-20-T3

Civil Action

On Appeal From:
Bergen County, Law Division

Sat Below:
Hon. Estela M. De La Cruz, J.S.C.

BRIEF OF PLAINTIFFS/RESPONDENTS, ROBERT FUHRMAN, MATTHEW LINDENBERG, CONSTANCE LOSCALZO, DEBORAH STEINBAUM, AND SIOBHAN CRANN WINOGRAD, IN OPPOSITION TO THE APPEAL OF THE SEPTEMBER 2, 2020 ORDER

On the Brief:
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PRELIMINARY STATEMENT

President Franklin D. Roosevelt once said that the "ultimate rulers of our democracy" are not our elected officials, "but the voters of this country." This lawsuit is a test of that theory.

In fact, this lawsuit is based upon a single, simple question: if a municipal clerk rejects an initiative petition presented by a group of concerned citizens for specific deficiencies, and if these deficiencies are corrected within the permitted time, can the municipal clerk reject the revised petition and refuse to provide a basis for that rejection? We believe, and the trial court held, that the answer is obviously no.

This appeal, however, presents a secondary question that is hopefully even more obvious than the first: can the municipal clerk wait until a lawsuit is filed to assert for the first time that there is a new, different basis for rejection based upon technicalities, and that such a technical violation of our elections laws warrants overturning the results of an election that has already occurred? Again, we believe the answer is obviously no.

It is perhaps the most fundamental precept of the election laws of the State of New Jersey that they must not "be construed so as to deprive voters of their franchise or so as to render an election void for technical reasons." N.J. Democratic Party, Inc. v. Samson, 175 N.J. 178, 186 (2002) (internal quotations omitted). Yet, that is, at its core, what Defendant/Appellant, Heather Mailander ("Appellant"), the Village Clerk of the Village of Ridgewood, is asking this Court to do. She is asking this Court to override the overwhelming will of the public that was made plain in the November 3, 2020 vote to pass the public question at issue

by a margin of 58.78% in favor and 41.21% against. This is an untenable position, both factually and legally, and should be soundly rejected.

COUNTERSTATEMENT OF FACTS

Plaintiffs/Respondents, Robert Fuhrman, Matthew Lindenberg, Constance Loscalzo, Deborah Steinbaum, and Siobhan Crann Winograd (collectively, "Respondents"), do not dispute Appellant's recitation of the Statement of Facts in this matter. However, to the extent that legal arguments are made (e.g., "On August 18, 2020, Mailander, via e-mail, advised the Respondents that the revised petition was also deficient; statutory authority required nothing further from Defendant to the Respondents as to any amplified explanation of any deficiency."), Respondents contest such arguments, as they form the basis of this appeal.

LEGAL ARGUMENT

POINT ONE

THIS APPEAL IS PRIMARILY BASED ON NEW (ALBEIT MERITLESS) ARGUMENTS THAT CANNOT BE CONSIDERED BY THIS COURT

A. Appellant's Argument as to Lack of Voter Choice Is New and Meritless

As a threshold matter, this Court should not consider any arguments that were not properly made before the trial court. See Correa v. Grossi, 458 N.J. Super. 571, 576 n.2 (App. Div. 2019) (citing Nieder v. Royal Indem. Ins., 62 N.J. 229, 234 (1973)). Appellant's first and seemingly primary argument, regarding the purported lack of voter choice as to the question placed on the ballot, Pb11, is among the arguments made that were not presented to the trial court and therefore may not be considered in the appeal at hand.

Moreover, there is a palpable sense of irony in Appellant's decision to make this appeal about "voter choice." First, again, it is a new

argument that Appellant is raising for the first time on this appeal. It constitutes the latest example of Appellant's refusal to honor her obligation to fulfill her duties as Village Clerk neutrally and continued effort to gin up some basis to thwart Respondents' Petition to allow Ridgewood voters to decide the issue for themselves. The latest of Appellant's continually changing reasons for rejection of the Petition was among the primary impetuses for this lawsuit in the first place.

