

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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In the Matter of the Application of
DOREY HOULE,
-against-
THE NEW YORK STATE BOARD OF ELECTIONS,
THE ORANGE COUNTY BOARD OF ELECTIONS,
AND JAMES SKOUFIS, CANDIDATE,
Respondents.
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Index No. EF006424-2022
VERIFIED ANSWER

JAMES SKOUFIS ("Candidate Skoufis"), by his attorneys, Greenberg Traurig, LLP, respectfully submits this Verified Answer in response to the Verified Petition filed by Dorey Houle, and states as follows:

- 1. Declines to respond to the allegations contained in paragraphs 2, 5, 7-17, 19, 44, 52-55, 71-72, 77, 78, 82, 86, 89-91, as they characterize the nature of the action brought by the Petitioner, state a legal conclusion or relief sought. To the extent that such allegations are interpreted to require a response, Candidate Skoufis denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in such paragraphs.
2. Admits the allegations set forth in paragraphs 3 and 6 of the Verified Petition.
3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 1, 4, 21-37, 40, 47-51, 56, 58-63, 65-67, 69-70, 73-76, 80, 83, 85, 87-88, 93-94, 96, 98-99, 101, 103-108 of the Verified Petition.
4. Denies the allegations contained in paragraphs 18, 20, 97, 102 of the Verified Petition.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 38-39, 41-43, 45, 46 of the Verified Petition, and respectfully refers the Court to the referenced authority for its true and correct proposition.

6. Denies the allegations set forth in paragraphs 57 and 84 of the Verified Petition, and respectfully refers the Court to the referenced authority for its true and correct proposition.

7. Declines to respond to the allegations contained in paragraphs 64, 68, 79, 81,92, 95, as they state a legal conclusion. To the extent that such allegations are interpreted to require a response, Candidate Skoufis denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in such paragraphs, and respectfully refers the Court to the referenced authority for its true and correct proposition.

8. Paragraphs 100 and “112” states a legal conclusion to which no response is required. To the extent a response is required, Candidate Skoufis denies the allegations contained in such paragraphs of the Verified Petition.

9. Denies each and every allegation in the Verified Petition not specifically responded to above.

**AS AND FOR THE FIRST
OBJECTION IN POINT OF LAW**

10. Repeats and re-alleges the responses to the allegations contained in all paragraphs set forth above as if fully set forth herein.

11. Election Law § 16-106(4), as amended in 2021, provides “[t]he court shall ensure the strict and uniform application of the election law and shall not permit or require the altering of the schedule or procedure in section 9-209 of this chapter but may direct a recanvass or the correction of an error, or the performance of any duty imposed by law.”

12. By law, the local boards of election are required to establish the schedule for the canvassing of absentee ballots and other ballots not counted on Election Day.

13. Additionally, Election Law § 9-209(8)(b) requires that all candidates and political parties be provided with five days notice by first class mail of the “time fixed for such meeting.”

14. A candidate has a statutory right to attend the post-election canvass to observe the proceedings and may send an attorney or duly appointed watchers on their behalf.

15. However, a candidate does not have the right to set the schedule for the canvass of ballots. *See* ELEC. L. § 9-209(8)(c).

16. Indeed, the duty of the board of elections to complete its work as required by law takes precedent over the candidate’s logistical concerns. *Larsen v. Canary*, 107 A.D.2d 809, 810 (2d Dep’t 1985).

17. In *Larsen*, the Appellate Division reversed a ruling of Supreme Court which impounded ballots and undertook a canvass “under the official jurisdiction of th[e] Supreme Court” due to a “narrow margin.” 107 A.D.2d 809, 810 (2d Dep’t 1985). In reversing the lower court, the Appellate Division held that the provisions of Election Law § 9-100 *et seq.* which govern the poll site canvass by inspectors as well as the provisions of the Election Law related to the board of elections canvass could not be abrogated in favor of a judicially fashioned canvass. *Id.* at 811.

18. Moreover, in *Ferrer v. Board of Elections of the City of New York*, the Appellate Division again held that the Supreme Court has “no authority to modify the statutory procedures set forth in Election Law § 9-209(2)(d) for the judicial review of ballots challenged by a candidate.” 286 A.D.2d 783,783 (2d Dep’t 2001). The court also noted that it did not have the authority “to vary the statutory procedure set forth in Election Law § 8-302(3)(e)(ii) or the regulations promulgated by the Board of Elections.” *Id.*

19. Here, it is respectfully submitted that the Court is constrained by the Election Law and may not alter the established schedule of the local board of elections.

**AS AND FOR THE SECOND
OBJECTION IN POINT OF LAW**

20. Repeats and re-alleges the responses to the allegations contained in all paragraphs set forth above as if fully set forth herein.

