

At an IAS/Special Term of the Supreme Court of the State of New York, held in and for the County of Onondaga, at Syracuse, New York on the 14th day of November, 2022.

P R E S E N T:

HON.: Scott J. DelConte, J.S.C.

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In the Matter of the Application of

Rebecca Shiroff

-against-

The New York State Board of Elections,
The Oswego County Board of Elections, and
The Onondaga County Board of Elections, and
John Mannion, candidate

Index No.: **Index No.**
009200/2022
Motion #1

ORDER TO SHOW CAUSE

Respondents.

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Upon the reading and filing of annexed Verified Petition, duly verified the eighth day of November, 2022, and upon all of the papers and proceedings heretofore submitted and had herein, it is hereby

ORDERED, that Respondent Boards of Elections (hereinafter, The New York State Boards of Elections and the local Boards of Elections – and the local Boards of Elections, The Oswego County Boards of Elections, and The Onondaga County Boards of Elections) show cause before this Court, before the Justice assigned, at an IAS/Special Term Part, to be held at the Courthouse located at

401 Montgomery Street, Syracuse, in the County of

Onondaga, State of New York, on the 14th day of November, 2022 at

3:00 p.m. of that day or as soon thereafter as counsel can be heard, why an order should not be made and entered herein:

- (a) Determining that the Petitioner, pursuant to §9-206(7) and the unaltered existing body of statute (see generally §8-506 and related sections of the Election Law) and the existing body of case law see People ex. Rel. Sibley v. Sheppard, 54 N.Y.2d 320 (1981); People v. Keyes, 141 A.D.2d 227 (3rd Dept., 1988); Conesco Industries v. St Paul Fire & Marine Ins. Co., 184 A.D.2d 956 (3rd Dept., 1992); Matter of Caroline, 218 A.D.2d 388 (4th Dept., 1998) [stating that the legislature is deemed to know of the existing body of statutory, common and case law when it enacts a statute and that unless expressly changed such law remains in effect], and see also, Matter of Panio v Sunderland, 4 NY3d 123, 128-129 (2005); See also In Re Frank K. Skartados, 81 AD 3d 757 (2d Dept 2011). and Kolb v. Casella, 270 AD 2d 964 (4th Dept. 2000), Matter of McClure v. D'Apice, 116 A.D.2d 721 (2d Dept 1986), and finally, see Tenney v. Oswego County Board of Elections, 2020 WL 8093628 (N.Y.Sup.), 2020 N.Y. Slip Op. 34388(U) (Trial Order), (2020 Sup. Ct. Oswego Co., Del Conte, J.), and Tenney v. Oswego Co. BOE, 71 Misc.3d 385 (2021 Oswego Co. Sup. Ct., DelConte, J.)[cases determining how to adjudicate objections to affidavit ballots].

- (b) Ordering the preservation of all objected to affidavit ballots pursuant to §16-112 Election Law, and the existing case law, see King v Smith, 308 AD2d 556 [2d Dept 2003].
- (c) Determining the accuracy of the canvass of the canvass of the ballots in the General Election as to all affidavit ballots, (hereinafter the paper ballots) cast on the 8th day of November, 2022;
- (d) Entering an order as is required preventing the Respondent Boards of Elections from disenfranchising the voters by dilution of their votes via the inclusion of illegal and / or improper votes in the canvass of the subject election, in contravention of the candidate's and voters constitutional rights, and
- (e) Ordering the Respondent Boards of Elections to certify the correct vote tally and/or the name of the correct Candidates as the duly elected persons to the public offices pertaining thereto, in the General Election held therefor in the General Election Early Voting Period and on the 8th day of November, 2022;
- (f) Ordering the Respondent Boards of Elections to maintain a secure system for preserving the ballots and ancillary records of the subject election, under a two lock system to which the representatives of one party may only have one of the two keys or combinations thereto, and

requiring all materials related to this election to be handled ONLY on
a bipartisan basis, and

- (g) Granting Petitioners such other and further relief as this Court deems
just and proper; and it is further

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ORDERED, that service of a copy of this Order to Show Cause and Verified Petition together with the papers upon which it is granted upon Respondent Boards of Elections, and upon the Respondent Candidate(s) by serving him / her / their counsel appearing herein by NYSCEF, and that such service shall be deemed good and sufficient service thereof.

DATED: November 14, 2022

ENTER :



Hon. Scott J. DelCotne J.S.C.