

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 9th day of November, 2022.

P R E S E N T:

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

-----X
In the Matter of the Application of

Index No.: 009200/2022

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

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 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 in the virtual Courtroom via Microsoft Teams, on the

17th day of November, 2022 at 1:00 p.m. of that day or as soon thereafter as counsel can be heard, why an order should not be made and entered herein:

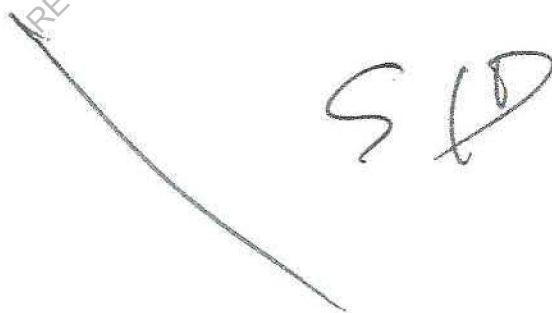
- (a) Determining the accuracy of the canvass of the ballots in the General Election Early Voting Period, all absentee, affidavit, military, special, special federal (hereinafter the paper ballots) and on the 8th day of November, 2022;
- (b) Determining the accurate tally upon the recanvass and/or audit 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

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,

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, in accordance with governing law,

RETRIEVED FROM DEMOCRACYDOCKET.COM

A handwritten signature, possibly "SIP", is written in the center of the page. A long, thin, curved line starts from the left side of the signature and extends downwards and to the left, ending near the bottom left of the page.

and 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,

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

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,

ORDERED, that if any local Boards 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

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,

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, in accordance with governing law,

pending the recanvass and/or audit thereof under court supervision and until further Order of this Court; and it is further

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

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

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

S 10

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

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

S 10

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

S 1 D

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 re-serve same after the filing of the papers and purchase of an index number, or alternatively to notify the respondentss of the Index Number assigned to this case after the papers have been filed, pursuant to Section 304 CPLR, and it is

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, or upon the counsel therefore (or appropriate County Attorney) or by electronically transmitting same to the office of such Board or such County

Attorney on or before the 11thth **day of November, 2022**, and that such service shall be deemed good and sufficient, and it is

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 11thth **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 10thth **day of November, 2022**
- (c) by personally delivering same to said candidate pursuant to the terms of the CPLR on or before the 11thth **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 proper 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 10thth **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 10th 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 November 11th, 2022; and that such service shall be deemed good and sufficient.

ENTER:

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

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

RETRIEVED FROM DEMOCRACYDOCKET.COM

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONONDAGA-----X
In the Matter of the Application of

Index No.:

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**VERIFIED PETITION**Respondents.
-----X**TO THE SUPREME COURT OF THE STATE OF NEW YORK****Petitioner, by her attorney, John Ciampoli, Esq. respectfully alleges as follows:****THE PARTIES**

1. Petitioner, Rebecca Shiroff, at all times hereinafter mentioned is the Republican, and Conservative Parties' candidate for the public office of New York State Senator for the 50th Senate District, State of New York, which was / is to be voted upon at the General Election held therefor on the 8th day of November, 2022.
2. Petitioner, candidate has standing to bring the instant proceeding under the Election Law.
3. The subject Senate District is comprised of Onondaga and Oswego.
4. Respondent County Boards of Elections and the Commissioners of the said Boards are responsible for the canvassing the returns of the elections from the various municipalities and other political subdivisions within the 50th Senate District, and, further, responsible for certifying the results of elections for the public office of State Senator for the 50th, District, acting in their capacity as County Board(s) of Canvassers.

