

Mannion v Shiroff

2022 NY Slip Op 34294(U)

December 19, 2022

Supreme Court, Onondaga County

Docket Number: Index No. 009195/2022

Judge: Scott J. DelConte

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.

At a Special Term of the Supreme Court of the State of New York held in and for the County of Onondaga on December 19, 2022.

PRESENT: **HON. SCOTT J. DELCONTE**
Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
ONONDAGA COUNTY

JOHN W. MANNION,

Petitioner,

Index No. 009195/2022

v.

REBECCA SHIROFF; THE ONONDAGA COUNTY BOARD OF ELECTIONS; THE OSWEGO COUNTY BOARD OF ELECTIONS; and THE NEW YORK STATE BOARD OF ELECTIONS,

Respondents.

REBECCA SHIROFF,

Petitioner,

Index No. 009200/2022

v.

THE NEW YORK STATE BOARD OF ELECTIONS; THE OSWEGO COUNTY BOARD OF ELECTIONS; THE ONONDAGA COUNTY BOARD OF ELECTIONS; and JOHN MANNION,

Respondents.

DECISION AND ORDER ON REVIEW OF BALLOT OBJECTIONS

APPEARANCES:

Greenberg Traurig, LLP by Robert M. Harding, Esq. and Joshua L. Oppenheimer, Esq. for Petitioner John W. Mannion
Messina Perillo & Hill, LLP by John J. Ciampoli, Esq. for Petitioner Rebecca Shiroff
Onondaga County Department of Law by Benjamin M. Yaus, Esq. for Respondent Onondaga County Board of Elections
Oswego County Attorney’s Office by Richard C. Mitchell, Esq. for Respondent Oswego County Board of Elections

These are two special proceedings pursuant to Article 16 of the Election Law brought by John Mannion and Rebecca Shiroff, candidates for State Senate in New York's 50th Senate District (Index Nos. 009195/2022 and 009200/2022). Over 123,000 ballots were cast in the 2022 general election in the 50th State Senate District, and the margin separating the candidates after all ballots were canvassed by optical scanners was only 51 votes – less than 0.05 percent – automatically triggering a full manual recount under recently revised Election Law § 9-208(4). Over the last three weeks, Respondents Onondaga and Oswego County Boards of Elections manually canvassed every ballot in the 50th State Senate District in the presence of the candidates and their representatives. During the process, the Boards accounted for and marshalled all ballots that had been cast (with the possible exception of one ballot in Oswego County), determined the validity of each ballot, and then individually counted and tallied the votes for Mannion and Shiroff. Upon completion of the manual recount, Mannion led Shiroff by 17 votes.

Both candidates now seek judicial review of objections to rulings made by the Boards of Elections during the recount as to the validity – or invalidity – of ballots and the counting – or not counting – of votes for a candidate on otherwise valid ballots. An evidentiary hearing was held on December 14, 2022, during which the Court received exhibits (ON-1 through ON-100 and OS-2 through OS-88) and heard arguments from counsel on the candidates' 187 continuing objections. At the hearing, 80 objections were withdrawn, and the candidates stipulated to reverse the Boards' rulings on 10 objections. Of the 97 remaining continuing objections, the Court affirms 78 of the Boards' rulings, and reverses 19 rulings, for the reasons set forth below. Based upon the stipulations and the Court's findings, it is **ORDERED** that the Respondent Boards remove 11 votes from Shiroff's recount tally (six in Onondaga County and five in Oswego County), and remove 18 votes from Mannion's recount tally (six in Onondaga County and 12 in Oswego County), and certify the election.

I.

Under the Election Law, the judiciary's power in our electoral system is strictly limited, and may only be invoked by candidates to ensure the rigid and uniform application of the rules governing the canvassing of ballots (*Gross v Albany County Bd. of Elections*, 3 NY3d 251, 258 [2004]). As a result, the role of this Court – as explicitly restrained by Election Law § 16-106 – is solely to determine the validity of the ballots and votes that were challenged by the candidates during the manual recount (*Gross*, 3 NY2d 257; *Benson v Prusinski*, 151 AD3d 1441, 1444 [3d Dept 2017]), ensuring that every single valid vote – and only every single valid vote – is counted. Accordingly, all rulings in this Decision and Order are based upon settled principles of law found in either existing appellate authority or the plain language of the governing statutes and regulations, which are then applied equally and consistently to all similarly situated ballots that were properly challenged.

