

Matter of Ruggiero v Orange County Bd. of Elections

2026 NY Slip Op 31154(U)

March 3, 2026

Supreme Court, Orange County

Docket Number: Index No. EF012694-2025

Judge: Sherri L. Eisenpress

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X

In the Matter of

PAUL I. RUGGIERO, Candidate-Agrieved,

DECISION & ORDER

Petitioner,

Index No.: EF012694-2025

-against-

Motions 1 and 2

THE ORANGE COUNTY BOARD OF ELECTIONS,
Courtney Canfield Greene and Louise
Vandemark, Commissioners,

and

MARY L. MCLYMORE, MARY LOU CAROLAN and
JIM POLITI, Respondent-Candidates,

Respondents.

-----X

Sherri L. Eisenpress, J.S.C.

On or about December 23, 2025, Paul Ruggiero ("Petitioner" or "Ruggiero") filed an Order to Show cause, pursuant to Articles Five, Six, Seven, Eight, Nine, Ten, Eleven and Sixteen of the Election Law and CPLR §3001 seeking an Order:

1. Determining the accuracy of the canvass of all ballots and certification of results in the 2025 General Election for the public office of Town of Newburgh Council Member; and
2. Sustaining the twenty-two (22) objections made on behalf of Petitioner to ballots claimed to have been improperly counted during the manual recount in the 2025 General Election for the public office of Town of Newburgh Council Member and removing the challenged ballots from the count/certification of election; and
3. Ordering the Respondent Board of Elections amend the certification to certify the correct vote tally and/or the name of the correct Candidate(s) as the duly elected persons to the public offices pertaining thereto in the 2025 General Election for the public office of Town of Newburgh Council Member;

4. Declaring Paul I. Ruggiero the winner (vote for two candidates) of the 2025 General Election for the public office of Town of Newburgh Council Member by way of receiving the second-highest total of valid votes cast in said election;

5. Ordering that the canvass of the votes made by the Board of Elections be corrected and adjusted to reflect a proper tally of the votes for the said public office, or if such determination is impossible for this Court to make with certainty, due to fraud, and/or irregularity, issuing an Order directing a new general election be held, and also to allow for the comprehensive review of the matters under the jurisdiction of this Court;

6. Temporarily enjoining the swearing-in, commencement of official term of office and/or seating/inauguration of Respondent Mary Lou Carolan as a Newburgh Town Council Member until after the December 31, 2025, expiration of incumbent Paul Ruggiero's current term of office as Newburgh Town Council Member, or until the date this Court sets for a hearing, whichever occurs later; and

7. Granting Petitioner such other relief as the Court deems just and proper.

The Court has considered NYSCEF Document Nos. 1, 5, 10, 12, 13, 16 and 18 and all the exhibits annexed thereto as well as Exhibit 1 stipulated into evidence by the parties, which consists of 37 ballot sheets with the Board of Election ("BOE") Commissioners notes in reaching this determination on the motion.

Verified Answers to the Petition were filed on or about December 30, 2025, by the BOE and by Mary Lou Carolan ("Carolan") on December 31, 2025, which each contain various affirmative defenses (including standing, subject matter jurisdiction, failure to plead fraud with particularity) and a counterclaim and a cross claim alleging that there were ballots that were either not counted for Carolan or not counted at all (specifically five ballots).

The action before this Court involves a challenge to the Board's certification of the election results following a full manual recount of ballots for an election that was decided by fewer than 20 votes, thus necessitating such manual recount pursuant to § 9-208(4)(i) and (ii) of the Election Law.

Pursuant to the dictates of § 9-208, at the manual recount, representatives for Petitioner objected to a number of ballots. Seventeen such objections were sustained by one commissioner but overruled by the other. Five of Petitioner's objections were unanimously overruled. Petitioner contends that each of the twenty-two challenged ballots should have been ruled invalid.

