

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
In the Matter of the Application of
Dorey Houle,

Petitioner,

DECISION AND ORDER

- against -

Index No. EF006424-2022

The New York State Board of Elections,
The Orange County Board of Elections,
and James Skoufis, candidate,

Respondents.

-----X
CRAIG STEPHEN BROWN, J.

Upon the papers filed in this special proceeding (NYSCEF documents 1 - 17), and upon the oral arguments made before this Court on November 16, 2022, it is hereby

ORDERED that the third through thirteenth "ORDERED" paragraphs of the November 11, 2022 Order to Show Cause are hereby vacated, and it is further

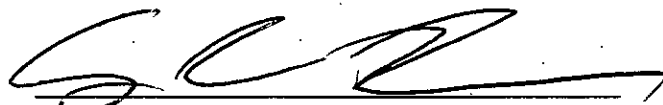
ORDERED that the respondent Orange County Board of Elections, the Commissioners and employees thereof shall record, preserve, and maintain all objections made by the parties' attorneys with respect to affidavit ballots and that a full record of any split votes of the two Commissioners (or their designees) be preserved for a potential review by this Court, and it is further

ORDERED that the parties shall submit legal briefs to this Court by 5:00 P.M. on November 18, 2022, that should include any and all arguments to be considered by this Court, and it is further

ORDERED that any reply briefs be submitted to this Court by 5:00 P.M. on November 21, 2022.

The foregoing constitutes the Decision and Order of this Court.

Dated: November 16, 2022
Goshen, New York



HON. CRAIG STEPHEN BROWN
Acting Supreme Court Justice

To: ALL COUNSEL VIA NYSCEF

RETRIEVED FROM DEMOCRACYDOCKET.COM

At an ~~IAS/Special Term~~ of the
Supreme Court of the State of New
York, held in and for the County
of ORANGE, at 285 MAIN ST. GOSHEN,
New York on the 16th day of November,
2022.

HON. CRAIG STEPHEN BROWN
PRESENTING SUPREME COURT JUSTICE

HON.: _____ A.J.S.C.
-----X

In the Matter of the Application of

Dorey Houle

Index No.: EF006424-2022

1-against-

The New York State Board of Elections,
The Orange County Board of Elections,
and James Skoufis, candidate

ORDER TO SHOW CAUSE

Respondents.
-----X

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 Board of Elections – and the local Board of Elections, The
Orange County Boards of Election,) show cause before this Court, before the Justice assigned, at
an ~~IAS/Special Term~~ Part, ⁵ to be held at the Courthouse located at 285 MAIN STREET
GOSHEN, N.Y., in the County of ORANGE, State
of New York, on the 16th day of November, 2022 at 9:30 a.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 the accuracy of the canvass of the canvass of the ballots in the General
Election Early Voting Period, all absentee, affidavit, military, special, special

federal (hereinafter the paper ballots) and on the 8th day of November, 2022;

- (b) Determining the accurate tally upon the recanvass and/or audit of the votes cast by utilization of electronic voting machines, special ballot marking devices and/or ballot scanners (collectively, the "Voting Machines");
- (c) 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;
- (d) Ordering the joinder / allowing the intervention of such other parties as are determined appropriate; and
- (e) Granting Petitioners such other and further relief as this Court deems just and proper; and it is further

2

ORDERED, that Respondent Boards of Elections produce upon the day of the hearing of this Order to Show Cause and on all adjournments thereof all election paper ballots, including emergency ballots, absentee ballots, affidavit ballots, special ballots, military ballots, and all removable electronic memory devices used by or as part of Voting Machines for the recording of votes and voting activity on said Voting Machines, official tally sheets and returns of canvass sheets used in the General Election Early Voting Period and on the 8th day of November, 2022, all reports pertaining to the breakdown or malfunctioning of said Voting Machines and /or Electronic Poll Books, all inspectors notes, reports and/or memos, and other records which are the subject of this proceeding, and together with the determinations of Respondent Boards of Elections upon any objections and challenges to voters and/or ballots and/or applications therefor, any cure notices determined to be issued by said Boards, and any cures filed with the said Boards, and any