Altogether, there are two distinct classes of objections before the Court: (1) challenges to the validity of a ballot itself; and (2) challenges to whether a particular vote should be counted or not. With respect to the challenges to the validity of ballots themselves, there are three categories of objections: (1) objections to allegedly identifying marks or writing on the ballots; (2) objections to the use of colored ink; and (3) objections to torn ballots. With respect to challenges to the validity of specific votes, the sole standard is the intention of the voter. The settled principles of law for each category and type of objection are set forth below, and the Court's rulings on the individual ballots, in accordance with those principles, are set forth in the attached Appendix. In addition to the Court's findings, the parties also stipulated during the hearing to remove the votes counted from the 10 ballots marked as ON-27; ON-32; OS-10; OS-17; OS-28; OS-57; OS-74; OS-80; OS-81; and OS-82, because each ballot contained language that constituted an identifying mark and, as such, is void.

II.

A. Objections to the Validity of a Ballot

Beginning with the candidates' challenges to the validity of entire ballots, any extraneous marking on a ballot – *i.e.* any marking on a ballot other than voting marks or the names of write-in candidates – that was intentionally made to distinguish that ballot and cause it to be identifiable after the canvassing renders the entire ballot void (*Scanlon v Savago*, 160 AD2d 1162, 1162-1163 [1990]; Election Law § 9-112[1]). Intentionally distinguishing extraneous marks include any written word other than the name of a write-in candidate (even if crossed out), any initials, and any intentional lines or drawings that are outside the voting squares and “not related to indication of the vote choice for a contest” (*Alessio v Carey*, 6 AD3d 18, 25 [2d Dept 2004] [written words]; *Carney v Davignon*, 289 AD2d 1096, 1096 [4th Dept 2001] [intentional lines]); 9 NYCRR 6210.13[a][1] [“voter signature, initials, voter name and address, voter identification number, messages or text, or unusual markings not related to indication of the vote choice for a contest”]).

By contrast, extraneous markings that are either unintentionally made or that do not cause a ballot to be identifiable after the canvassing will not render the ballot itself void (Election Law § 9-112[1]). Nonidentifying extraneous marks include: all voting marks, no matter how irregular or inconsistent, so long as they are in a voting squares (including an “x,” a checkmark, a circle, a filled-in bubble, a line through the candidate, the words “yes” or “no” next to a candidate or proposition, and any combination of these); unintentional stray marks and non-distinguishing scribbles; spills or smudges; erasures; holes; double-votes and over votes; and obliterations and cross outs of valid voting marks or write-ins (as distinguished from obliterations or cross outs of messages or text) (*Fallon v Dwyer*, 197 NY 336, 338 [1910] [irregular voting marks]; *Rosenblum v Tallman Fire District*, 117 AD3d 1064 [2d Dept 2014] [combination of multiple voting marks]; *Alessio*, 6 AD3d at 24 [stray marks and crooked, retraced and irregular voting marks];

O'Shaughnessy v Monroe County Bd. of Elections, 15 AD2d 183, 189-90 [4th Dept 1961] [unintentional marks]; *Devine v Osmann*, 252 AD 787, [2d Dept 1937] [unintentional holes and obliterations or cross outs of a voting mark]; Election Law § 9-112[1] [irregular voting marks and erasures]; 9 NYCRR 6210.13[a][5] [overvotes]).

Proper write-in votes – *i.e.* votes that, on their face, appear to be for a valid write-in candidate – that are correctly made in the designated write-in voting squares are nonidentifying voting marks, and do not render a ballot void (Election Law § 9-112[1][e]). Similarly, proper write-in votes that are incorrectly placed in blank voting squares, as opposed to the designated write-in voting squares, are nonetheless nonidentifying marks, and do not render a ballot void (*Hosley v Valder*, 160 AD2d 1094, 1095 [3d Dept 1990]; *Carpinello v Tutunjian*, 154 AD2d 872, 872 [3d Dept 1989]). Improper write-in votes, however – *i.e.* votes that are not for a valid write-in candidate but, instead, are used to convey a message, such as by writing in phrases, insults, the names of famous or fictitious individuals, or the same name across multiple voting squares – make a ballot identifiable after the canvassing, and therefore render the entire ballot void (*Smajic v Oneida County Bd. of Elections*, 66 AD3d 1529, 1530 [4th Dept 2009] [“name of a candidate for another office”]; *Franke v McNab*, 73 AD2d 679, 680 [1979] [words “Mickey Mouse”]).