Second, "voter choice" has been, from day one, Respondents' main argument for why the public question had to be placed on the ballot. Consolidation of elections from April and May to November has always been about increasing voter turnout—as well as saving taxpayer money—and therefore about giving voters more of a say in how their Village operates. It is bizarre to say the least for Appellant to now argue that placing a public question on the ballot—as opposed to keeping it off entirely, which Appellant sought to do—somehow diminishes voter choice. Indeed, if the Court grants this appeal, it will have the most profound possible impact on "voter choice" by denying the overwhelming will of the voters of Ridgewood by negating a public question that passed with nearly a 20% margin of victory.

Appellant's argument, at its most fundamental level, now comes down to the utterly illogical argument that by putting this public question on the ballot in the format in which it appeared (which by definition gives voters a choice), voters did not have **enough** of a choice. Of course, voters still did have a choice, even if it was not the one that Appellant now claims she wants. If they did not like all of the implications of the question, they simply could have voted it down. They did not, and, on the contrary, voted overwhelmingly to approve it. Voters chose to

consolidate the elections, and that choice should be respected. Indeed, even if all the various statutes were not adhered to in the strictest sense, the spirit of the law was still followed, with the end result being the voters expressing their will to consolidate elections.

In addition to the flawed logic underlying Appellant's new position, not a single authority cited by Appellant factually or legally supports this new argument that "two distinct questions" rather than one question had to be placed on the ballot here in order to comply with New Jersey law. And, again, that was not argued below, which is a recurring theme.

Nothing stated within Appellant's argument indicates that the trial court made an error as a matter of law and it is therefore insufficient to meet the standard to reverse the trial court's decision.

B. Appellant's Argument as to the Influence of Partisan Local Government Is New and Irrelevant

Appellant further makes the new argument that by moving the school board elections from April to November, the public question—which, it must be constantly remembered, was approved by the voters of Ridgewood—increases the "likelihood of partisan local government intermingling with school board affairs and removes a citizen's right to vote on the school budget." Pb17. Appellant therefore is objecting to the content of the Petition, an objection that is far outside the purview of the Village Clerk's "ministerial" purview. Again, this is another new argument that was not made before the trial court and therefore should not be considered in this appeal.

In any event, Appellant ignores a critical fact: that the Village of Ridgewood already has nonpartisan local government elections, and so it defies basic common sense to argue that moving a nonpartisan school board

election to coincide with a nonpartisan municipal election would increase "partisan local government intermingling." Appellant therefore has a fatal problem to an already irrelevant argument.

In addition, contrary to Appellant's unsupported factual arguments as to some potential "intermingling" effect, since the State Legislature established procedures for moving the date of a school district's annual school election from April to November in 2012, it has been the established public policy of the State of New Jersey to **encourage** the consolidation of elections. See L. 2011, c. 202 § 1. That is why only 13 of the 584 operating public school districts in the State still hold April school board elections, including Ridgewood.[1]

As such, Appellant's argument is not only new, but also incorrect and irrelevant and therefore should not hold any weight before this Court.

POINT TWO

APPELLANT FAILS TO ADDRESS THE DISPOSITIVE FACT THAT THE STATED REASONS FOR DEFICIENCY WERE CORRECTED

On July 24, 2020, Appellant notified Respondents that their Petition was allegedly deficient and stated, in pertinent part, "**Although you have sufficient signatures for the Initiative Petition, it fails to conform to N.J.S.A. 40:69A-186** in that the petition was not filed in the proper legal form for an Initiative Petition." Da005-6, ¶ 36 (emphasis added). After a back-and-forth e-mail exchange in which Respondents sought

1. See Fourteen Districts Hold Elections, NEW JERSEY SCHOOL BOARDS ASSOC., May 12, 2020, https://www.njsba.org/news-publications/school-board-notes/may-12-2020-vol-xliii-no-40/fourteen-districts-hold-elections/; see also Katie Sobko, Garfield to move school district elections to November, NORTHJERSEY.COM, June 14, 2021, https://www.northjersey.com/story/news/bergen/garfield/2020/06/14/garfield-nj-move-school-district-elections-november/3177881001/.

clarification as to what Appellant meant that it was not in the "proper legal form," Appellant's only response was "**Please read the statute cited**, which will guide you in the proper legal form for an Initiative Petition." Da006, ¶ 37 (emphasis added).