5. The Respondent County Board(s) of Elections and Commissioners as part of its / their responsibilities are charged with conducting all of the post-election procedures and those mandated by their rules, so long as such rules are not violative or inconsistent with the law, the rights of the parties and the supervision of the courts over the exercise of such powers and responsibilities including canvassing, re canvassing voting machine results, canvassing affidavit, absentee and military as well as special ballots, the compilation of the final tallies of the votes cast and the certification of the results of the election.
6. Respondent, John Mannion, is the Candidate for the public office of State Senator, 50th, District of the Democratic, and Working Families parties, in the instant General Election.
7. This petition is made in order to preserve Petitioner's and the public's rights under the Election Law including Election Law 16-112 thereof to preserve all voting materials, in the canvass and return as well as the re canvass of returns from the General Election of November 8, 2022 for the public office of State Senator of the 50th, District. Such voting materials include unopened and/or non-scanned ballots including emergency ballots, absentee ballots, applications for absentee ballots, special ballots and applications for such ballots, affidavit ballots and envelopes containing such ballots, special ballots and military ballots, machine breakdown reports, mechanic or custodian logs, election day affidavits, election day court orders, poll books (printed or electronic), ballot stubs, spoiled ballots, voided or defective ballots, unused ballots and all copies of close of polls reports, all printed and electronic records and vote tallies, for the public office and relative to the public office of State Senator 50th, Senate District; preserve inviolate and separate the ballots voted upon by the voters of the subject counties cast for the office of State Senator for the 50th, Senate District, from all others, and that such listed items be

preserved, separated and held under a security system requiring bipartisan participation in order to access such material by the use of a two lock system with a Commissioner of each party having the key / combination / access code to only one lock of the storage facility in which election materials and ballots and other materials, and further together with court review of the canvass, recanvass, and or audit of the electronic voting machines, ballot marking devices and or ballot scanners and the direction of an expanded audit and if so determined an audit pursuant to Election Law 16-102(3) and also to allow for comprehensive review of the matters under the jurisdiction of this Court.

VENUE

8. This action brought in Onondaga County is based upon the fact that the 50th State Senate District is partially within Onondaga County.

JURISDICTION

9. This proceeding is commenced pursuant to the provisions of Articles Five, Six, Seven, Eight, Ten, Eleven, Nine and Sixteen of the Election Law, including but not limited to Sections 16-100, 16-106, 16-112, 16-113, 16-116 Election Law, Article 78 of the Civil Practice Law and Rules, which confer authority upon this Court to determine and receive any disputes arising out of or relating to the canvass, re canvass of ballots and returns as well as the handling of memory sticks and to preserve the ballots, including challenged ballots, the machines and the memory sticks employed in the General Election for the public office of State Senator for the 50th, Senate District, and to make orders directing ballots to be canvassed and / or voided and to adjust the canvass of the votes.

10. Further, to the extent that it becomes relevant, application is made pursuant to the provisions of CPLR 3001 for a declaratory judgment of the Court declaring any statute, rule or executive order of the State of New York, or of the Respondent Boards of Elections as being invalid under the Laws of the State of New York and / or unconstitutional under the provisions of the New York State Constitution, and to further make declaration of the rights of the parties hereto. .

PRESERVATION

11. This Election already has an unusually high number of paper ballots being cast, many of which are being sent via the mail (which will be received after the date of the election).
12. Due to changes in the Laws of the State of New York there has been an increase in the number of Affidavit Ballots, and requirement for additional layers of research and review of same.
13. Due to changes in the law most absentee, special, military and other ballots were already canvassed without the benefit of an opportunity for judicial review, or the ability for a poll watcher or Commissioner of Elections to set any improper or illegal ballots filed by persons who were not qualified to vote in the subject election.
14. These ballots are beyond our reach at this point, however, the remaining ballots are currently preserved, therefore, they may be reviewed by this Court, see Decker v. Jutkofsky, 77 A.D.2d 159 (3rd Dept., 1980).
15. This influx of mailed and other paper ballots necessarily means that the outcome of this election will NOT be determined by the election night canvass.
16. The current state of affairs and the facts surrounding this election require that this Court use its powers under Section 16-112 Election Law to preserve the ballots and election

materials related thereto so that any contest related thereto, and any administrative determination of the Respondent Boards of Elections may be heard before and reviewed by this Court.

17. The Petitioners herein have clearly invoked their right to Judicial Review of the ballots in the upcoming General Election.
18. The right to preservation of ballots in light of an upcoming contest in Court is expressly set forth in the Election Law. The Courts routinely grant preservation orders under the provisions of Election Law § 16 – 112, see Cairo & Jacobs v. Nassau County Board of Elections, Index No. 612124/2020.
19. The results of this election, as published by Respondent State Board of Elections, are very close and cry out for this Court's attention and supervision, see <https://nyenr.elections.ny.gov/>.
20. Petitioner is ahead by 396 votes.
21. Upon information and belief, based upon inquiry with the local boards of elections, there are 150 Absentee ballots on hand (unopened) in Onondaga County and 110 absentee ballots on hand (unopened) in Oswego County.
22. An undetermined number of such ballots will continue to be timely received in the days ahead.
23. In addition, there are an undetermined number of Affidavit Ballots issued on the days of election to voters whose names did not appear in the poll books.
24. Upon information and belief, these ballots are being returned to the Respondent local Boards of Elections and must be properly secured.

