

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONONDAGA

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JOHN W. MANNION,

Petitioner-Candidate-Aggrieved,

v.

REBECCA SHIROFF,

Candidate-Respondent,

THE ONONDAGA COUNTY BOARD OF ELECTIONS
and THE OSWEGO COUNTY BOARD OF
ELECTIONS,

Board-Respondents, and

THE NEW YORK STATE BOARD OF ELECTIONS,

State-Board Respondent.

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Index No.:

VERIFIED PETITION

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Petitioner JOHN W. MANNION, by his attorneys Greenberg Traurig, LLP, respectfully alleges as follows:

1. Petitioner-Candidate-Aggrieved JOHN W. MANNION (“Petitioner”), residing at 110 Breakspear Road, Syracuse, New York 13219 in the County of Onondaga, was entitled to vote in the General Election for the public position of Member of Senate, 50th Senate District, State of New York in the General Election held on the 8th day of November, 2022 (hereinafter referred to as the “General Election”), and was the Democratic Party and Working Families Party candidate for said position in the General Election.

2. Upon information and belief, Candidate-Respondent REBECCA SHIROFF (“Candidate-Respondent”) residing at 8454 Prestwick Drive, Manlius, New York, 13104, in the County of Onondaga, New York, was entitled to vote in the General Election for the public office of Member of Senate, 50th New York State Senate District, and was the Republican Party and Conservative Party candidate for said position in the General Election.

3. Petitioner has standing to commence this proceeding pursuant to Sections 16-100, 16-102, 16-106, 16-112, and 16-113 of the New York State Election Law. This proceeding is commenced pursuant to and in accordance with Article 16 of the Election Law.

4. Respondent Onondaga County Board of Elections is charged by the New York State Election Law with the administration of elections held in the County of Onondaga, including the canvassing of the returns of elections and the certifying of the results of elections for the public position of Member of Senate, 50th New York State Senate District in the County of Onondaga.

5. Respondent Oswego County Board of Elections is charged by the New York State Election Law with the administration of elections held in the County of Oswego, including the canvassing of the returns of elections and the certifying of the results of elections for the public position of Member of Senate, 50th New York State Senate District in the County of Oswego.

6. Respondents Onondaga County Board of Elections and Oswego County Board of Elections are collectively referred to herein as “Board-Respondents.”

7. Respondent New York State Board of Elections (“State Board-Respondent”) is charged by the New York State Election Law with overseeing the regulations and directives concerning the canvassing the returns of elections and the final certification of the results of elections for the public position of Member of Senate, 50th New York State Senate District.

8. Over the course of the last four years, the State of New York (the “State”) has made several changes to its Election Laws in regards to both its *affidavit* ballot and *absentee* ballot canvassing and recanvassing processes.

9. As of 2021, Election Law section 9-208(4)(a) mandates that “[t]he board of elections or a bipartisan committee appointed by the board shall conduct a full manual recount of all ballots for a particular contest . . . [w]here the margin of victory is 0.5% or less.”

10. Upon information and belief, the margin separating Petitioner and Candidate-

Respondent will be below 0.5% of the total votes cast.

11. Accordingly, New York State Election Law mandates that the Board-Respondents must, forthwith, conduct a full manual re-canvass of every vote cast in the General Election for the public office of New York State Senator from the 50th Senate District.

12. Petitioner has no interest in superseding the provisions of the Election Law or any State Board Directives (hereinafter collectively referred to as the "Election Law"), nor does Petitioner seek to dictate how the Board-Respondents are to conduct a canvass of the General Election.

13. This verified petition is made in order to preserve Petitioner's rights under the Election Law, including, without limitation, to correct any errors in the canvass of returns of the subject election, and to provide for this Court's supervision, as necessary, of the canvass or manual recanvass of the regularly cast scanned ballots on the voting machines, whether cast on Election Day or on any so-called early voting day, and of all relevant unopened and/or non-scanned ballots, and/or improperly opened ballots (including all emergency ballots, absentee ballots, affidavit ballots, special ballots, federal ballots and military ballots ("Paper Ballots")) cast for the candidates in the General Election, together with the Court's supervision of any manual recanvass held pursuant to the rules of the Board-Respondents and/or audit of the electronic voting machines, special ballot marking devices, and/or ballot scanners (collectively, the "Voting Machines"), and to allow for the comprehensive review of the matters under the jurisdiction of this Court.