Appellant delayed presenting her certification to the Village Council, or otherwise specifying any further deficiencies in the Petition, until August 5, 2020. At that point, Appellant for the first time stated that there were now **two** deficiencies. First, Appellant stated that the Petition was deficient because it did not include the text of the ordinance proposed. This apparently was the deficiency Appellant vaguely stated on July 24. Second, Appellant stated that although Respondents had submitted the required verified certification of circulators, she was rejecting the Petition for a second deficiency: namely that the Petition was not personally circulated to each voter, but rather put on a website for citizens to sign. Da006-7, ¶ 42.

In response to these purported deficiencies, and in an attempt to cure them as entitled by law, Respondents put the full text of the proposed ordinance on the face of the Petition itself, rather than just including the question and interpretive statement and attaching the text of the ordinance as a separate letter, and circulated the Petition to individuals as opposed to on a website. Da007, ¶ 44.

Appellant has not, and cannot, deny any of these facts, all of which are evidenced in e-mail communications or which occurred in public meetings. Nor has she ever denied that the two purported deficiencies she stated in her certification were corrected. Instead, Appellant argued for the first time before the trial court that "although her August 5, 2020 certification of review has only two specified deficiencies, nowhere

does it state there are only two deficiencies," Da064, and that her first rejection letter actually involved "categories" of rejection, not specific reasons for rejections. Da064. She then pointed the trial court to N.J.S.A. 19:60:1-1 in arguing that the number of signatures was deficient as to the portion of the Petition that moved the School Board election. The trial court properly rejected this new argument.

As the trial court found, it was Appellant herself who informed the Petitioners of the number of signatures they would need for their Petition (as the State's form suggested was her duty) and "[t]he Petitioner's efforts exceeded the 410-signature benchmark that was quoted by the clerk as necessary for the Petition to be certified." Da146. As the trial court further noted, "[t]he Clerk's two categories describing the insufficiencies issued on August 5 are textually explicit, and do not indicate that there was an insufficient amount of signatures." Da147. Indeed, "[a]t no time was insufficiency of the number of qualified voters' signatures ever raised on either Petition," yet, "[h]ad that been a valid reason to reject the Petition based on the insufficiency of the signatures it should have been explicitly mentioned in the rejection of the first Petition." Da146-147.

"Additionally," the trial court properly held:

> [I]f it was the reason for rejection, as the Village Clerk now argues in opposition to this application, it should also have been cited in the deficiency email issued by the clerk on August 18, 2020. N.J.S.A. 40:69A-188 requires action from the municipal official if the petition be still insufficient that they 'shall file his certificate to that effect in this office and notify the Committee of the Petitioners of his findings and no further action shall be had on such insufficient petition.

Da147 (emphasis in original).

Yet, "[n]o certificate was filed, and no notification of the findings were communicated to the Petitioners." Id. Instead, the trial court found, "[i]t appears that the Clerk punted her obligation to notify of reasons for a second rejection to the Village Council." Id.

The trial court further noted that "[i]t also cannot be overlooked that the Clerk's referral to the Village Council was scheduled for September 2. Nothing in the statutes that guide the municipal clerk's duties regarding the Petition offer any such opportunity for her to defer giving the reasons of insufficiency to the Village Council. The statute explicitly requires that she notify the Committee of the Petitioners of her findings, which she did not do." Id.