25. Upon information and belief, the Respondent Onondaga County Board of Elections is in possession of some 800 ballots (and the accompanying envelopes and documentation therefor) which have, in contravention of law, NOT been counted.
26. These ballots must be preserved and secured.
27. Upon information and belief, and based upon counsel's experience with prior elections, several Voting Machines used in this election were defective, which may result in inaccurate tallies of votes; additionally, there are certainly other irregularities in the election process which may give rise to improper votes being canvassed or the canvass of inaccurate returns.
28. Respondent Boards of Elections have not disclosed to petitioner such irregularities and the logs and documentation of same. Petitioner respectfully demands an order for production of same.
29. All of this information, and the documentation thereof which is required by law, are in the sole and exclusive possession of the Respondent local Boards of Elections.
30. Without the intervention of this Court, petitioner has no way to access this vital information which may affect the outcome of this election.
31. Upon information and belief, such defective Voting Machines would have resulted in the use of emergency ballots that were returned to the Board of Elections because they were unable to be properly scanned at the polling places and not reviewed by the Board of Elections in a timely fashion.
32. Upon information and belief, there are / will be affidavit ballots and special ballots that will not have been reviewed by the Respondent Board of Elections in a timely fashion.

33. Upon information and belief, there are /will be absentee ballots that will not have been reviewed by the Respondent Board of Elections in a timely fashion.
34. Upon information and belief, there are / will be Military and Federal ballots that will not have been reviewed by the Respondent Board of Elections in a timely fashion.
35. Upon information and belief, there are / will be other Non-Scanned Ballots that will not have been reviewed by the Respondent Board of Elections in a timely fashion.
36. It is possible that the Respondent Board of Elections, acting on its own or by local Boards of Inspectors in canvassing these Non-Scanned Ballots may have tie votes, may be unable to determine the validity of individual ballots, or may err in determining the validity / invalidity of individual ballots.
37. Since 2000 this state has seen some of the closest of elections. In 2000, the last race decided in the United States was in a Manhattan State Senate District, where Senator Roy M. Goodman was re-elected by a margin of one hundred votes.
38. In 2004 the Court of Appeals passed on the qualifications of voters in Albany County Legislative races as the result of Court ordered rescheduled General Election, see Matter of Gross v Albany County Bd. of Elections, 10 AD3d 476, 479 [3d Dept 2004], affd 3 NY2d 251 [2004] Matter of Gross v Albany County Bd. of Elections, 10 AD3d 476, 479 [3d Dept 2004], affd 3 NY2d 251 [2004].
39. In 2004, in Westchester County, Senator Nicholas Spano was re-elected by eighteen votes. The matter was finally decided in February, after Election Day by a final order of the Supreme Court which followed upon remand from the Court of Appeals.

40. In 2006 a race for Town Board in Wappingers was declared a tie when the Courts found a ballot with pizza sauce stains was valid and to be canvassed, see Brilliant v. Gamache, 25 A.D.3d 605 (2nd Dept., 2006)
41. In 2008 another tight State Senate race was decided by a few hundred votes out of the thousands cast, see Ragusa v. Board of Elections, 57 A.D.3d 807 (2nd Dept., 2008).
42. In 2009 the Nassau County Executive Election was decided by a mere 286 votes out of more than 260,000 ballots cast, see <https://www.nytimes.com/2009/12/01/nyregion/01nassau.html>.
43. In 2015 the New York State Court of Appeals decided Stewart v. Chataqua County Board of Elections, 14 N.Y.3d 115 (2015) setting important precedent regarding the qualifications of a voter to vote in an election (invalidating certain ballots).
44. More recently a Niagara County Legislative Race was decided by a couple of votes, see Voccio v. Kennedy, Niagara County Index No. E176438/2021.
45. New York State saw the last race for Congress to be decided in the entire nation after the 2020 Elections, by a margin of 109 votes out of over 300,000 votes cast. see Tenney v. Oswego Co. Board of Elections, 71 Misc.3d 385 (Sup. Ct., Oswego Co, 1921).
46. Indeed, our electoral history has repeatedly seen extremely close races in which the powers of the Courts were invoked to review the administrative determinations of the Boards of Elections.
47. It would be foolhardy to assume that there will be no races that are brought to a “photo finish” this year.
48. Each of the cases mentioned above featured Court review of the Board of Elections determinations to validate or invalidate ballots.