other papers or worksheets relating thereto; and it is further,

3

ORDERED, that Respondents State Board of Elections (and the other Respondent Boards) cause shall cause and require all local Boards of elections under its jurisdiction to see to it that all election paper ballots, including emergency ballots, absentee ballots, affidavit ballots, special ballots, military ballots, special federal ballots, and removable electronic memory devices used by or as part of Voting Machines for the recording of votes and voting activity on said Voting Machines, and other repository of electronic voting records, scanned ballots, stubs, spoiled ballots, papers and worksheets including tally sheets and returns of canvass (collectively the "Voting Material"), utilized in and for the General Election Early Voting Period and on the 8th day of November, 2022 be returned to the offices of the local Boards of Elections forthwith after the close of the polls and the report of the initial canvass and that the local Boards of Elections cause all Voting Material described above to be preserved inviolate and separate, under a two lock system, for which each political party's representatives shall have access to only one of the two keys or combinations, or alternatively or additionally, at the option of the local Boards of elections or as may be subsequently ordered by this Court, under police guard between the hours of 5:00 pm and 9:00 am, Monday through Friday, and all hours, Saturday, Sunday, and holidays (subject to such reasonable access by the Board of Elections personnel using bi-partisan teams as is necessary to fulfill statutory duties), pending future order of this Court, unless released upon stipulation of the parties hereto, but that no unopened and/or non-scanned ballots (including all unscanned emergency ballots, absentee ballots, affidavit ballots, special ballots, and military ballots) may be opened and canvassed except in the presence of representatives of the parties hereto; and it is further,

4

ORDERED, that respondents New York State Board of Elections (and the Respondent

local Boards of Elections) shall, pursuant to the provisions of the Election Law, direct and cause the local Boards of elections under its jurisdiction not to proceed with any scheduled canvass / recanvass proceedings by such Boards pending an order of this Court setting a schedule for such canvass / recanvass so that the parties hereto might participate in them, and it is

5

ORDERED, that any attorney representing a party and his/her agent(s) and/or employee(s) be admitted to the place of canvass or recanvass of the votes in the General Election and be allowed full participation in the administrative proceedings of the Boards of Elections held in relation thereto; and it is further,

6

ORDERED, that if any local Board of Elections shall determine or reschedule a date for canvass / recanvass of ballots after the issuance of this order, that counsel for the petitioners shall be given written notice of canvass / recanvass proceedings at the Boards of Elections not later than three business days prior to the commencement of such administrative proceedings, and it is

7

ORDERED, that the local Boards of Elections prepare all necessary records for the canvass of all relevant unopened and/or non-scanned ballots (including all unscanned emergency ballots, absentee ballots, affidavit ballots, special ballots, and military ballots) in the General Election Early Voting Period and on the 8th day of November, 2022, as soon thereafter as the ballots and supporting records can be made available and prepare all necessary records, Voting Material, and Voting Machines for the recanvass thereof under court supervision; and it is further,

8

ORDERED, that Respondent local Boards of Elections, shall forthwith recall as soon as practicable, after the close of the polls, and cause to be returned to central locations maintained by the Boards of Elections for the storage and preservation of electronic voting machines, all Voting Machines, electronic poll books, scanned ballots (including emergency ballots scanned at the polls), and removable electronic memory devices used by or as part of such Voting Machines for:

the recording of votes and voting activity on said Voting Machines (collectively, the "Voting Systems") in the respective applicable geographical jurisdictions and shall cooperate with the Local Police Department(s) in so doing so as to ensure that the aforementioned Voting Systems are preserved inviolate and separate, from all others, under seal / double lock security system with each of the Republican and Democratic Commissioners (or their designees) having the key or combination to one of the two locks, and under police guard between the hours of 5:00 pm and 9:00 am, Monday through Friday, and all hours, Saturday, Sunday, and holidays (subject to such reasonable access by the Boards of Elections personnel in bi-partisan teams as is necessary to fulfill statutory duties), pending the recanvass and/or audit thereof under court supervision and until further Order of this Court; and it is further

9

ORDERED, that the Respondent local Boards of Elections the Commissioners and employees thereof shall record and preserve all objections made by the parties' poll watchers, and further shall maintain records of each objection made to any ballot, ballot envelope, application, or ancillary election document or material, and further that a full record of any split votes of the two Commissioners (or their designees) be preserved for review by this Court, and it is

10

ORDERED, that any objected to unopened and/or non-scanned ballots, absentee ballots, unscanned emergency ballots, affidavit ballots, special ballots, and military ballots, be preserved and set aside unopened and / or un-scanned pending further Order of this Court; and it is further

11

ORDERED, that the Petitioners be informed of and allowed to have poll watchers present for the inspection of the voting machines after their return to Boards of Elections facilities, and it is further

12

ORDERED, with regard to all scanned ballots, that the procedures mandated by Section 9-211 of the Election Law requiring an audit of voter verifiable records in 3% of the election

districts in each county be completed, that the Petitioners be informed of the districts selected for the said audit, and that the Petitioners be allowed to have poll watchers present for such audit, and that the records of such audit be provided to the Petitioners prior to the conduct of the canvass of the votes, and it is