On or about February 2, 2026, the parties and their counsel appeared before this Court for a conference. During that conference, the specific ballots to which there were objections were reviewed, and following said review, certain objections were withdrawn.

The parties produced the original ballots for the Court's review should the Respondents' contentions regarding standing and jurisdiction fail.

I. STANDING AND JURISDICTION

Citing to Election Law § 9-209 (8)(e) ("Each such candidate, political party and independent body shall be entitled to object to the BOE's determination that a ballot is invalid. Such ballots shall not be counted absent an order from the Court.") Respondents argue that this does not permit a party to challenge a ballot found to be valid. Citing further to Election Law § 9-209 (8)(6), the legislature directed that "[i]n no event may a Court order a ballot that has been counted to be uncounted." This, Respondents argue, divests this Court of jurisdiction to review a ballot once it has been found valid by the BOE (citing to IMO Amedure v. State of New York, 232 AD3d 48, 57 (3d Dept. 2024) aff'd, 2024 NY Slip Op 05425 (2024)) and the petition should be dismissed as to any challenge to a ballot found by the BOE to valid.

In response to the jurisdiction argument, Petitioner takes issue with Respondent's assertion of the applicability of Election Law § 9-209 and Respondent's reliance on Amedure. First, Petitioner argues that this proceeding is not governed by 9-209 as that section is limited to the early rolling canvas of ballots and only governs "the manner hereinafter prescribed to review, cast and canvas early mail, any absentee, military, special

presidential, special federal or other special ballots and any ballots cast in affidavit envelopes.”

The preamble of § 9-209 provides that:

“Before completing the canvass of votes cast in any primary, general, special, or other election at which voters are required to sign their registration poll records before voting, the board of elections shall proceed in the manner hereinafter prescribed to review, cast and canvass early mail, any absentee, military, special presidential, special federal or other special ballots and any ballots cast in affidavit envelopes, including ballots cast by voters pursuant to section 8-604 of this chapter. Each such ballot shall be retained in the original envelope containing the voter’s affidavit and signature, in which it is delivered to the board of elections until such time as it is to be reviewed, in order to be cast and canvassed.” (L. 2021, Ch. 763).

The legislative intent behind the 2021 amendment creating a new Section 9-209 is stated as follows:

“The purpose of the bill is to speed up the counting of absentee, military, special and affidavit ballots to prevent the long delay in election results that occurred in the 2020 election and to obtain election results earlier than the current law requires. To do so, the bill would require the boards of elections to review absentee, military and special ballots on a rolling basis as they are received prior to, during and after the election.” (Sponsor’s Memorandum, L. 2021, Ch. 763)

The action presently before this Court involves a challenge to the Board’s certification of the election results following a full manual recount. This is not a challenge to the rolling canvass under § 9-209.

Despite Respondent’s reliance on § 9-209, Petitioner contends that the actual statutory provision for this proceeding and this election is founded upon Election Law § 9-208.

The authority of the courts in an Election Law proceeding is strictly limited, and the only relief that may be awarded is that which has been expressly authorized by a statutory provision. (Jacobs v Biamonte, 33 AD3d 777, 778 [2d Dept 2007]). Here that express authority is found in § 9-208.

Following the rolling canvass of ballots, the margin between the second and third highest vote receiving candidates, Carolan (3,226) and Ruggiero (3,224), was fewer than 20 votes and also less than .5%, thus necessitating a full manual hand recount of every ballot cast in the election pursuant to Section 9-208 (4)(a)(i) and (ii) of the Election Law. The Respondent even acknowledges that the Board of Elections was required to conduct a manual hand recount for every ballot cast in this election.

Section 9-208 (4)(a)(i) and (ii) requires a manual hand recount of every ballot included recounting all election day ballots – a class of ballots that is not even mentioned in § 9-209. The manual recount of all election day ballots took place because the provisions for recounting ballots under § 9-208 are completely different from the early rolling canvass provisions under § 9-209. There are no provisions for challenges to election day ballots under § 9-209.

