

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

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In the Matter of

STACEY G. PHEFFER AMATO,

Petitioner-Candidate Aggrieved,

-against-

THOMAS P. SULLIVAN,

Respondent-Candidate,

-and-

THE BOARD OF ELECTIONS IN THE CITY OF
NEW YORK,

Respondent.

-----X
TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Petitioner-Candidate Aggrieved **STACEY G. PHEFFER AMATO**, respectfully alleges
as follows:

1. Petitioner-Candidate Aggrieved **STACEY G. PHEFFER AMATO** ("Petitioner-Candidate"), a duly registered voter and enrolled Democratic Party member, resides at 8800 Shore Front Parkway, 10E, Rockaway Beach, in the City of New York and the County of Queens, was entitled to vote in the general election for the Public Office of Member of the State Assembly of the 23rd Assembly District in and for the County of Queens held on the 8th day of November 2022 and was a candidate for said position in said General Election.

2. Upon information and belief, Respondent-Candidate **THOMAS P. SULLIVAN** ("Respondent-Candidate"), also a duly registered voter and enrolled Republican Party member, was entitled to vote in the general election for the Public Office of Member of the State

Assembly of the 23rd Assembly District in and for the County of Queens held on the 8th day of November 2022 and was a candidate for said position in said General Election and resides at 114 Beach 219th Street, Breezy Point, City of New York and the County of Queens.

3. Petitioner-Candidate, residing at 8800 Shore Front Parkway, 10E, Rockaway Beach, New York 11693, was the Democratic and We The People candidate for Public Office of Member of the State Assembly of the 23rd Assembly District in and for the County of Queens held on the 8th day of November 2022.

4. Petitioner-Candidate has standing to commence this proceeding pursuant to Sections 16-100, 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 said Election Law.

5. Respondent Board of Elections in the City of New York ("Board of Elections") is charged by the New York State Election Law with the administration of elections held in the County of Queens, including the canvassing of the returns of elections and the certifying of the results of elections in the County of Queens of the New York City Board of Elections.

6. Respondent-Candidate residing at 114 Beach 219th Street, Breezy Point, New York 11697 was the Republican and Conservative candidate for Public Office of Member of the State Assembly of the 23rd Assembly District in and for the County of Queens held on the 8th day of November 2022.

7. Unofficial returns of the General Election for Public Office of Member of the State Assembly of the 23rd Assembly District in and for the County of Queens held on the 8th day of November 2022 report that Respondent-Candidate was in the lead with 15,246 votes and that Petitioner-Candidate was second with 15,000 votes, trailing by 246 votes with over 1,000

absentee and affidavit ballots to be counted. The canvassing of absentee ballots is occurring on a rolling basis. The affidavit ballots are scheduled to be canvassed on November 16th, 2022.

8. This proceeding is brought to have the Court rule on the casting and canvassing of improper votes, or the refusal to cast and canvas proper votes, and other protested and challenged ballots of whatever kind.

9. This proceeding is also brought pursuant to Articles 9 and 16 of the Election Law that confers upon this Court supervision, as necessary, of the canvass or manual recanvass of the regularly cast scanned ballots on the voting machines, 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) cast in said general election for said Public Office of Member of the State Assembly of the 23rd Assembly District in and for the County of Queens, as well as the Court's supervision of any manual recanvass; and to allow for the comprehensive review of the matters under the jurisdiction of this Court.

10. In view of the foregoing, the courts have authorized a procedure to preserve the ballot for later court review as is authorized by Election Law 16-112. Before such protested ballot is mixed with other ballots it is copied and the copy is placed in the ballot envelope. The envelope is then sealed and held for court review. *King v. Smith*, 308 A.D.2d 556 (2d Dept. 2003); *O'Keefe v. Gentile*, 1 Misc.3d 151 (S. Ct., Kings Co. 2003).

11. Petitioner-Candidate requests that this procedure be used at the canvas of paper ballots for this election.

12. Accordingly, Petitioner-Candidate requests the procedure set forth in *King v. Smith, supra*, also be directed for this situation, as set forth in the annexed Order to Show Cause.

13. 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. Upon information and belief, some of the polling sites Election Day votes were not actually included in the unofficial count of votes released by the New York City Board of Elections and it is anticipated that the vote on Election Day will differ substantially from the votes originally reported.

14. Upon information and belief, the results of the General Election for Public Office of Member of the State Assembly of the 23rd Assembly District, held on November 8, 2022, as reflected in the votes cast by Voting Machines and the Paper Ballots in the General Election were exceedingly close, with only a marginal number of votes separating the Petitioner and the Respondent-Candidate.

15. Upon information and belief, the allegations in the paragraphs hereinabove suggest that the final result of the General Election may be determined by the canvass of the various types of Paper Ballots mentioned herein.

16. Upon information and belief, there are a large number of Paper Ballots cast in the General Election causing a disproportionate number of ballots to be cast by mail in relation to past general elections.

17. Upon further information and belief, Respondent Board of Elections has not yet fully complied with Election Law § 9-209(3) requiring the Board of Elections to provide those who voted by absentee ballot the opportunity to cure deficiencies in their absentee ballots, providing that the Board of Elections is to provide notice to any voter of any deficiency within 24 hours of identifying said deficiency by phone, email, and mail and providing the voter with a period of time to cure said deficiency.

18. As such, it may be necessary for this Court to direct the Board of Elections to comply with Election Law § 9-209(3) as modified and notify voters of any deficiencies in their absentee ballots and provide them the applicable time period to cure said deficiencies. Upon information and belief, the Board of Elections may improperly disqualify paper absentee and affidavit ballots on the basis of signatures “not matching” when in fact the signature on the absentee/affidavit ballot is in fact the signature of the voter and the Board of Elections is improperly comparing a current signature with a signature from the voter’s record that might be over 20 years old and not taking into account that a person’s signature may change over a period of time and that many people that vote by Absentee ballot may be infirmed or elderly. This may require judicial review of the Board’s determination.