21. In 2021, New York State repealed and reenacted Election Law section 9-209, to “provide a new, more streamlined process.” See Chap. 763 of the Laws of 2021; see also *Matter of Amedure v. State of N.Y.*, 2022 N.Y. App. Div. LEXIS 5966 (3d Dep’t Nov. 1, 2022).

22. Absentee, military, and special ballots are now opened on a rolling basis and, although candidates have the right to watch the canvassing process, candidates no longer have the right to object during the process. See Elec. L. § 9-209(2), (5).

23. Similarly, with regards to affidavit ballots, due to the repeal and reenactment of Section 9-209 in 2021, “ballots are valid when cast at a polling site permitted by law by qualified voters.” See N.Y. ELEC. L. § 9-209(7)(b).

24. As long as “the central board of canvassers determines that a person was entitled to vote at such election *it shall cast and canvass* such affidavit ballot.” N.Y. ELEC. L. § 9-209(7)(a) (emphasis added).

25. As was concluded by the Supreme Court, Onondaga County, current law does not afford candidates and political parties an opportunity to influence the views of the central board of canvassers in making a determination of whether a voter was entitled to vote. *Shiroff v. Mannion et al*, Onondaga Cnty., Index No. 009200/2022: NYSCEF Doc. No. 21

26. Here, Petitioner may not object to the form and substance of the absentee, military, special, or affidavit ballots during the canvassing by the local board of elections.

**AS AND FOR THE THIRD
OBJECTION IN POINT OF LAW**

27. Repeats and re-alleges the responses to the allegations contained in all paragraphs set forth above as if fully set forth herein.

28. To the extent Petitioner relies on *Amedure v. State of New York*, Index No. 2022-2145, 2022 N.Y. Misc. LEXIS 6179 (Sup. Ct. Saratoga Cnty. Oct. 21, 2022) (the “Saratoga County Decision”) for the proposition that Chapter 763 of the Laws of 2021 has been ruled “patently unconstitutional,” Candidate Skoufis respectfully refers the Court to the text of the decision and order appealing the Saratoga County Order. *See Matter of Amedure v. State of N.Y.*, 2022 N.Y. App. Div. LEXIS 5966 (3d Dep’t Nov. 1, 2022).

29. In *Amedure*, the Third Department refused to affirm the Saratoga County Decision and reversed the lower court’s amended preservation order. *Id.* at *12.

30. After hearing arguments similar to those raised in the pleadings submitted on behalf of Petitioner in this matter, the Supreme Court, Onondaga County concluded that the *Amedure* decision prevents further assertions as to the constitutionality of Election Law Section 9-209 “pursuant to the equitable doctrine of laches,” and that “the doctrine of *stare decisis* requires trial courts in one department to follow precedents set by the Appellate Division of another department until the Court of Appeals or the Appellate Division of its department pronounces a contrary rule.” *Shiroff v. Mannion et al*, Onondaga Cnty., Index No. 009200/2022: NYSCEF Doc. No. 21 (citing *Mountain View Coach Lines, Inc. v. Storms*, 102 A.D.2d 663 (2d Dep’t 1984)).

31. The Onondaga Supreme Court concluded that it is “without authority to issue a preservation order, nor can it consider the constitutionality of Election Law § 9-209.” *Id.*

32. It is respectfully submitted that in light of the Third Department's decision, the Saratoga County Decision has no bearing on the issues before the Court and, this Court should reach the same conclusion as was reached by the Supreme Court, Onondaga County.

PRAYER FOR RELIEF

WHEREFORE, James Skoufis respectfully requests that the Court deny Dorey Houle's Verified Petition in its entirety, along with such other and further relief as to this Court may seem just and proper.

Dated: November 15, 2022
Albany, New York

Respectfully submitted,

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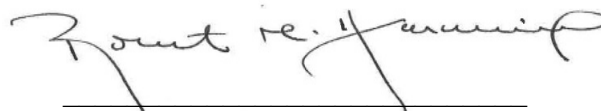
Attorneys for Candidate James Skoufis

VERIFICATION

Robert M. Harding, an attorney at law, duly affirms under the penalties of perjury:

I am the attorney for Candidate James Skoufis, and I have my office at 54 State Street, 6th Floor, Albany, New York. I have read the foregoing Verified Answer and know the contents thereof and the same are true of my own knowledge except as to matters therein stated to be alleged on information and belief, and that as to those matters, I believe them to be true. The reason why this verification is made by me, instead of by Mr. Skoufis, is because Mr. Skoufis is not located within Albany County, which is the county where I have my office. The grounds of my belief as to all matters in the Verified Answer not stated upon my knowledge are as follows: correspondence and other writings furnished to me by Mr. Skoufis or the New York State Board of Elections.

Dated: November 15, 2022
Albany, New York



Robert M. Harding

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