Applying these principles to the 69 challenges by the candidates to the validity of ballots during the manual recount, the 57 rulings of the Boards of Elections on the validity of the ballots marked as ON-1 [non-distinguishing mark]; ON-2 [inadvertent smudge]; ON-4 [proposition voting mark]; ON-6 [stray mark]; ON-10 [stray mark]; ON-12 [stray mark]; ON-13 [stray mark]; ON-14 [proposition voting mark]; ON-15 [proposition voting mark]; ON-16 [proposition voting mark]; ON-19 [proposition voting mark]; ON-22 [obliteration of voting mark]; ON-23 [voting mark]; ON-26 [write-in]; ON-35 [voting mark]; ON-36 [voting mark]; ON-40 [identifying mark]; ON-42 [voting mark]; ON-43 [voting mark]; ON-46 [voting mark]; ON-47 [voting mark];

ON-48 [identifying mark]; ON-51 [voting mark]; ON-56 [voting mark]; ON-57 [voting mark]; ON-58 [voting mark]; ON-62 [write-in]; ON-63 [voting mark]; ON-64 [voting mark]; ON-66 [non-distinguishing mark]; ON-68 [voting mark]; ON-70 [voting mark]; ON-71 [voting mark]; ON-72 [voting mark]; ON-73 [hole]; ON-75 [voting mark]; ON-78 [obliteration of voting mark]; ON-79 [voting mark]; ON-80 [voting mark]; ON-81 [stray mark]; ON-91 [non-distinguishing and stray marks]; ON-94 [stray mark]; ON-95 [voting mark]; ON-97 [stray mark]; OS-9 [identifying mark]; OS-22 [write-in]; OS-42 [write-in]; OS-43 [write-in]; OS-44 [write-in]; OS-45 [write-in]; OS-46 [write-in]; OS-48 [write-in]; OS-49 [write-in]; OS-50 [write-in]; OS-51 [write-in]; OS-54 [write-in]; OS-56 [write-in], are affirmed; and the 12 rulings of the Boards of Elections on the validity of ballots marked as ON-31 [identifying mark – distinguishing symbol]; ON-60 [identifying mark – initials]; ON-86 [identifying mark – distinguishable series of lines outside voting square]; ON-98 [identifying mark – crossed out words]; OS-2 [improper write-in – name used multiple times]; OS-15 [identifying mark – initials]; OS-52 [identifying mark – obliterated language]; OS-59 [identifying mark – initials]; OS-64 [identifying mark – initials]; OS-65 [improper write-in – famous name]; OS-84 [improper write-in – fictitious name]; and OS-88 [improper write-in – insult], are reversed.

B. Objections to the Color of Ink Used

The candidates also challenge the validity of ballots where colored ink, pencil or highlighter was used to make voting marks on a ballot. Voters may use any color of writing instrument to fill out a ballot, however, and the validity of the ballot will not be affected (*Carola v Saratoga Cty Bd. of Elections*, 180 AD2d 962, 965 [3d Dept 1992]). Accordingly, the Boards of Elections' rulings as to the validity of the three ballots marked as ON-8, ON-17 and OS-55 are affirmed.

C. Objections to Torn Ballots.

Finally, both candidates challenge the validity of multiple ballots that were torn, including one ballot that was torn into two pieces. The act of a voter in tearing his or her ballot will render that ballot void; however, a ballot that is torn by a Board of Elections or its workers is still valid (9 NYCRR 6210.13[a][8]). Since “[t]here is no presumption that a torn ballot was torn by the voter,” the Court may only find a torn ballot to be void if evidence is presented during the Election Law proceeding that the act of tearing the ballot was done by the voter (*Ruffo v Margolis*, 61 AD2d 846, 847 [3d Dept 1978]). Here, there was no evidence presented to suggest that any of the challenged ballots were torn by a voter – including the ballot torn into two pieces – and, as such, the Boards of Elections’ rulings on the validity of the 13 ballots marked as ON-7; ON-9 ON-29; ON-41; ON-49; ON-50; ON-53 [torn in two pieces]; ON-55; ON-84; OS-32; OS-33; OS-34; and OS-36 are affirmed.

III.

