

“Board-Respondents”), including any records reflecting the Board-Respondents’ determinations regarding potentially defective absentee ballot envelopes, notices to cure, and any cure affirmations supplied by voters; upon all the ballots cast on the voting machines, as well as the Absentee, Affidavit, Special, Emergency and Military Ballots cast or endeavored to be cast in and for the General Election; and upon all of the papers and proceedings herein, it is hereby:

ORDERED, that Respondents show cause before this Court to be held via video/telephonic conference, on the 17th day of November, 2022 at 1:00 p.m. o’clock in the after noon, or as soon thereafter as counsel can be heard, why an Order should not be made and entered herein pursuant to the provisions of Articles 8, 9 and 16 of the New York State Election Law:

- (a) Determining the validity of all ballots and votes, including but not limited to, all ballots cast in and for the General Election, (including scanned and/or manually cast ballots on the voting machines, as well as non-scanned hand-counted emergency ballots, absentee ballots, affidavit ballots, special ballots, federal ballots and military ballots (the “Paper Ballots”) voted by the voters in the 50th Senate District, State of New York;
- (b) Determining the accurate tally upon the canvass, recanvass, audit and/or manual recanvass of the votes cast utilizing electronic voting machines, special ballot marking devices and/or ballot scanners (collectively, “Voting Machines”) and those cast upon the Paper Ballots in and for the General Election and ordering the canvass of the votes made by the Board-Respondents be corrected and adjusted to reflect such proper tally;
- (c) Ordering that any manual recanvass held pursuant to N.Y. Election Law section 9-208(4) be completely re-canvassed with counsel and representatives of all parties having the right to be present and interpose challenges consistent with the New York Election Law;
- (d) Ordering Board-Respondents to certify the correct vote tally and certify the name of John W. Mannion as the winner of the election for the public office of Member of Senate, 50th Senate District, State of New York, held on November 8, 2022; or
- (e) Ordering a new election for the public office of Member of Senate, 50th Senate

District, State of New York at a date to be determined by the Court, if, upon a finding by the Court that a winner in the applicable election cannot be determined; and

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

ORDERED that Board-Respondents cause all Voting Machines and all ballots and ballot envelopes used in the General Election be preserved and supervised by Board of Elections personnel in bi-partisan teams as is necessary to fulfill their statutory duties pending future Orders of this Court _____; and it is further

