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**REPLY TO FREEHOLD**

December 9, 2020

Via eCourts

Hon. Linda Grasso Jones, J.S.C.  
Superior Court of New Jersey  
Monmouth County Superior Court  
71 Monument Park  
Freehold, NJ 07728

*Re: De Germeaux v. Evelyn Malsbury-O'Donnell, et. al.*  
*Docket No. MON-L-3758-20*

Dear Judge Grasso Jones:

We represent Respondent Evelyn Malsbury-O'Donnell in the above referenced recount petition filed by the unsuccessful candidate in the 2020 General Election for the office of Township Committee in the Township of Howell (the "Howell Election"), Andre De Germeaux ("Petitioner"). We wish to make the Court aware of a troubling event which occurred on December 8, 2020 in connection with this recount.

By way of background, the Monmouth County Board of Elections consists of three Commissioners affiliated with the Republican Party and three Commissioners affiliated with the Democratic Party. During the recount process, both the Petitioner and Respondent had their respective representatives present to observe the recount process at all times, as they are permitted to do by law.

Pursuant to the Court's December 2, 2020 Order, this recount commenced on the morning of December 7, 2020 and recommenced on the morning of December 8<sup>th</sup> and continued through approximately 4:15 pm, at which point the Board of Elections determined that all of the approximately 30,000 ballots had been counted. It is our understanding that approximately 99 adjudications took place during the recount process,

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meaning that the Commissioners decided whether the votes contained on these 99 ballots would count or not.

At approximately 4:30 on December 8th, the Board of Elections concluded business for the day and the parties' observers and the Commissions left the building, with the exception of Commissioner Alan Roth, Esq., who is a member of the same political party as the Petitioner. We understand that the ballots were then placed in boxes with a tally sheet for each box placed at the top, which reflected the tally of the ballots *contained in that box*. The Board of Elections was supposed to reconvene today, December 9<sup>th</sup>, at 9:30 am to perform a final tally of all ballots and finalize the recount. It is my understanding that this process is completed by adding the numbers from each tally sheet in each box to obtain the final count.

This morning, my office discovered for the first time that, after the Board of Elections concluded business and everyone left the building on the night of December 8<sup>th</sup>, Commissioner Roth and Board of Elections Chief Clerk Tracee Johnson stayed behind and proceeded to provide themselves with access to the ballots and commenced performing a tally of the ballots from each box. This was done outside the presence of and without notice to the Petitioner or the Respondent or the other Commissioners on the Board of Elections. We have no idea what occurred during this secret tally, only that Mr. Roth and Ms. Johnson were the only people present and that no one else had the opportunity to be there. This chain of events is confusing since the Board of Elections was not to tally the votes until the morning of December 9<sup>th</sup>, at which point the parties and their legal representatives would have been present to observe the process. It is also confusing since Commissioner Roth and the Petitioner are members of the same political party. While we understand that Chief Clerk Johnson is a member of the opposing political party to the Petitioner, she is not a Commissioner and is not the authorized representative of a political party.

This morning, we attempted to contact Your Honor's chambers by telephone from the Board of Elections Office to address this emergent election-related issue, at which point we learned that Your Honor is on vacation. As such, we then contacted Judge Oxley's chambers to address same given that the recount process is not yet complete. Soon thereafter, the Board of Elections concluded business for the day and the final tally was not performed.

We strenuously object to the conduct of the Commissioner and Chief Clerk described in this letter. As the saying goes, the appearance of an impropriety is an impropriety. Ostensibly, the Petitioner filed this case out of a desire to change the result of the Howell Election, which he lost. The fact that a Commissioner from the same political party as the Petitioner can access the ballots at night and perform a tally without oversight or notice to the parties or other Commissioners is completely inappropriate and unnecessarily casts doubt on this process. Our client is the duly-certified winner of the

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Howell Election and has an absolute and unassailable right for this recount to be conducted within the confines of the law and free of the taint of impropriety, as do the people of Howell who reelected her. While we do not seek relief from the Court at this time, we wish to make the Court aware of this irregularity to the extent that it becomes relevant at a future time and certainly reserve any and all rights to take the appropriate action.

It is our understanding that the Board of Elections now intends to recommence the recount and perform the tally tomorrow at 10:00 am. We intend to be present at that time and look forward to a speedy and error-free conclusion to this process.

We thank the Court for its courtesies in this regard and are available at the Court's convenience to address these or any other issues that Your Honor wishes to discuss.

Respectfully submitted,

*/s/ Jason N. Sena*

Jason N. Sena, Esq.

cc: Brian Trelese, Esq. (via e-mail)  
Dominic Giova, Esq. (via e-mail)  
Erik Anderson, Esq. (via e-mail)  
Hon. Evelyn Malsbury-O'Donnell (via e-mail)