49. To the personal knowledge of your affirmant, without Judicial Review and preservation, as provided by the Election Law for nearly a century, there would be no way to uncover ballots improperly invalidated or votes cast in contravention of law
50. In some cases, the preservation order came before the election had commenced (see Cairo, supra). In others, Court intervention came on the heels of the close of the polls.
51. The hallmark of all of these cases, and the policy of this state is to preserve the right for candidates, voters, and party committees to have their day in Court.
52. The policy of this state for over a century has to allow for Court review of the administrative process so that the voters have confidence in the electoral system – that is to say that where Constitutional rights – including the right to vote – are involved the State of New York must be committed to getting it right, even where the process might take time and inconvenience those who desire quick results.
53. That policy, which protects the rights of due process, free speech, free association and the right to vote are intertwined and protected by the Article 16 Election Law relief sought by the Plaintiffs here. It must be effectuated by this Court.
54. This Court is empowered by the State Constitution to adjudicate all matters relating to Elections, see Article II, § 8 N.Y. Constitution.
55. Upon information and belief, based upon counsel's checks with the New York State Board of Elections, several Boards of Elections are planning to alter canvassing processes from those used in past years so as to reduce or eliminate poll watchers from having meaningful and effective access to election materials and ballots so they might make objections to absentee, military, special, affidavit, or federal ballots.

- commenced pursuant to, *inter alia*, the provisions of the Election Law, which confers authority upon this Court to order the preservation of the ballots and pursuant to Section 16-112 of the Election Law. The Court has the duty to order the preservation of the ballots in order to protect the rights of the Respondent Boards of Elections and to preserve the integrity of the election process. The Court has the duty to order the preservation of the ballots in order to protect the rights of the Respondent Boards of Elections and to preserve the integrity of the election process. The Court has the duty to order the preservation of the ballots in order to protect the rights of the Respondent Boards of Elections and to preserve the integrity of the election process.

- delegation of powers to the Judiciary by the Constitution of the State of New York, the Election Law, and/or the Rules and Regulations of the New York State Board of Elections.
62. In the event that the Court determines that it will take up any constitutional questions, leave is respectfully requested here to provide the Attorney General with notice of same pursuant to the Executive Law and CPLR.
63. Each voter must be qualified to vote in the Election in question and this Court has the right, power and duty to pass on any / all questions of law and fact relating thereto, see Matter of Gross v Albany County Bd. of Elections, 10 AD3d 476, 479 [3d Dept 2004], affd 3 NY2d 251 [2004] Matter of Gross v Albany County Bd. of Elections, 10 AD3d 476, 479 [3d Dept 2004], affd 3 NY2d 251 [2004], see also Stewart v. Chataqua County Board of Elections, 14 N.Y.3d 115 (2015), and Voccio v. Kennedy, Niagara County Index No. E176438/2021.
64. Petitioner, and the voters of this District have the right NOT to have their vote diluted and the right NOT to be forced to associate with persons not qualified to vote under the provisions of the State Constitution.
65. Petitioner respectfully asserts and reserves her right challenge any statute, rule, practice, or action of the Respondent Boards which transgresses her rights under the Constitution, Election Law or other statutes of the State of New York.
66. Petitioners make their claims herein under the New York State Constitution and the Laws of the State of New York.
67. Any claims based upon the United States Constitution or Federal law are expressly reserved for a Federal forum, see England v. Louisiana State Board of Medical

Examiners, 375 U.S. 411 (1964).