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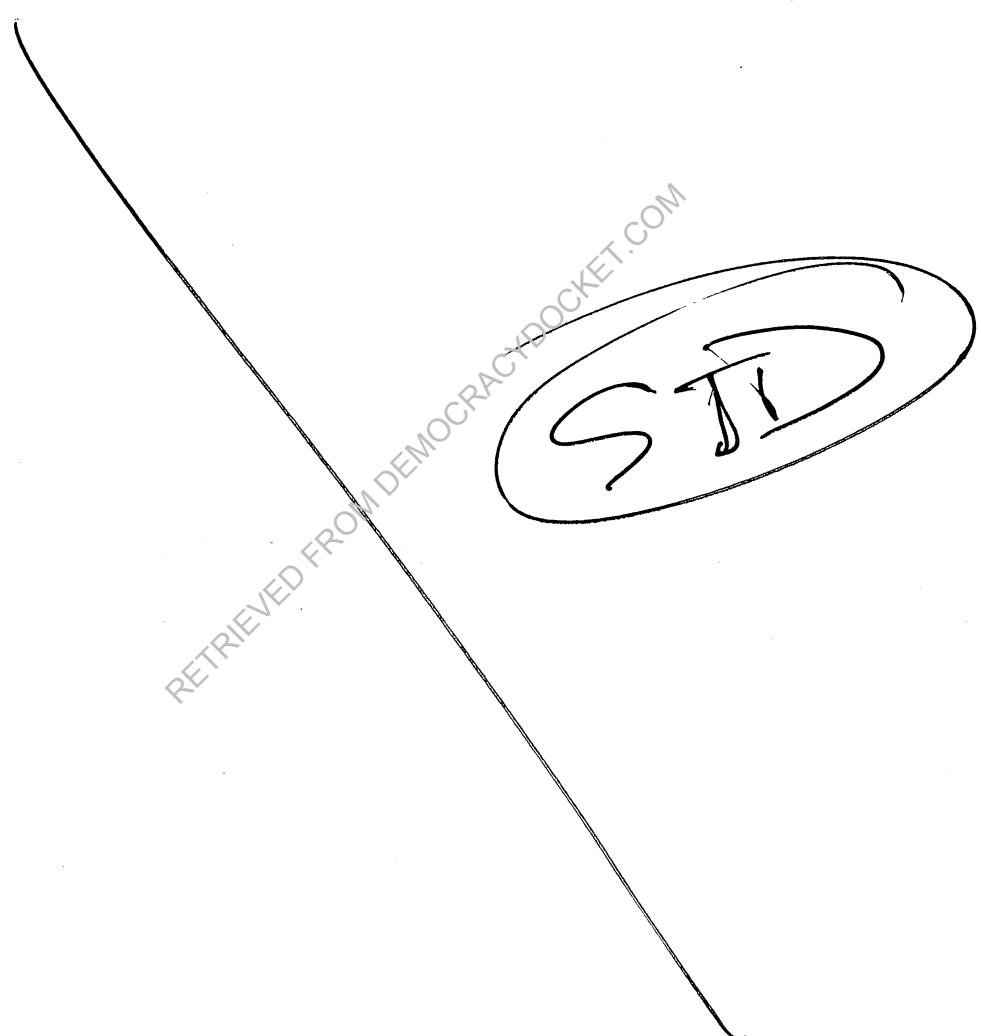
ORDERED that any attorney or his or her designee representing the candidates be admitted to the place of canvass or recanvass of the votes in this election and be allowed full participation in the administrative proceedings of the Board-Respondents held in relation thereto, without the need for production and filing of a poll watcher's certificate; and it is further

ORDERED that Board-Respondents produce upon the hearing of this Order to Show Cause and on all adjournments thereof, any and all General Election ballots and ballot envelopes with respect to the General Election, or copies thereof, as may be necessary for a hearing to determine the accuracy and validity of those ballots, including Paper Ballots to which an objection has been interposed, as well as any and all records pertaining to the evaluation and determination of defects to absentee ballot envelopes, notices to cure, and cure affidavits, as well as any corresponding procedures, guidance, or rules, relied upon by Board-Respondents, as applicable, and to determine the accuracy of any manual recanvass held pursuant to the Board-Respondents' procedures, as well as official tally sheets and returns of canvass sheets relating to the Voting Machines used in and for the General Election, and any and all reports pertaining to Voting Machines' breakdowns or malfunctions, all inspectors notes, reports and/or memos, if any objections relating to the results of said Voting Machines has been interposed; provided that Board-Respondents' obligations under the Election Law with respect to canvassing, re-canvassing, auditing, and/or manually recanvassing is not delayed or interfered with; and it is further

ORDERED, that in the interests of justice, the efficient administration of the law and judicial economy, the objection(s) of any party hereto to any ballot, ballot envelope, affidavit, application or documents relating to the ballots of the General Election and all days of early

voting for the subject public office of State Senator of the 50th Senate District are hereby ordered to be preserved until the time of the canvass and recanvass of such ballots, and the hearing before this Court, regardless of whether three days have elapsed, and all such ballots and documents shall be preserved for the review of this Court pursuant to the power conferred upon this Court by Election Law Section 16-112; and it is further

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ORDERED that Board-Respondents shall follow canvassing procedures as set forth in the statute and case law, including but not limited to any directive issued by the State Board of Elections regarding the implementation of Article 9 of the Election Law, including the manner in which absentee ballots shall be canvassed and the manner in which boards of elections shall conduct a full manual recount; and it is further