In addition to challenges made to the validity of ballots in total, the candidates also raise 12 objections to the rulings of the Boards of Elections as to whether particular votes should be counted. No matter how irregular or inconsistent it may be, any mark or combinations of marks made by a voter in a voting square that clearly represents the voter’s choice to select that candidate – including an “x,” a checkmark, a circle, a filled-in bubble, a line through the candidate, the words “yes” or “no” next to a candidate or proposition, and any combination of these – constitutes a valid voting mark and must be counted (*Kelley v Lynaugh*, 112 AD3d 862, 863 [2d Dept 2013]; Election Law § 9-112[2]; 9 NYCRR 6210.15[a]). However, a hesitation mark in a voting square – a small dot, such as that made by a voter pausing briefly with their pen on the ballot, that is

inconsistent with all of the other voting marks on that particular ballot – is not a valid voting mark, and must not be counted (9 NYCRR 6210.13[a][4]).

Erased, obliterated and crossed out voting marks are also not valid voting marks, and must not be counted (9 NYCRR 6210.13[a][3][i]). Where a voting mark has been erased, obliterated or crossed out, that entire column is spoiled (although the ballot itself remains valid), and any other voting marks in that column must be disregarded (*see e.g.* Election Law 7-104[13] [instructing voters to obtain a new ballot in order to revote in a column in which they had to cross out a prior voting mark]). Similarly, a write-in vote for a candidate whose name is printed in a voting square along a party line (whether or not the voting square with the candidate's printed name contains a voting mark), spoils that column and may not be counted (Election Law §§ 8-308, 9-112[3]; 9 NYCRR 6210.13[a][12][i]).

Applying these principles to the 12 challenges by the candidates to the counting of particular votes during the manual recount, the rulings of the Boards of Elections on the counting of the votes in the 50th State Senate race on the ballots marked as ON-3 [voting marks]; ON-5 [spoiled column]; ON-24 [spoiled column]; ON-30 [hesitation mark does not create an overvote]; and OS-86 [hesitation mark] are affirmed; and the rulings of the Boards of Elections on the counting of the votes in the 50th State Senate race on the ballots marked ON-20 [hesitation mark]; ON-33 [hesitation mark]; ON-38 [hesitation mark]; ON-54 [write-in for nominated candidate]; ON-59 [hesitation mark]; ON-76 [spoiled column]; and OS-55 [hesitation mark], are reversed.

IV.

At the conclusion of the hearing, Shiroff requested that the Court remand all ballots that do not accurately recite her continuing objections to adverse final rulings to the Boards to be reviewed and remarked pursuant to Election Law §§ 8-506, 9-114. However, Shiroff's representatives were present at all stages of the manual recount, and no evidence was offered at the hearing that either Board prohibited her representatives from continuing her objections and preserving them for subsequent judicial review by ensuring they were properly documented. Rather, a review of the ballots unequivocally demonstrates that the Boards substantially complied with the canvassing procedures under Election Law § 9-114 by clearly and succinctly recording the candidates' objections and their rulings in ink on each ballot (*Tenney v Oswego Cty Bd. of Elections*, 70 Misc3d 680 [Oswego Cty. Sup Ct. 2020]). Consequently, any objections that were not recited on the face of the ballots during the recount are not preserved for judicial review (*Dyer v Davis*, 156 AD3d 1313, 1314 [3d Dept 2017]). As such, Shiroff's request to remand an unspecified number of ballots for the correction of errors must be denied.

III.

Accordingly, upon due deliberation and in accordance with the Court's rulings on the individual ballots as set forth in the attached Appendix, it is hereby

ORDERED that Respondent Onondaga County Board of Elections remove six votes from Shiroff's manual recount tally (ON-20; ON-33; ON-38; ON-54; ON-76; ON-86), and remove six votes from Mannion's recount tally (ON-27; ON-31; ON-32; ON-59; ON-60; and ON-98); and it is further

ORDERED that Respondent Oswego County Board of Elections remove five votes from Shiroff's manual recount tally (OS-28; OS-55; OS-65; OS-80; and OS-81), and remove 12 votes from Mannion's recount tally (OS-2; OS-10; OS-15; OS-17; OS-52; OS-57; OS-59; OS-64; OS-74; OS-82; OS-84; and OS-88); and it is further

ORDERED that Respondents Onondaga County Board of Elections and Oswego County Board of Elections shall certify the General Election results for New York State Senate in New York's 50th Senate District and transfer the official certifications to the New York State Board of Elections for state certification in accordance with law.

Dated: December 19, 2022



HON. SCOTT J. DELCONTE, J.S.C.

ENTER.