Notwithstanding that the reasons for rejection that were given were specific, and not broad "categories," at no point prior to the initiation of this lawsuit was the insufficiency of the number of signatures ever indicated, even in passing, even in broad generalities, as a basis for rejection. Appellant's argument is no more than an effort to have her improper (and unlawful) gamesmanship sanctioned by this Court. Given Appellant's failure to dispute that the two cited bases for rejection were corrected, which is the core of the trial court's decision, this appeal should be denied in its entirety.

POINT THREE

APPELLANT HAS WAIVED HER RIGHT TO ARGUE THAT THE INITIATIVE PETITION DOES NOT MEET STATUTORY REQUIREMENTS

Appellant comes to this Court with unclean hands. The trial court found that Appellant violated Respondents' civil rights in improperly attempting to thwart the Petition. Da125. Appellant supplied Respondents with the number of signatures needed and now amazingly seeks to argue

that Respondents should be punished, and the vote overturned, because she gave them the wrong number and apparently then tried to keep that that secret from Respondents until the deadline for printing the ballots had passed. Only through Respondents' diligence in filing this lawsuit did this come to light. Through such conduct, Appellant has waived her right to argue that the Petition does not meet any statutory requirements and should be estopped from overriding the will of the electorate.

A. General Principles of Election Law Hold That the Overwhelming Will of the Public Should be Respected

In the State of New Jersey, courts must "start with the proposition that the legislative grant of the [petition] power 'should be liberally construed in order to encourage public participation in municipal affairs in the face of normal apathy and lethargy in such matters.'" Tumpson v. Farina, 240 N.J. Super. 346, 350-51 (App. Div. 1990) (quoting Narciso v. Worrick, 176 N.J. Super. 315, 319 (App. Div. 1980)); see also Margate Tavern Owners' Ass'n. v. Brown, 144 N.J. Super. 435, 441 (App. Div.), certif. denied, 72 N.J. 455 (1976); D'Ascensio v. Benjamin, 137 N.J. Super. 155, 163 (Ch. Div. 1975), aff'd, 142 N.J. Super. 52 (App. Div. 1976), certif. denied, 71 N.J. 526 (1976).

Courts are to bear in mind the fundamental purpose of our election laws. "Because the right to vote is the bedrock upon which the entire structure of our system of government rests, our jurisprudence is steadfastly committed to the principle that election laws must be liberally construed to effectuate the overriding public policy in favor of the enfranchisement of voters." Correa, supra, at 580 (citing Afran v. Cty. of Somerset, 244 N.J. Super. 229, 232 (App. Div. 1990)).

On November 3, 2020, voters from the Village of Ridgewood turned out in record numbers and overwhelmingly voted in favor of the municipal public question that is at issue in this case. The question, regarding consolidation of elections, passed by a nearly 20% margin of victory, with 58.78% in favor and 41.21% against, of which this Court may take judicial notice. Appellant asks the Court to override and nullify that vote and discard the will of the people based on technicalities that, as described *infra*, are irrelevant in the circumstances at bar.

B. Appellant Is Estopped from Objecting to Statutory Incompliance

Appellant cites to N.J.S.A. 19:60-1.1 to argue that, at least as far as the consolidation of school board elections are concerned,[2] Respondents failed to properly submit the Petition to the clerk of the school board and failed to obtain the required number of signatures under that statute. As the number of signatures required by N.J.S.A. 19:60-1.1 is higher than those required by N.J.S.A. 40:69A-184, Appellant argues that the trial court's decision must be overturned.

However, even if Appellant's now-stated reason for rejection is correct, Appellant is skipping a step... indeed, the most important one: whether or not Appellant properly rejected the Petition at the time. While Appellant may believe that she has found a reason for rejection after-the-fact, that is not what the trial court was asked to consider. Rather, the trial court was tasked with determining whether, by the reasons of rejection that Appellant provided to Respondents when she

2. Appellant does not argue that Respondents failed to comply with the relevant sections of N.J.S.A. 40:69A-184, et seq. as they relate to the consolidation of municipal elections, merely that Respondents failed to comply as to the consolidation of school board elections.

rejected their Petition, Respondents had properly corrected said deficiencies, and if Appellant failed to comply with her statutory obligations and therefore violated Respondents' civil rights.

