

knowledge except as specifically stated otherwise. This affidavit is to inform the court of relevant facts related to the Orders to Show Cause signed by the court and noncompliance therewith.

2. On October 26, 2022 at 10:04 AM, Justice John C. Egan, Jr. issued a stay order, providing:

ORDERED that, pending the hearing and determination of this motion, said (1) decision and order and (2) preservation order are STAYED in its entirety; and plaintiffs are prohibited from any and all actions seeking to enforce said decision and order and preservation order.

3. Unfortunately, the State Board of Elections was not able to issue uniform guidance to county boards of elections to continue the statutory canvassing process. I was informed by Todd Valentine, Republican Co-Executive Director, that he did not agree that the current stay required county boards of elections to resume canvassing activities.

4. Co-Executive Director Kristen Zebrowski Stavisky issued the attached guidance (Exhibit "A") to all county boards of elections in her singular official capacity.

5. Upon information and belief after the aforementioned stay went into effect, Mr. Valentine relayed to Republican county commissioners the advice, emanating from some counsel(s) for petitioners below, that they should not resume the canvassing process for various vaporous reasons.

6. As a result, as of this morning, upon information and belief, approximately eighteen county Republican commissioners had indicated explicitly they would not be resuming the statutory canvassing procedures (i.e. reviewing ballots every four days and scanning those that have been opened tomorrow) until this appeal is fully determined. Approximately seventeen other Republican county commissioners have not answered the inquiries of their Democratic counterparts and are presumed to not be willing to resume their statutory canvassing duties.


7. In addition to the troubling evasion of the operative stay which restores the present statutory status quo, these unfolding events further demonstrate the chaos that the lower court decision has already injected into the orderly administration of the mechanics of our democracy.

8. At approximately 1:41 pm today, the Attorney General issued guidance to county boards of elections advising them that they must "immediately resume their duties pursuant to the Election Law." (Exhibit "B"). I am hopeful they will heed this unfortunately necessary communication.

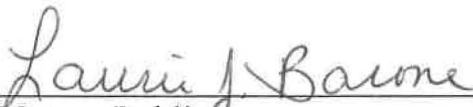
9. As of 2:00 pm, I am now advised by Co-Executive Director Valentine that Republicans will scan ballots tomorrow, and resume canvassing activities including opening, if the court's stay is not amended today.

Dated:

10/27/2022


BRIAN L. QUAIL

Sworn to before me this 27th
day of October 2022


Notary Public

LAURIE J BARONE
Notary Public - State of New York
No. 01BA6398086
Qualified in Schenectady County
My Commission Expires Sept. 23, 2023

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EXHIBIT “A”

RETRIEVED FROM DEMOCRACYDOCKET.COM

From: Zebrowski.Stavisky, Kristen (ELECTIONS) <Kristen.Zebrowski.Stavisky@elections.ny.gov>
Sent: Wednesday, October 26, 2022 1:55 PM
To: Zebrowski.Stavisky, Kristen (ELECTIONS) <Kristen.Zebrowski.Stavisky@elections.ny.gov>; Valentine, Todd (ELECTIONS) <Todd.Valentine@elections.ny.gov>
Cc: Connor, Brian (ELECTIONS) <Brian.Connor@elections.ny.gov>; Quail, Brian (ELECTIONS) <Brian.Quail@elections.ny.gov>; Galvin, Kimberly (ELECTIONS) <Kimberly.Galvin@elections.ny.gov>; McCann, William (ELECTIONS) <William.McCann@elections.ny.gov>; Cartagena, Nicholas (ELECTIONS) <Nicholas.Cartagena@elections.ny.gov>; Connolly, Thomas (ELECTIONS) <Thomas.Connolly@elections.ny.gov>; Lovullo, Brendan (ELECTIONS) <Brendan.Lovullo@elections.ny.gov>; Couser, Cheryl (ELECTIONS) <Cheryl.Couser@elections.ny.gov>; Conklin, John (ELECTIONS) <John.Conklin@elections.ny.gov>; Spear, Ben (ELECTIONS) <Ben.Spear@elections.ny.gov>; Wilson, Jennifer (ELECTIONS) <Jennifer.Wilson@elections.ny.gov>; Haber, Michael (ELECTIONS) <Michael.Haber@elections.ny.gov>; Suggs, Aaron (ELECTIONS) <Aaron.Suggs@elections.ny.gov>; Murphy, Kevin G (ELECTIONS) <Kevin.Murphy@elections.ny.gov>; Tarpinian, Anne (ELECTIONS) <Anne.Tarpinian@elections.ny.gov>
Subject: Stay: Absentee Canvass Case