The applicable Election Law provision, found at Section 9-208, provides that:

“Before making such canvass the board of elections, with respect to each election district to be recanvassed, shall give notice in writing to the voting machine custodian thereof, to the state and county chair of each party or independent body which shall have nominated candidates for the said general or special election or nominated or elected candidates at the said primary election and to each individual candidate whose name appears on the office ballot, of the time and place where such canvass is to be made; and the state and county chair of each such party or independent body and each such individual candidate may send a representative to be present at such recanvass. Each candidate whose name appears on the official ballot, or his or her representative, shall have the right personally to examine and make a record of the vote recorded on the tabulated result tape and any ballots which were hand counted.” (Election Law § 9-208 [1]).

Pursuant to the dictates of § 9-208, at the manual recount, representatives for Candidate-Agrieved Ruggiero objected to a number of ballots in an effort to make a record of the vote recorded on the tabulated result tape and any ballots which were hand counted. Seventeen (17) such objections were sustained by the Republican Commissioner but overruled by the Democratic Commissioner. Five (5) objections were unanimously

overruled by both Commissioners. Due to the split determinations, or unanimous rulings, all twenty-two (22) ballots were cast and canvassed.

As further evidence that this is a § 9-208 recount matter, as opposed to the § 9-209 rolling canvass, the aforesaid objections to ballots were only permitted because a § 9-208 manual recount authorizes "the right personally to examine and make a record of the vote recorded..." § 9-208(1). Juxtapose this to a § 9-209 early rolling canvass, wherein poll watchers are merely poll spectators, as during the rolling canvass poll watcher may observe, "without objection, the review of ballot envelopes...". (Election Law § 9 - 209[5] [emph. added]). Respondent's reliance on § 9-209 and Amedure, supra is thus misplaced. Election Law § 9-209 is a completely different statutory creature from § 9-208.

Petitioner now avails himself of the jurisdiction of this Court under Election Law § 16-106, which governs proceedings as to the casting and canvass of ballots after certification following a manual recount. This action was commenced within 30 days after the certification of results by the Respondent Board, which is the date giving rise to the cause of action challenging the determination made.

With respect to the Court's jurisdiction, it is well-settled that, in a summary proceeding such as this one, brought pursuant to Election Law Article 16, the Supreme Court has the power: (1) to determine the validity of protested, blank or void paper ballots and protested or rejected absentee ballots and to direct a recanvass or correction of any error in the canvass of such ballots and (2) to review the canvass and direct a recanvass or correction of an error or performance of any required duty by the board of canvassers. (See Matter of Stewart v Rockland County Bd. of Elections, 41 Misc 3d 1238[A] [Sup Ct. Rockland County 2013] aff'd, 112 A.D.3d 866 [2d Dep't 2013]).

The issue of whether a ballot should be cast canvassed and counted for the public office is within the jurisdiction of this Court and should be heard and determined by this Court.

II. THE MERITS

With regard to the sufficiency of the Petitioner's pleadings, the Petitioner's application was made with sufficient particularization to put the Respondent on adequate notice as to which ballots the Petitioners intended to seek to have the Court remove from the count. A copy of the objections was not only appended to the pleadings but detailed in the body of the Verified Petition.

The CPLR directs that "[s]tatements in a pleading shall be sufficiently particular to give the court and parties notice of" what is being alleged or challenged and what the filing party "intended to be proved" (CPLR 3013). "Pleadings shall be liberally construed" (CPLR 3026), and "[a] copy of any writing which is attached to a pleading is a part thereof for all purposes" (CPLR 3014).

With regard to the authority of this Court to order a new election, the Court of Appeals has passed on the qualifications of voters in races as the result of Court ordered rescheduled General Election. See Matter of Gross v Albany County Bd. of Elections, 10 A.D.3d 476 (3d Dept 2004) aff'd 3 N.Y.2d 251 (2004).