Mannion v Shiroff (009195/2022) / Shiroff v Board of Elections (009200/2022)
Decision and Order - Appendix

Exhibit	BOE Ruling	Objector	Continuing Objection	Court's Finding and Ruling	Court's Order
ON-1	Valid Ballot	Shiroff	Identifying mark	Nonidentifying mark ("x" mark in write-in box in Attorney General column)	Affirm
ON-2	Valid Ballot	Shiroff	Identifying mark	Nonidentifying or inadvertent mark (red smudge or smear)	Affirm
ON-3	Vote Counted (Mannion)	Shiroff	Voter intent	Valid, consistent voting marks (voter both circled candidates' names and filled in voting target areas)	Affirm
ON-4	Valid Ballot	Shiroff	Identifying mark	Nonidentifying voting mark (valid proposition voting "v" checkmark)	Affirm
ON-5	Vote Not Counted	Mannion/ Shiroff	Voter intent; improper voting mark	Spoiled column by obliteration of voting mark in State Senate election	Affirm
ON-6	Valid Ballot	Shiroff	Identifying mark	Stray mark; nonidentifying	Affirm
ON-7	Valid Ballot	Shiroff	Torn ballot	Torn ballot is presumptively valid; no proof tear caused by voter	Affirm
ON-8	Valid Ballot	Shiroff	Colored ink (green)	Colored ink on absentee ballot is allowed	Affirm
ON-9	Valid Ballot	Shiroff	Torn ballot	Torn ballot is presumptively valid; no proof tear caused by voter	Affirm
ON-10	Valid Ballot	Shiroff	Identifying mark	Stray mark; nonidentifying	Affirm
ON-11	Invalid Ballot	Mannion	Withdrawn		
ON-12	Valid Ballot	Shiroff	Identifying mark	Stray mark; nonidentifying	Affirm

Mannion v Shiroff (009195/2022) / Shiroff v Board of Elections (009200/2022)
Decision and Order - Appendix

Exhibit	BOE Ruling	Objector	Continuing Objection	Court's Finding and Ruling	Court's Order
ON-13	Valid Ballot	Shiroff	Identifying mark	Stray mark; nonidentifying	Affirm
ON-14	Valid Ballot	Shiroff	Identifying mark	Nonidentifying mark (proposition voting mark)	Affirm
ON-15	Valid Ballot	Shiroff	Identifying mark	Nonidentifying mark (valid irregular proposition voting mark)	Affirm
ON-16	Valid Ballot	Shiroff	Identifying mark	Nonidentifying mark (valid irregular proposition voting mark)	Affirm
ON-17	Valid Ballot	Shiroff	Colored ink (green)	Colored ink on absentee ballot is allowed	Affirm
ON-18	Vote Counted	Shiroff	Withdrawn		
ON-19	Valid Ballot	Shiroff	Identifying mark	Nonidentifying mark (valid irregular proposition voting mark)	Affirm
ON-20	Vote Counted (Shiroff)	Mannion	Voter intent; improper voting mark	Hesitation mark (dot) in Shiroff target area is not valid voting mark	Reverse; no vote to be counted; remove one tallied vote for Shiroff
ON-21	Valid Ballot	Mannion	Withdrawn		
ON-22	Valid Ballot	Shiroff	Identifying mark	Nonidentifying mark (obliteration of voting mark in first column)	Affirm
ON-23	Valid Ballot	Shiroff	Identifying mark	Nonidentifying mark (valid irregular consistent voting mark)	Affirm
ON-24	Vote Not Counted	Mannion/ Shiroff	Voter intent	Spoiled column by obliteration of voting mark in State Senate election	Affirm

Mannion v Shiroff (009195/2022) / Shiroff v Board of Elections (009200/2022)
Decision and Order - Appendix

Exhibit	BOE Ruling	Objector	Continuing Objection	Court's Finding and Ruling	Court's Order
ON-25	Invalid Ballot	Shiroff	Withdrawn		
ON-26	Valid Ballot	Shiroff	Identifying mark	Valid write-in vote in space provided on ballot	Affirm
ON-27	Valid Ballot	Shiroff	Stipulation	Parties stipulate to invalidate (identifying language printed on ballot)	Reverse per stipulation; ballot invalid; remove one tallied vote for Mannion
ON-28	Valid Ballot	Mannion	Withdrawn		
ON-29	Valid Ballot	Shiroff	Torn ballot	Torn ballot is presumptively valid; no proof tear caused by voter	Affirm
ON-30	Vote Counted (Mannion)	Shiroff	Void; overvote; improper voting mark	Hesitation mark (dot with stray line) in Shiroff target area is not valid voting mark and nonidentifying; voter properly marked Mannion target area	Affirm
ON-31	Valid Ballot	Shiroff	Identifying mark	Identifying and distinguishing mark (symbol drawn in) in proposition voting target area	Reverse; ballot invalid; remove one tallied vote for Mannion
ON-32	Valid Ballot	Shiroff	Stipulation	Parties stipulate to invalidate (words printed by voter in write-in space)	Reverse per stipulation; ballot invalid; remove one tallied vote for Mannion