Appellant skips over the fact that she is obligated, when rejecting an initiative petition, to provide clear reasons for rejection. See N.J.S.A. 40:69A-187. Appellant argues that she cannot give legal advice to Respondents. That is undisputed. However, Appellant does admit, multiple times, that the onus is on her, and not on Respondents, to determine and provide the correct number of signatures required.

Specifically:

1. The Clerk "was required to confirm the required number of signatures to deem the Petition sufficient." Pb19.
2. "The Faulkner Act and case law suggest that it is necessary for the Clerk to investigate and determine the number of voters required to pass an initiative." Pb19.
3. "A Clerk is required to accept a Petition for filing, and then determine these thresholds to determine if there is any deficiency." Pb20.

Appellant thus simultaneously acknowledges her responsibility to: (1) provide Respondents with the correct number of signatures required; (2) accept a petition for filing; and (3) determine whether the Respondents submitted sufficient signatures to meet the requirements. Ordinarily, this might not be an issue. And in fact, it was not an issue until this lawsuit was filed. Appellant was fully aware of the type of Petition that Respondents was seeking to file, and in fact there were multiple meetings and e-mails regarding its content. Appellant thereafter provided Respondents with the number of signatures required under

N.J.S.A. 40:69-41. After Respondents submitted the Petition the first time, Appellant reviewed it, as required by law, and explicitly stated that there were enough signatures and that it was not the basis for rejection. Da005, ¶ 36; Da006, ¶ 42. Appellant never said that Respondents needed to have more signatures to comply with N.J.S.A. 19:60-1.1. Id. Appellant never said that Respondents could not submit the petition to her, that it had to go to the clerk for the school board. Id. Indeed, Appellant specifically indicated in her notification of petition deficiency that it failed to conform with "N.J.S.A. 40:69A-186 in that the petition was not filed in the proper legal form for an Initiative Petition." Da005, ¶ 36. When Respondents inquired further, Appellant stated, "Please read the statute cited [N.J.S.A. 40:69A-186], which will guide you in the proper legal form for an Initiative Petition." Da006, ¶ 38. Appellant's citation to N.J.S.A. 19:60-1.1, which came up for the first time after the lawsuit was filed, is even more surprising **given that she specifically told Respondents not to file their petition with the Board of Education** during their February 2020 initial meeting, as they would have to do if they sought to comply with N.J.S.A. 19:60-1.1.[3] Da003, ¶ 18.

3. Notably, and as stated to the trial court, Da098, not only did Appellant never state that the Board of Education had oversight over this type of petition, but neither did Dan Fishbein, the current Superintendent of the BOE, Sheila Brogan, former President of the BOE, Jeannie Smith Wilson, former President of the BOE, Charles Reilly, former President of the BOE, Bob Hutton, former President of the BOE, Vince Loncto, former President of the BOE, Muhammed Mahmoud, former member of the BOE, Mike Yannone, President of the Ridgewood Education Association, Tom Gorman, Principal of Ridgewood High School, nor Matt Murphy, Superintendent of the Ramsay BOE. All of these individuals personally signed Respondents' Petition without objection or comment. Nor, indeed, was it ever mentioned by any member of the Village

Appellant states that she should not be required to cite to the specific statute that she utilizes as a basis of rejection. Even if that were the case, it was her obligation to reject the Petition because of the Respondents' failure to acquire the necessary signatures under N.J.S.A. 19:60-1.1. Had she done that, Respondents would have had an opportunity to cure the deficiency by acquiring more signatures and submitting it to the Board of Education. **By failing to cite to the correct statute, or even rejecting the Petition because it had insufficient signatures, Appellant leaves Respondents with no recourse or opportunity to correct the deficiencies that the Legislature clearly intended Respondents to have**, and Appellant has therefore waived her right to now complain that a different statute applies that might bar the Petition.