ORDERED that Board-Respondents shall preserve a record of all objections entered against the canvassing of any of the ballots, together with a record of the vote upon the objection thereon (sustained, overruled or split vote), and shall further preserve all of the ballots and supporting documentation upon an objection so that this Court may review same, provided that in no instance shall said Board of Elections compromise the secrecy of any voter's ballot in violation of Election Law 17-126 (1), (2) or (3); Article 2, Section 7 of the New York State Constitution; and relevant provisions of Article 8 and Article 9 of the Election Law; and it is further

ORDERED that Board-Respondents be and hereby is enjoined from certifying the results of the General Election at issue herein pending further Order of the Court; and it is further

ORDERED that Board-Respondents shall be free to conduct the recanvass and/or audit of votes cast for all other public offices according to its normal procedures except to the extent such would contravene the procedures set forth herein for the canvass, recanvass, manual recanvass, and/or audit of the votes for the office at issue herein; and it is further

ORDERED that sufficient reason appearing therefore, leave is hereby granted to the parties herein to submit on the date set for the hearing or the trial of this matter, and any adjourned dates, additional witnesses, exhibits, proofs and other evidence as may be necessary; and it is further



ORDERED, that this special proceeding is and shall be commenced by the signing of this Order to Show Cause, pursuant to the provisions of CPLR 304, and related provisions of law, and service of the within Order and supporting papers is authorized without regard to their filing on NYSCEF, and

Sufficient cause appearing therefore, leave is hereby granted to the Petitioners to submit on the date set for the hearing or the trial of this matter additional witnesses, exhibits, proofs and other evidence as may be necessary, and,

Sufficient cause appearing therefore leave is hereby granted to the parties to amend their pleadings as may be necessary and,

SUFFICIENT CAUSE APPEARING THEREFORE, it is further

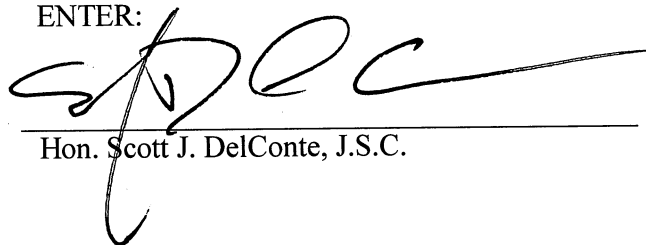
ORDERED that service of a copy of this Order to Show Cause and accompanying Verified Petition, together with any papers upon which it is granted, be made upon Board-Respondents by (1) delivering such papers by electronic mail to the email address designated for such purpose or (2) by personal delivery of the same to each Board-Respondent on or before the 10th day of November, 2022;

ORDERED that service of a copy of this Order to Show Cause and accompanying Verified Petition, together with any papers upon which it is granted, be made upon Respondent New York State Board of Elections by (1) delivering such papers by electronic mail to the email address designated for such purpose or (2) by personal delivery of the same to the State-Board Respondent on or before the 10th day of November, 2022;

ORDERED that service of a copy of this Order to Show Cause and accompanying Verified Petition, together with any papers upon which it is granted, be made upon Candidate-Respondent by (1) personal delivery of the same to Candidate-Respondent on or before the 11th day of November, 2022 or (2) by enclosing the same in a securely sealed and duly postpaid wrapper, addressed to the Candidate-Respondent at the residence as set forth on the Designating Petition filed by or on behalf of the Candidate-Respondent with Respondent New York State Board of Elections and by sending same by overnight, next-day delivery by UPS or FedEx or by the United States Postal Service on or before the 11th day of November, 2022; and that any such method of service shall be deemed good and sufficient service thereof; and it is further

ORDERED, that any requirement that the affidavits of service be filed with the Clerk of the Court be extended to the return date of this motion, and such affidavits shall be filed with the Clerk of the Part on the return date, and that any requirement that substituted service be preceded by due diligence attempt(s) at personal delivery upon any or all Candidates-Respondents be and is hereby waived, and that the ten day completion of service provision be waived by this Order.

ENTER:

A handwritten signature in black ink, appearing to read 'S. DelConte', written over a horizontal line.

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

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