Dear Commissioners:

I am writing to you in my own official capacity to ensure we are all aware of the attached Order of the Appellate Division issued today staying the application "in its entirety" of the orders of Saratoga County Supreme Court declaring the canvassing procedures of Election Law 9-209 unconstitutional AND the subsequent "preservation order". The Order of the Appellate Division provides:

ORDERED that, pending the hearing and determination of this motion, said (1) decision and order and (2) preservation order are STAYED in its entirety; and plaintiffs are prohibited from any and all actions seeking to enforce said decision and order and preservation order...

There is no ambiguity as to the application of this Order. Election Law § 9-209 is in effect. This Order applies to our implementation of Election Law 9-209 by county boards of elections, and we must continue / resume the canvassing process.

We must be mindful that Election Law 17-128 provides that:

"A public officer or employee who knowingly and wilfully omits, refuses or neglects to perform any act required of him by this chapter or who knowingly and wilfully refuses to permit the doing of any act authorized by this chapter or who knowingly and wilfully hinders or delays or attempts to hinder or delay the performance of such act is, if not otherwise provided by law, guilty of a felony."

In addition, our awareness of a Court Order binds us to its provisions even if we are not a party to the proceeding in which the Order is issued. Our failure to follow an Order would thus subject us to contempt sanctions. See *Vastwin*

Invs., Ltd. v. Aquarius Media Corp., 295 A.D.2d 216, 217, 743 N.Y.S.2d 492, 493 (2002) ("Nonparty Levene was properly found individually liable based upon his undisputed knowledge of the 1996 judgment and the subsequent court orders and his active participation in assisting the corporate respondent in evading them."); see e.g. *Oak Beach Inn v Babylon Beacon*, 62 NY 2d 158 (1984).

In sum, we are obligated to follow statutorily and judicially prescribed processes, and I advise all of us, in my official capacity, to do so.

Best,
Kristen

Kristen Zebrowski Stavisky
Co-Executive Director

New York State Board of Elections
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Albany, NY 12207-2729

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EXHIBIT “B”

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STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
CIVIL RIGHTS BUREAU

October 27, 2022

Dear Colleague:

The Office of the New York Attorney General ("OAG") writes to clarify the obligations of local Boards of Elections ("BOEs") to canvass absentee ballots pending the litigation captioned *Amedure v. New York*, Index No. 2022-2145 (N.Y. Sup. Ct. 2022) (trial court); *Amedure v. New York*, Case No. 2022-cv-1955 (N.Y. App. Div. 2022) (appellate proceedings).

Your obligation to canvass absentee ballots pursuant to the process set forth in New York Election Law § 9-209 remains operative until further order of the court. While the lower court in *Amedure* ruled that the canvassing procedures in section 9-209 are unconstitutional and issued a preservation order as to, among other things, absentee ballots and other election materials,¹ those orders have been stayed in their entirety by the Appellate Division's Third Department.² As a result, the trial court's orders have no current legal effect, and local BOE officials must immediately resume their duties pursuant to the Election Law. BOE officials are bound by these obligations regardless of whether they are a party to the lawsuit.

The OAG urges you to contact our office or the New York State Board of Elections immediately should you have any questions.

A handwritten signature in black ink that reads "Letitia James".

LETITIA JAMES
New York Attorney General

¹ Decision and Order, *Amedure v. New York*, Index No. 2022-2145, NYSCEF Doc. No. 140 (N.Y. Sup. Ct. 2022); *see also* NYSCEF Doc. No. 183.

² Amended Order to Show Cause with Interim Relief, *Amedure v. New York*, Case No. 2022-cv-1955, NYSCEF Doc. No. 77 (N.Y. App. Div. 2022).