It cannot be stressed enough that the rejection of an initiative petition is not meant to be a guessing game. It is not Respondents' obligation to divine what Appellant "really meant," especially when Appellant knows that Respondents is not a lawyer. **If Appellant believes there is a valid basis for rejecting an initiative petition, it is her obligation to inform the Respondents of that specific basis so that Respondents may have an opportunity to cure the deficiency, as permitted by law.** That is why, by law, Appellant is given 20 days to review the petition and determine all such deficiencies and why Respondents is given an opportunity to cure the deficiencies listed. See N.J.S.A. 40:69A-187 and -188. Appellant's failure to do so here should result in her being estopped from coming up with a new basis for rejection after the fact, when it is too late for Respondents to do anything about it. **Critically,**

Council or the current Board of Education when Respondents sent multiple e-mails to all those individuals explaining what they were hoping to do. Id.

Appellants, upon whom the burden is placed for overturning the trial court's decision, do not cite any law or provide any basis whatsoever for overturning an election after the fact because of what they describe as "wrongful advice by the municipal clerk." To do so would penalize both Respondents and the voters when the issue was entirely Appellant's fault.

C. Public Policy Demands That the Appeal Be Denied

If this Court were to overturn the trial court's decision, it would have the practical effect of disenfranchising 7,582 voters, nearly 60% of the voting electorate in one of the highest turnout elections in history. **As our Supreme Court has stated, "[e]lection laws should not be construed so as to deprive voters of their franchise or so as to render an election void for technical reasons."** N.J. Democratic Party, Inc. v. Samson, 175 N.J. 178, 186 (2002) (quoting Kilmurray v. Gilfert, 10 N.J. 435, 440 (1952)) (emphasis added). As such, Title 19, and the requirements thereunder, along with relevant sections of the Faulkner Act that govern elections, should not be subject to strict constructionist arguments.

1. The Submission of the Petition with the Required Number of Signatures and to the Board of Education is Now Moot

N.J.S.A. 19:60-1.1 states that those seeking to move the date of a school board election from April to November obtain signatures and submit the petition to the clerk of the school board, as opposed to the clerk of the municipality (which is required by N.J.S.A. 40:69A-187 for changing the date of a municipal election). In this instance, the number of signatures required is irrelevant, as the public question passed overwhelmingly. **There is no higher threshold implemented by N.J.S.A. 19:60-1.1 as opposed to N.J.S.A. 40:69A-187 in terms of votes required to pass the question; it is not as though one requires a supermajority**

as opposed to a majority of the vote. Petition signature requirements are set to ensure that measures have sufficient support to be placed on the ballot, so the public's time is not wasted with measures that have no chance of passing. Since the question here passed with a nearly 20% margin of victory, with (several thousand) Ridgewood voters voting in favor, the public purpose in requiring a minimum number of signatures has been satisfied.

Moreover, the public purpose in submitting the petition to the to the clerk of the school board instead of the municipal clerk is also satisfied in this case. The purpose of this requirement is simply not applicable to Ridgewood. Of the 584 operating public school districts within the State, approximately 66 are regional and/or encompass multiple municipalities.[4] In those districts, if the petition were turned in to a municipal clerk, who then approved the petition and submitted it to the county clerk to be included on the ballot, only that one municipality would be able to vote on the public question. It would be unfair for one municipality to have the sole ability to vote on such a question on behalf of all such municipalities within the school district. That is why N.J.S.A. 19:60-1.1 states that such a petition goes to the school board clerk instead of the municipal clerk.

The Ridgewood Public School District, however, only encompasses the Village of Ridgewood. If all the different municipalities in a regional school district comprise a Venn Diagram, the overlap would be the regional school district itself. Here, the Venn Diagram is just one circle; the Village of Ridgewood is the Ridgewood Public School District, and the

4. The New Jersey Department of Education offers a directory of public school districts within the State. See https://homeroom5.doe.state.nj.us/directory/.