Thus, as Plaintiff has standing and this Court has jurisdiction, the Court turns to the specific objections asserted by both Petitioner and Respondent Carolan. As to those, the Court rules as follows¹

In reviewing the ballots at issue, the Court is guided by the following relevant statutory provisions to wit:

- 1) A ballot that is marked or signed by the voter in such a way that it can be identified from other ballots must be voided and none of its votes counted. Examples of such markings include, but are not limited to, voter signature,

¹ The references to ballot numbers compared with exhibit B to the Affidavit of Petitioner and the original ballots provided by the parties for review.

initials, voter name and/or address, voter identification number, messages or texts or unusual markings not related to indication of the vote choice for a contest. If there are distinctly identifiable markings on one page or a multipage ballot, the entire ballot must be voided See N.Y. Comp. Codes R. & Regs Title 9 § 6210.13

- 2) A vote for any candidate or ballot measure shall not be rejected solely because the voter failed to follow instructions for marking the ballot. If, for any reason, it is impossible to determine the choice of the voter for any candidate or ballot question, the vote for that candidate or ballot question shall be considered void.
- 3) A mark is considered valid when it is clear that it represents the voter's choice and is the technique consistently used by the voter to indicate his or her selections. Such marks may include, but are not limited to, properly filled in voting position targets, cross mark "X", a checkmark "[TICK]", circles, completed open arrow "<- ", or any other clear indication of the voter's choice.

(i) A mark crossed out by the voter, an erasure, or words such as no next to a candidate's name or a voting position target area for a ballot question shall not be considered to be a valid vote but will, instead, be deemed an indication that the voter did not choose to cast a vote for that candidate or measure and the vote for that candidate or proposition shall be considered void.

- 4) In determining the validity of a partially filled-in voting position target area, the consistency of a voter's marks on the entire ballot shall be taken into consideration. A hesitation mark such as a dot in the voting position target area shall not be considered a valid mark unless it is demonstrated that the voter consistently marked his or her ballot in such a manner.

5) Overvote. If a contest is marked with a greater number of choices of different

candidates or ballot questions than the number for which he or she is lawfully entitled to vote, the vote shall not be counted for that contest, but shall be counted in all other contests in which there are no overvotes and the voter's choice can be clearly determined.

6) Undervote. If a contest is marked with a lesser number of choices of candidates or ballot questions than the number for which he or she is lawfully entitled to vote, the votes cast for all otherwise properly marked candidates or ballot questions shall be counted.

7) If a ballot is marked in each of two or more target areas or sensitive areas for a candidate whose name appears on the ballot more than once for the same office, and the total number of votes cast for such race for different candidates does not exceed the number for which he or she is lawfully entitled to vote, only the first vote for such candidate with multiple markings shall be counted for such candidate.

8) Ballots that are damaged, torn by the Board of Elections or its agents, or otherwise non-machine processable as submitted by the voter, shall be manually counted by a bipartisan team of election inspectors and such vote totals shall be added to the canvass of such other valid ballots for the respective office(s) and ballot questions.

9) Unintended machine marks placed on a ballot by the voting system that are not made at the direction of the voter shall not invalidate the ballot.

10) If two or more persons are to be nominated or elected to the same office or position, a voter may vote for one or more persons whose names do appear on the ballot and one or more persons whose names do not appear on the ballot, provided that the total number of votes cast by the voter for that office

or position does not exceed the number of persons to be elected or nominated to such office or position.

11) Abandoned ballot.

i) If a voter leaves the voting machine or system without casting their ballot, a bipartisan team of election inspectors shall cause the ballot to be cast as the voter left it, without examining the ballot.

(ii) If a voter leaves their paper ballot in a privacy booth and leaves the polling place without first casting that ballot on the voting device, such ballot shall be marked spoiled and retained by the election inspectors, accounted for in the statement of canvass, and returned in secure storage with such other spoiled ballots to the county board.

12) Write-in votes are votes cast for a person or persons whose name(s) do not appear on the official ballot.