19. Upon further information and belief, votes were cast by persons who signed the polling place registration book but were not, in fact, the duly enrolled voter whose name they signed. Voting by such imposters is unlawful and fraudulent; and votes were also cast by absentee ballots by voters who also voted on the voting machines either during early voting or on November 8, 2022. The counting of such absentee ballots is not permitted and would constitute a voter improperly casting two ballots.

20. Upon further information and belief, votes were cast by absentee ballots by persons who signed the absentee ballot envelope but were not, in fact, the duly enrolled voter whose name they signed. Voting by such imposters is unlawful and fraudulent. Said ballots should be invalidated by the Board of Elections.

21. As such, this Court should order that the Board of Elections make available to the Petitioner-Candidate the computer images evidencing who signed in during early voting or on November 8, 2022 and cast a vote on the voting machine.

22. This proceeding is commenced pursuant to Election Law Sections 16-100, 16-106, 16-112, 16-113, and 16-116 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 for the Public Office of Member of the State Assembly of the 23rd Assembly District, County of Queens, State of New York, held on the 8th day of November 2022.

23. Petitioner-Candidate 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, to amend the pleadings to reflect the facts adduced by way of canvass or recanvass of the Paper Ballots in and for the General Election for the Public Office of Member of the State Assembly of the 23rd Assembly District, County of Queens, State of New York, held on the 8th day of November 2022.

24. Petitioner-Candidate believes that, after a complete canvass of the Paper Ballots, it should be determined that Petitioner-Candidate won the General Election for the Public Office of Member of the State Assembly of the 23rd Assembly District, County of Queens, State of New York, held on the 8th day of November 2022.

25. In an Election Law proceeding such as the instant one, commencement of the proceeding requires not only the filing of the petition, but the actual service of the Order to Show Cause and Petition upon all necessary parties before the expiration of the Statute of Limitations, which is November 18th, 2022. Because of the highly truncated Statute of Limitations period, request is made for liberal service provisions, as is routinely provided as reflected in the Order to Show Cause. Furthermore, this matter has a preference over all other matters. Accordingly, it is requested that the annexed Order to Show Cause be signed today.

26. Petitioner has no adequate remedy or relief other than that applied for herein.

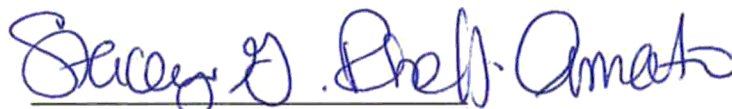
27. No previous application has been made for the relief sought herein or in the Order to Show Cause.

WHEREFORE, your Petitioner respectfully requests that this Court issue an Order:

1. Determining the validity of all ballots cast for the said General Election for Public Office of Member of the State Assembly of the 23rd Assembly District in and for the County of Queens held on November 8, 2022, whether on the voting machines on that date, or on the voting machines or otherwise during early voting, and all absentee, affidavit, special, federal, military, and emergency ballots;
2. Determining the accurate tally under the recanvass of the votes cast on the voting machines, special ballot making devices, and/or ballot scanners for said office in said primary election, and ordering the Board to adjust and correct its tally to reflect the accurate tally;
3. Ordering that pursuant to § 16-112 of the Election Law, Respondent Board of Elections shall preserve for judicial review in accordance with the procedures set forth in *King v. Smith*, 308 A.D.3d 556 (2d Dept. 2003) absentee, affidavit, special, federal, military, and emergency ballots which are counted over any objection by any candidate or his representative;
4. Ordering that all absentee, affidavit, special, federal, military, and emergency ballots cast in said General Election for the Public Office of Member of the Assembly of the 23rd Assembly District in and for the County of Queens, State of New York, be recanvassed by hand and representatives of all parties having the right to be present and interpose challenges;

5. Ordering the Board of Elections to comply with Election Law § 9-209(3);
6. Declaring Petitioner -Candidate Stacey G. Pheffer Amato duly elected to the Public Office of Member of the Assembly of the 23rd Assembly District in and for the County of Queens, State of New York by virtue of having received the greatest number of valid votes cast in the General Election for Public Office of Member of the Assembly of the 23rd Assembly District in and for the County of Queens, State of New York held on November 8, 2022, during the early voting, and by absentee, affidavit, special, military, and emergency ballots, and directing the Board to certify Petitioner as Member of the Assembly of the 23rd Assembly District; and
7. For such other and further relief as this Court deems just and proper.

Dated: Lake Success, NY
November 14, 2022



STACEY G. PHEFFER AMATO
Petitioner-Candidate Aggrieved

Frank A. Bolz, III, Esq.
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VERIFICATION

STATE OF NEW YORK, COUNTY OF QUEENS) ss.:

STACEY G. PHEFFER AMATO Petitioner-Candidate Aggrieved being duly sworn, deposes and says that she has read the foregoing **PETITION** subscribed by her and knows the contents thereof; and that the same is true of her own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters she does believe it to be true.


STACEY G. PHEFFER AMATO

Sworn to before me this 14th day of
November 2022


NOTARY PUBLIC

FRANK A. BOLZ III
Notary Public, State of New York
No. 02BO4803493
Qualified in Suffolk County
Commission Expires Nov. 30, 2027

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ORDER TO SHOW CAUSE WITH VERIFIED PETITION

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FRANK A. BOLZ III ESQ.
Attorney(s) for Petitioner
Attorney Certification pursuant to Court Rule § 130-1.1-a

Dated,

Attorneys for

Yours, etc.

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