13

ORDERED, that the Petitioners be provided with the images of all scanned ballots, upon further application to the Court; and it is

14

ORDERED, that the Boards of Elections be and hereby is enjoined from certifying to the New York State Boards of Elections or any other party the results of the election at issue herein, pending further Order of the Court; and it is further

15

ORDERED, that sufficient reason 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 it is further

16

ORDERED, that in the event the canvass and/or recanvass of ballots continues beyond the return date specified hereinabove, counsel for the parties hereto may adjourn same by stipulation, and counsel shall inform the Court by telephone and / or electronic means of same immediately upon agreeing thereon, so that the canvass and/or recanvass may proceed with all due speed; and it is further

17

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

Sufficient reason appearing therefor, within the petition to this Court; and by the presentation of counsel, leave is hereby granted to the Petitioner who has purchased an Index Number and Request for Judicial Intervention, from the County Clerk and has file these papers to file a set of papers with the assigned index number within the period specified therefor by CPLR 304, within five days of the

5:00 PM
^

signing of this order, not to be later than November 14th, 2022, and,

Specifically, the Court finds that the instant application is made outside the ordinary hours of operation of the Court, and the Clerk's Office making an assignment of an index number by the County Clerk impossible. It is hereby determined that the instant application is made on an emergency basis, and without immediate judicial intervention machines and ballots could be left unguarded and unsecured allowing for fraud and corruption of the election results. The Court determines that a full and immediate filing pursuant Section 304 CPLR is impossible, and hereby authorizes issuance of an index number and a filing subsequent to the date of the signing as provided therein, and

This Court further determines that the security of election returns and the integrity of the voting machines, ballots, scanners, "sticks" or flash drives (the electronic record of voting similar to USB port devices), and ballot stubs and the ballots cast are paramount in this proceeding. Moreover, in an Elections proceeding notice to the parties is a paramount concern, therefore, service of the within order to show cause and petition prior to the filing of same is specifically authorized by the Court under the emergency circumstances presented herein, and

The Court shall, however, permit the petitioner(s) to notify the respondents of the Index Number assigned to this case after the papers have been filed, pursuant to Section 304 CPLR, and it is

18

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, by leaving copies thereof at the Offices thereof, personally delivering same to one of the commissioners thereof, or upon the counsel therefore (or appropriate County Attorney) or by electronically transmitting same to the office of such Board or such County Attorney (each alternatively) on or before the 14th day of November, 2022, and that such service shall be deemed good and

5:00 PM
^

sufficient, and it is

19

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 the Respondent Candidate(s) by serving him / her [alternatively at the option of the Petitioner] by:

- (a) by personally delivering a true copy of said papers to such candidate on or before the ^{5:00 PM} 14th day of November, 2022, or
- (b) by enclosing the same in a securely sealed and duly prepaid wrapper, addressed to such Respondent Candidate at such address, and depositing the same with a depository of the United States Postal Service via Priority Mail or Priority Mail Express (or via any recognized express delivery service) on or before the 13th day of November, 2022
- (c) by personally delivering same to said candidate pursuant to the terms of the CPLR on or before the 14th day of November, 2022, or
- (d) pursuant to the Court of Appeals holding in Angletti v. Morealle, 25 NY3d 734, by affixing the same to the outer or inner door of the residence of such Respondent Candidate at the address set forth in any document on file with the Nassau County District of Elections, AND by enclosing the same in a securely sealed and duly prepaid wrapper, addressed to the Respondent Candidate at such address, and depositing the same with a depository of the United States Postal Service via Priority Mail or Priority Mail Express (or via any recognized express delivery service) on or before the 14th day of November, 2022; or by delivering the same to a person of suitable age and discretion at the said address of such Respondent Candidate AND by enclosing the same in a securely sealed and duly prepaid wrapper, addressed to the Respondent Candidate at such address, and depositing the same with a

depository of the United States Postal Service via Priority Mail or Priority Mail Express (or via any recognized express delivery service) on or before the 13TH day of November, 2022;

(e) or alternatively, at the option of the Petitioner, any other means of service allowed by the CPLR on or before ^{SECOND} ~~13TH~~ ^{ABN} 14TH, 2022;

and that such service shall be deemed good and sufficient.

ENTER:



HON. CRAIG STEPHEN BROWN
ACTING SUPREME COURT JUSTICE

RETRIEVED FROM DEMOCRACYDOCS.COM