

STATE OF NEW YORK
SUPREME COURT CHAMBERSONONDAGA COUNTY COURTHOUSE
401 MONTGOMERY STREET
SYRACUSE, NEW YORK 13202

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DOUGLAS M. MCRAE
PRINCIPAL LAW CLERK**SCOTT J. DELCONTE**
JUSTICE

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ERIC VAN BUREN
LAW SECRETARY**VIA NYSCEF**

November 10, 2022

Robert M. Harding, Esq.
Greenberg Traurig, LLP
54 State Street, 6th Floor
Albany, New York 12207John J. Ciampoli, Esq.
Messina Perillo & Hill, LLP
285 W. Main Street, Suite 203
Sayville, New York 11782**Re: Mannion v Shiroff et al. (Index No. 009195/2022)**
Shiroff v New York State Board of Elections et al. (Index No. 009200/2022)

Dear Counselors:

Both of these actions have been assigned to my Chambers.

I.

Before we proceed further, I want to fully disclose several matters to all parties in writing:

- One, I am acquainted with Dustin Czarny, one of the Commissioners of Respondent Onondaga County Board of Elections. I met Mr. Czarny prior to taking the bench in January of 2019, and he is an electronic social media contact of mine on Facebook. I do not have a close social relationship, nor a close personal relationship, with Mr. Czarny. I have not discussed this election law proceeding with him, or any other matter relating to the 2022 elections.
- Two, I am acquainted with Laura Brazak, one of the Commissioners of Respondent Oswego County Board of Elections. I do not have a close social relationship, nor a close personal relationship, with Ms. Brazak. I have not discussed this election law proceeding with her, or any other matter relating to the 2022 elections.
- Three, I am acquainted with John W. Mannion, a party in both of these actions. I met Mr. Mannion prior to taking the bench in January of 2019, and he is an electronic social media contact of mine on Facebook. It is possible, although I do not recall, that I may have acknowledged non-political posts that he has made in the past. I do not have a close social relationship, nor a close personal relationship, with Mr. Mannion. I have not discussed this election law proceeding with him, or any other matter relating to the 2022 elections.

- Four, I am acquainted with Richard C. Mitchell, Esq., counsel for Respondent Oswego County Board of Elections in these actions. As an attorney, I litigated many matters with him, and I also significantly interacted with him through my involvement in the Oswego County Bar Association. I do not have a close social or personal relationship with Mr. Mitchell; however, I did deliver a personal condolence card to him after his father's recent passing.
- Five, finally, I reside in Oswego County in New York's 50th State Senate District, along with my wife and our four children. Together, my wife and I voted early, and in person, in the 2022 election. Three of my children are of voting age and currently attend college; they each voted by absentee ballot in the 2022 election. My wife has advised me that the signature on the outer envelope of my oldest daughter's absentee ballot (which my wife hand delivered to an early voting polling site) was questioned by a poll worker, but ultimately accepted, and counted. I have no personal knowledge of the canvassing and ultimate processing of my children's absentee ballots.

Absent legal disqualification under Judiciary Law § 14, which is not presented here, recusal is a matter of conscience upon which the presiding Judge is, generally, the sole arbiter. As a matter of due process and fairness to all parties involved, as well as the orderly and efficient process of justice, recusal is proper only where the assigned Judge has a direct personal or pecuniary interest in reaching a particular conclusion that the Judge believes makes it impossible to serve with impartiality. This is particularly true in election law proceedings, given their expediency and precedence over all other pending legal matters. Absent a direct personal or pecuniary interest in reaching a particular conclusion, the assigned judge has an obligation to avoid recusal. I do not have any direct personal or pecuniary interest in this matter that would prevent me from presiding impartially over it and, accordingly, do not believe I must recuse myself.

Nonetheless, I feel that full disclosure of these matters is necessary to avoid even the appearance of impropriety, particularly given the need for full transparency in election law matters. We will be conferencing this matter at 2:00 p.m. today, via Microsoft Teams. Counsel for all parties are directed to confer with their clients in advance of this Conference and to raise any concerns they have with my continuing as the presiding Judge at that time.

II.

Yesterday afternoon, this Court issued two emergency Orders to Show Cause – one in each of the pending actions – which contain several temporary restraining orders relating to the preservation of ballots and related materials. These orders were issued on an *ex parte* basis given the risk of significant prejudice that could occur if election materials were not preserved until every party has the opportunity to present their arguments to the Court (22 NYCRR 202.8-e).

Now that counsel for all parties have appeared, a **mandatory** conference pursuant to 22 NYCRR 202.12(j) is hereby scheduled for today, **Thursday November 20, 2022, at 2:00 p.m.** via Microsoft Teams. A link shall be sent separately. This conference is for attorneys only. Counsel should confer with their clients in advance, and be prepared to discuss:

- Consolidation of the two actions pursuant to CPLR 602;
- A briefing schedule for the pending Election Law Article 16 proceedings;
- The balancing of the need for continued canvassing under Election Law § 9-209 with the preservation of election materials; and
- The effect, if any, of CPLR 6313 and Election Law § 16-112 upon the temporary restraining orders.

SO ORDERED,



Hon. Scott J. DelConte, J.S.C.

cc: All Attorneys of Record

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