14. This verified petition is further made to continue to preserve the ballots as well as any and all records related to Board-Respondents' review of absentee ballot envelopes that could have or did result in the issuance of a notice to cure/cure affirmation form, as well as the related notices and affirmations; to have this Court review all determinations of Board-Respondents as provided for in the Election Law; allow for this Court to make adjustments in the canvass as may be necessary; enjoin any certification of election results which would prejudice the rights of Petitioner; and to bar or prevent any procedural defect which might be asserted to defeat this Court's determinations.

15. Upon information and belief, the results of the election for the winner of the General Election, as reflected in the votes cast by Voting Machines and on the Paper Ballots in

the General Election were exceedingly close, with only a marginal number of votes separating the Petitioner and Candidate-Respondent.

16. Upon information and belief, numerous unopened and/or non-scanned ballots and/or mis-scanned ballots remain uncanvassed or uncounted, and the canvass of or counting of such ballots may determine the outcome of this election.

17. Upon information and belief, many absentee ballot envelopes have already been reviewed by Board-Respondents and the Board-Respondents have failed to follow the State Board Directives or other provisions of Election Law. Requisite notices regarding voters' rights to cure deficiencies or otherwise vote on machines have not been sent, and registered voters within the 50th Senate District have been denied their rights accordingly.

18. Upon information and belief, it is possible that Board-Respondents, in canvassing the Paper Ballots, may be unable to determine the validity of individual ballots, may err in determining for which candidate the individual ballots were cast, or may continue to err by failing to comply with the State Board Directives.

19. Upon information and belief, the allegations in the above paragraphs suggest that the final result of the General Election may be determined by the canvass of the various types of Paper Ballots mentioned herein and/or any manual recanvass of all the ballots cast on the voting machines or by hand held pursuant to the Board-Respondents' rules, if any, and it may be required under the law and pursuant to the Board-Respondents' rules, if any, to conduct a manual recount of all such scanned ballots and Paper Ballots.

20. This proceeding is commenced pursuant to provisions of Sections 16-100, 16-106, 16-112, 16-113, and 16-116 of the Election Law as well as Articles 8 and 9 of the Election Law, which confers authority upon this Court to determine and resolve any disputes arising out of or relating to the canvass of ballots and returns in the General Election.

21. Petitioner reserves the right to submit further proofs by way of witnesses, affidavits, and evidence upon the date set by this Court for the trial and hearing of this matter and any adjourned dates thereof, and to amend these pleadings to reflect the facts adduced by way of a canvass or recanvass of the ballots in and for the General Election.

22. Petitioner believes that, after a complete canvass of the Paper Ballots – including those Paper Ballots that must be counted notwithstanding any alleged defect to the envelope due

to the Board-Respondents' failure to comply with the State Board Directives – and, to the extent relevant, a recanvass of all ballots cast by the Voting Machines, it should be determined that Petitioner won the public position of Member of Senate, 50th New York State Senate District, State of New York.

23. Petitioner has no adequate remedy at law.

24. No previous application has been made by Petitioner for the relief sought herein or for the Order to Show Cause hereto annexed, or for any similar relief.

WHEREFORE, Petitioner respectfully prays that the annexed Order to Show Cause be granted for a final Order and Judgment granting the relief prayed for in the Order to Show Cause, together with such other and further relief that this Court may deem just and proper.

Dated: Albany, New York
November 9, 2022



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Attorneys for Petitioner

VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF ALBANY)

Robert M. Harding, an attorney admitted to practice in the courts of the State of New York, affirms under the penalty of perjury:

I am the attorney for the Petitioner in this Proceeding. I am not a party to this proceeding. I have read the Petition and know the contents thereof and the same are true to my knowledge; as to matters therein alleged on information and belief, I believe them to be true. The reason that I am making this verification is that I have my office in the County of Albany and the Petitioner is located in the County of Onondaga.

Dated: Albany, New York
November 9, 2022

Robert M. Harding
Robert M. Harding

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