68. New procedures for “cures” for defective ballot envelopes may adversely affect Petitioner’s rights under the Election law and related laws. This Court must order full disclosure of the “cure” process so as to protect Petitioner’s rights and allow for Court to review board Actions.
69. New procedures for the Board(s) of Elections to review and rule on signatures on ballot envelopes and related documents are in place for the first time in New York’s history.
70. The State Constitution and the Election Law require identification of each voter by signature.
71. The judgment that a signature on an application, ballot envelope or affidavit is within the exclusive jurisdiction of this Court pursuant to the Constitution, Article II, §8.
72. Upon information and belief, the Respondent Board(s) may / will make errors in their determinations as to cures and the authenticity of signatures. Such matters are properly before this Court for review.
73. Further, the Respondent Board (s) must be ordered to preserve and produce the records relating to such processes.
74. Any determinations as to signatures must, therefore, come before this Court for review where that is objection made at the Board.
75. In the past experience of counsel, when the outcome appears to be very close the result of the election hinges upon the recanvass of voting machines, the condition and reliability of the memory sticks, and the canvass of paper ballots including emergency, affidavit, absentee, and military, as well as Special ballots.
76. Petitioner respectfully asserts that it is incontrovertible that she is irreparably harmed when any ballot is counted where the voter is not qualified under the Constitution and the

Election Law and included in the count of the ballots in her election.

77. This irreparable harm would / will occur where the respondent Local Boards are in error on a unanimous basis and determine to count an improper or illegal ballot; where a ballot is canvassed in error due to a split vote on validity and immediately bursting the ballot envelope and counting the ballot therein; where the Local Boards are unable or refuse to take evidence or objections as to the validity of a ballot or the qualifications of a voter which will prove or disprove the qualifications of that voter.
78. Petitioner is irreparably harmed by any action of the Board which deprives her (or a Commissioner of the Board) of the right to obtain Judicial Review of the administrative determinations of a Board of Elections, see Matter of Pan Am. World Airways v. New York State Human Rights Appeal Bd., 61 N.Y.2d 542, 548, 475 N.Y.S.2d 256, 463 N.E.2d 597 [1984]; Matter of Baer v. Nyquist, 34 N.Y.2d 291, 298, 357 N.Y.S.2d 442, 313 N.E.2d 751 [1974]).
79. The Courts have an obligation to preserve the integrity of our election process and assure the public's confidence in the election process.
80. Thus, even when proscribed by statute, Judicial Review is mandated when constitutional rights are implicated by an administrative decision or 'when the agency has acted illegally, unconstitutionally, or in excess of its jurisdiction' (Matter of New York City Dept. of Env'tl. Protection v. New York City Civ. Serv. Commn., 78 N.Y.2d at 323, 574 N.Y.S.2d 664, 579 N.E.2d 1385)" DeGuzman v. NY Civil Service Commission, 123 A.D.3d 1189 (3rd Dept., 2015).
81. It is beyond question that when considering the qualifications of voters, the right to vote, and the counting of ballots, that Constitutional Rights are at stake.
82. Petitioners reserve 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 to amend these pleadings to reflect the facts adduced by way of a canvass of the ballots for the subject public office.

83. Upon information and belief, the facts alleged in the paragraphs hereinabove, point to the fact that the final results of this election hinges upon the canvass of the various types of paper ballots mentioned hereinabove, as well as a review of the canvass of the machine cast ballots, voting machines, ballots, scanners, "sticks" or flash drives (the electronic record of voting similar to USB port devices), the ballot images, and ballot stubs, and the audit of the voting machines as well as the review of the paper ballots contained in said machines (or otherwise preserved).
84. Petitioner has not requested the relief set forth herein or similar relief from any Court.
85. Should there not be any impoundment order entered with regard to races statewide or such an overarching order be withdrawn or vacated prior to this Court taking jurisdiction of this matter, there will be no protection of the machines and paper ballots in the subject state senate district. Such a situation would present a lapse in security for the electoral process in this senate district and leave the election returns vulnerable to fraud.
86. Any lapse in security or breach of protective measures for the voting machines, ballots, scanners, "sticks" or flash drives (the electronic record of voting similar to USB port devices), and ballot stubs relating to the election for state senator in the subject state senate district would irreparably harm petitioner, and, indeed, undermine public confidence in the electoral process.
87. Petitioner requests leave to, and 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 to amend these pleadings to reflect the facts adduced by way of further

investigation and/or a canvass of the ballots for election to the subject public office by the Board of Elections.