Ridgewood Public School District is the Village of Ridgewood. As a practical matter, there is no difference (for purposes of this statute), because it is the same universe of residents. As such, this distinction is simply a matter of form over substance in this instance and the parties are in the same place as they would have been had the Petition been submitted in accordance with N.J.S.A. 19:60-1.1.

2. Appellant Seeks to Place an Impossible Burden on Those Seeking to Invoke Their Right of the Initiative Petition

Appellant has worked as the Village Clerk for more than 30 years.[5] Additionally, Appellant consulted with (or at least, had the opportunity to consult with) the Village Attorney prior to notifying Respondents of the alleged deficiencies in their Petition. Da005, ¶ 30-31; Da146. Yet Appellant did not identify any of the purported legal deficiencies to the Respondents that she now claims should serve to overturn a public vote. In doing so, Appellant now asks that Respondents be held to a higher standard in terms of fidelity to the law than the one to which she asks to be held. If Appellant believed, at the time, that Respondents had violated N.J.S.A. 19:60-1.1, she had an obligation to inform them of that when she rejected the Petition on August 5, 2020. **In short, it cannot possibly be the law that it is a regular citizen's responsibility to know the law better than an experienced municipal clerk who has consulted with a lawyer experienced in municipal law.**

As a matter of public policy, this Court should not put the burden on regular citizens, who may or may not have the resources to hire a lawyer but regardless still hold the sacred right of the initiative petition,

5. See Daniel Hubbard, Longtime Clerk Appointed Ridgewood Manager, PATCH, March 3, 2017, https://patch.com/new-jersey/ridgewood/longtime-clerk-appointed-ridgewood-manager.

to ensure compliance of the law when the individual statutorily tasked with such compliance abdicates that responsibility. It is the municipal clerk's job, as the gatekeeper, to provide the reason for rejection. We cannot allow, as a matter of public policy, to allow a municipal clerk to provide one basis for rejection, and when it is cured, to change the reason for rejection, or as is the case here, refuse to provide a basis for rejection on the second round of submission.

Appellant implicitly submits that, by law, the municipal clerk is entitled to stall out the clock, refuse to provide a reason for rejection, then change the reason for rejection, and even after the question passes, try to invalidate the vote of the electorate. By extending the logic of Appellant's actions in this case, it is easy to envision a scenario where a municipal clerk rejects a petition for some broad reason that encompasses all possible deficiencies and refuses to provide any clarity so the petition can never be fixed, all under the guise of "not giving any legal advice," as Appellant appears to seek. That is not a scenario this Court should endorse, and so this appeal should and must be rejected.

CONCLUSION

It is the absolute purpose of both Title 19 and the Faulkner Act to ensure that the will of the voters are heard. That is what happened here by an overwhelming majority of Ridgewood voters. Appellants do not address the fact that to reverse the trial court's decision would be to nullify the will of the voters based on ballot technicalities, a violation of one of the most fundamental precepts of our election laws. Effectively every court in not just the State of New Jersey but, indeed, the entire country, has repeatedly held that to be unacceptable. Most recently, the Third Circuit Court of Appeals stated that, "Ballots, not briefs, decide

elections." Donald J. Trump for President, Inc. v. Sec'y Pa., No. 20-3371, 2020 U.S. App. LEXIS 37346, at *29 (3d Cir. Nov. 27, 2020). In the final analysis, that is the standard that should govern this case, one which Appellant fails to overcome.

The voters of the Village of Ridgewood have spoken in a decisive manner. Respondents respectfully request that this Court honor that decision, the most sacred under our system of government, by rejecting the appeal in its entirety.

Respectfully submitted,
JARDIM, MEISNER & SUSSER, P.C.

Dated: January 18, 2021

/s/ Scott D. Salmon, Esq.
Scott D. Salmon, Esq.