(i) Write-in votes for persons whose names appear on the official ballot for that office or party position shall not be counted.

(ii) A write-in vote may be cast by the use of a name stamp.

(iii) A write-in vote must be cast in the appropriate place on the machine, or it shall be void and not counted.

(iv) A voter need not write in the first and last name of a candidate in every situation; the standard is whether the election inspectors can reasonably determine the intent of the voter when they cast their ballot.

13) If a ballot is received that is a Federal write-in absentee ballot (pursuant to 42 USC section 1973ff-2), the county board shall canvass the ballot as follows:

(i) If the overseas voter designated a candidate by writing in the name of the candidate or writing in the name of a political party, the vote is counted for the candidate of that party.

(ii) If the overseas voter wrote in only the last name of a candidate whose name appears on the ballot, the vote is counted for that candidate.

(iii) If the voter wrote in the name of only a candidate for president or only a candidate for vice-president whose name appears on the ballot, the vote is counted for the electors of that candidate. The name is entered into the canvass as the official ballot name of the presidential candidate.

(iv) Abbreviations, misspellings or other minor variations in the form of the name of a candidate or political party shall be disregarded if the intention of the voter can be ascertained. The name is entered into the canvass so that its spelling matches the spelling of the candidate's official ballot name. If it is impossible to determine the voter's choice of a candidate or candidates for an office upon the official ballot, such vote shall not be counted, but shall be returned as a blank vote.

Upon Review of the contended ballots and utilizing the above paragraphs, the Court finds as follows:

Ballot No. 1: Invalid

Ballot No. 2: Invalid

Ballot No. 3: Invalid

Ballot No. 4: Invalid

Ballot No. 5: Invalid

Ballot No. 6: Invalid

Ballot No. 7: Valid

Ballot No. 8: Valid

Ballot No. 9: Valid

Ballot No. 10: Valid (objection withdrawn)

Ballot No. 11: Valid (objection withdrawn)

Ballot No. 12: Valid

Ballot No. 13: Valid (objection withdrawn)

Ballot No. 14: Valid (objection withdrawn)

Ballot No. 15: Valid

Ballot No. 16: Valid

Ballot No. 17: Valid

Ballot No. 18: Invalid

Ballot No. 19: Invalid

Ballot No. 20: Valid (objection withdrawn)

Ballot No. 21: Valid

Ballot No. 22: Invalid (as to council race)

Ballot No. 23: Valid (objection withdrawn)

Ballot No. 24: Valid

Ballot No. 25: Invalid

Ballot No. 26: Valid

Ballot No. 27: Invalid

Ballot No. 28: Valid (objection withdrawn)

Ballot No. 29: Invalid

Ballot No. 30: Valid

Ballot No. 31: Invalid

Ballot No. 32: Invalid (as to council race)

Ballot No. 33: Valid (objection withdrawn)

Ballot No. 34: Valid

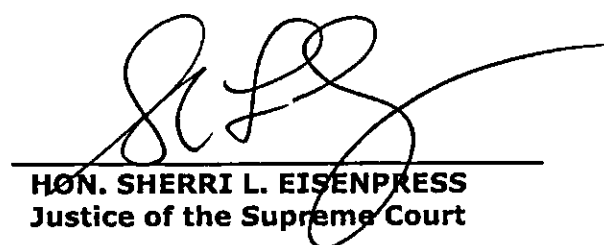
Ballot No. 35: Valid

Ballot No. 36: Valid

Ballot No. 37: Valid

The Respondent Commissioners are hereby directed to retally the aforesaid ballots in accordance with this Decision and Order and all parties and counsel are directed to appear on April 13, 2026, at 10:00 a.m. for further proceedings and argument consistent with this Decision and Order.

Dated: Goshen, New York
March 3, 2026



HON. SHERRI L. EISENPRESS
Justice of the Supreme Court

To: All parties via NYSCEF