88. This action is being brought via e-filing which was authorized for Elections Matters in 2020 by the Chief Administrative Judge of the Courts of New York. The immediate attention of the Court to the Order to Show Cause submitted herewith is required so as to ensure preservation of the ballots and the election materials.
89. This proceeding is commenced pursuant to the provisions of Article Five, Six, Seven, Eight, Ten, Eleven, Nine and Sixteen of the Election Law, and related statutory provisions, which confers authority upon this Court to preserve the ballots and voting materials, and to determine and resolve any disputes arising out of or relating to the canvass of ballots and returns for public office.
90. In order to assure that the ballots and voting machines in the subject political subdivision(s) are immediately protected, and that every step is taken to prevent tampering and fraud, it is respectfully submitted that service of the within requested order must be made as soon as possible.
91. It is respectfully submitted that the circumstances described herein present this court with an emergency situation requiring immediate action, and further that the very nature of an election proceeding, particularly with regard to ballot integrity, presents an exemption to any rule which might bar the court's action in other circumstances, see Banko v. Webber, 7 NY2d 758 (1959).
92. This action is commenced just after the day of the election. Immediate service of the pleadings and order is required.
93. Expedited service in accordance with the holdings of the Court of Appeals and the Appellate Division, Second Department are requested, see Angletti v. Morreale, 25 NY3d

794 (2015) and Marcoccia v. Garfinkle, 307 A.D.2d 1010 (2nd Dept., 2003), that is to affix a copy to the entrance / door / doorway of such Respondent's residence and to mail a copy to him/her/them.

94. It is Counsel's personal experience that candidates will absent themselves from their residence and otherwise attempt to avoid service in situations such as this one. Substituted service in accordance with the above guidelines of the Court of Appeals and Appellate Division is required.
95. As this is a General Election, petitioner has requested that the Board of Elections, acting in its capacity as the Board of Canvassers, be enjoined from certifying the results of this election until such time as these court proceedings are finally resolved and determined. Absent such injunction Petitioner may lose his or her right to proceed directly before the courts of this state to correct the canvass of the returns of the General Election, and the matter will be removed from the jurisdiction of this Court, except, possibly, by way of a *quo warranto* proceeding initiated by and at the sole discretion of the Attorney General of the State of New York, or left to be taken up as a matter within the constitutional jurisdiction of the legislative body seating a new member.
96. The Board of Elections is required by law to recanvass the returns within 15 days from the date of the General Election pursuant to Election Law Section 9- 208. The request for said injunction as to certification is requested only to protect the rights of the petitioner in the event of delay in the conclusion of all administrative and court proceedings extending beyond 15 days.

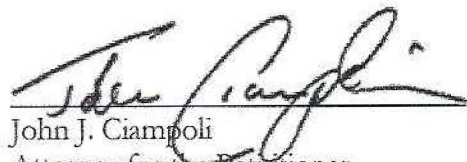
97. The TRO requested herein will not prejudice any party's rights; but, rather, will serve to allow for an orderly review of the process by this Court, and ensure the integrity of the election process.
98. To the best of counsel's knowledge, no Court has been requested to, or has taken jurisdiction over the canvass and recanvass of votes in the subject state senate district.
99. Counsel has not requested the relief requested herein, or any similar relief from any Court of competent jurisdiction.
100. An emergency affirmation is annexed hereto and made a part hereof.
101. Counsel hereby certifies these pleadings as non-frivolous pursuant to the Rules of the New York State Courts.

WHEREFORE, Petitioner respectfully demands,

- (1) The signing of the accompanying Order to Show Cause and the granting of the relief requested therein, including but not limited to the temporary relief requested, and
- (2) An order of this Court in the first instance that the Respondent Board of Elections be temporarily enjoined and restrained from certifying any candidate other than the Petitioner, Rebecca Shiroff, as the candidate duly elected to the office of State Senator 50th State Senate District, and
- (3) The preservation of ballots and elections materials (including any ballots scheduled to be cast and canvassed at the offices of the Board(s) of Elections after Election night as specified herein, so as to assure the review of same by the Courts of this state, and
- (4) A judgment of this court correcting, adjusting and finalizing the canvass of returns for the General Election for election to the office of Member of New York State Senate, 50th Senate District and further declaring that the Respondent Board of Elections certify the name of Petitioner, Rebecca Shiroff, as the candidate duly elected to the said public office, together with the relief requested in the attached Order to Show

Cause, and such other, further, and different relief that this court may deem to be just and proper.

DATED: SUFFOLK County, New York
November 9, 2022



John J. Ciampoli
Attorney for the Petitioner
Messina, Perillo and Hill LLP
285 W Main St. Ste 203, Sayville, NY 11782
Tel: (631) 582-9422 Cell: (518) 522-3054
Fax: (516) 450-3473
Email: ciampolilaw@yahoo.com

RETRIEVED FROM DEMOCRACYDOCK.COM

ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
COUNTY OF SUFFOLK) s.ss:

JOHN CIAMPOLI, ESQ., an attorney duly admitted to the practice of law
before the Courts of the State of New York, does hereby affirm under the penalties of perjury:

1. He is the attorney for the plaintiff(s) - petitioner (s) in this action.
2. He has reviewed the contents of this document with his client(s), and / or their workers, and elections officials, and upon the conclusion of said review as to the facts alleged therein, believes same to be true.
3. He has personally reviewed originals or copies of the relevant documents, petitioners' records, and ancillary documents on file with or published by the Boards of Elections together with other papers relating thereto, and upon the conclusion of the said review, believes the within allegations to be true, on the basis of his personal knowledge.
4. This affirmation is being used pursuant to the provisions of the CPLR and applicable case law, due to the fact that time is of the essence and that petitioners and counsel are in different counties. Counsel having offices in the County of Suffolk and Petitioner(s) residing in a County / Counties other than the County of Suffolk.

DATED: Sayville, New York
November 9, 2022



John Ciampoli, Esq.
Of counsel to
Messina, Perillo and Hill, LLP
285 W. Main Street, Suite 203
Sayville, New York 11782
Phone: 631-582-9422
Cell: 518 - 522 - 3548
Email: Ciampolilaw@yahoo.com

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONONDAGA-----X
In the Matter of the Application of

Index No.:

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**EMERGENCY**
AFFIRMATIONRespondents.
-----X

John Ciampoli, Esq. an attorney duly admitted to the practise of law before the Courts of the State of New York does hereby affirm under the penalties of perjury, as follows:

1. I am the attorney for the Plaintiffs - Petitioner(s) in the above captioned proceeding.
2. This affirmation is offered to the Court to explain why this matter is of the most urgent nature and requires the Court's immediate attention.
3. This is an Election Law proceeding, and a declaratory judgment action related to the General Election, and as such, this matter has a statutory preference over all other matters on the Court's calendar, see, Election Law Section 16 - 116. Elections matters are

subject to an incredibly short statute of limitations. The last day to commence this proceeding is a mere seven days after the last day to file petitions. As a practical matter, this case must receive immediate attention so that the Court may achieve jurisdiction.

4. This matter must be instituted immediately to prevent the harm that will come to the Plaintiffs - Petitioners by the application of the statutes challenged herein.
5. Further, the Court of Appeals has determined that Elections Matters are always to be given the highest priority by the Courts. It is respectfully submitted that the circumstances described in the petition present this court with an emergency situation requiring immediate action, and further that the very nature of an election proceeding, particularly with regard to petition challenges which have a very short statute of limitations, presents an exemption to any rule which might delay or bar the court's action in other circumstances, Banko v. Webber , 7 NY2d 758 (1959).
6. It is respectfully submitted that the statute and case law require the immediate consideration of this matter by the Supreme Court

WHEREFORE, it is respectfully requested that this Court take up the annexed Order to Show Cause immediately and grant the relief requested for such order and in the verified petition, together with such other, further and different relief as this Court may

RETRIEVED FROM DEMOCRACYDOCKET.COM

deem to be just and proper in the premises.

DATED: November 9, 2022

A handwritten signature in black ink, appearing to read "John Ciampoli". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

John Ciampoli, Esq.
Of counsel to
Messina, Perillo and Hill, LLP
285 W. Main Street, Suite 203
Sayville, New York 11782
Phone: 631-582-9422
Cell: 518 - 522 - 3548
Email: Ciampolilaw@yahoo.com

RETRIEVED FROM DEMOCRACYDOCKET.COM