Mannion v Shiroff (009195/2022) / Shiroff v Board of Elections (009200/2022)
Decision and Order - Appendix

Exhibit	BOE Ruling	Objector	Continuing Objection	Court's Finding and Ruling	Court's Order
ON-33	Vote Counted (Shiroff)	Mannion	Voter intent; improper voting mark	Hesitation mark (dot) in Shiroff target area is not valid voting mark	Reverse; no vote to be counted; remove one tallied vote for Shiroff
ON-34	Valid Ballot	Shiroff	Withdrawn		
ON-35	Valid Ballot	Shiroff	Identifying mark	Nonidentifying mark (valid irregular consistent voting marks)	Affirm
ON-36	Valid Ballot	Shiroff	Identifying marks	Nonidentifying marks (valid irregular consistent voting marks)	Affirm
ON-37	Valid Ballot	Mannion	Withdrawn		
ON-38	Vote Counted (Shiroff)	Mannion	Voter intent	Hesitation mark (dot) in Shiroff target area is not valid voting mark	Reverse; no vote to be counted; remove one tallied vote for Shiroff
ON-39	Valid Ballot	Shiroff	Withdrawn		
ON-40	Invalid Ballot	Mannion	Identifying mark	Identifying mark (word "spoiled" printed on ballot)	Affirm
ON-41	Valid Ballot	Shiroff	Torn ballot	Torn ballot is presumptively valid; no proof tear caused by voter	Affirm
ON-42	Valid Ballot	Mannion	Identifying marks	Nonidentifying marks (valid irregular consistent voting marks)	Affirm
ON-43	Valid Ballot	Mannion	Identifying marks	Nonidentifying marks (valid irregular consistent voting marks)	Affirm

Mannion v Shiroff (009195/2022) / Shiroff v Board of Elections (009200/2022)
Decision and Order - Appendix

Exhibit	BOE Ruling	Objector	Continuing Objection	Court's Finding and Ruling	Court's Order
ON-44	Valid Ballot	Mannion	Withdrawn		
ON-45	Valid Ballot	Mannion	Withdrawn		
ON-46	Valid Ballot	Shiroff	Identifying marks	Valid, consistent, nonidentifying voting mark (voter circled and filled in proposition voting target area)	Affirm
ON-47	Valid Ballot	Shiroff	Identifying mark	Nonidentifying voting mark (voter circled and filled in proposition voting target area)	Affirm
ON-48	Invalid Ballot	Mannion	Nonidentifying marks; valid ballot	Identifying and distinguishing marks (voter placed and crossed out words on the ballot outside of write-in square)	Affirm
ON-49	Valid Ballot	Mannion	Torn ballot	Torn ballot is presumptively valid; no proof tear caused by voter	Affirm
ON-50	Valid Ballot	Shiroff	Torn ballot	Torn ballot is presumptively valid; no proof tear caused by voter	Affirm
ON-51	Valid Ballot	Mannion	Identifying mark	Valid, consistent, nonidentifying voting mark	Affirm
ON-52	Valid Ballot	Mannion	Withdrawn		
ON-53	Valid Ballot	Mannion	Torn ballot	Torn election day ballot (two pieces) is presumptively valid; no proof tear caused by voter before placing ballot in scanner	Affirm

Mannion v Shiroff (009195/2022) / Shiroff v Board of Elections (009200/2022)
Decision and Order - Appendix

Exhibit	BOE Ruling	Objector	Continuing Objection	Court's Finding and Ruling	Court's Order
ON-54	Vote Counted (Shiroff)	Mannion	Voter intent	Write-in vote for nominated candidate (Shiroff) is void	Reverse; no vote to be counted; remove one tallied vote for Shiroff
ON-55	Valid Ballot	Mannion	Torn ballot	Torn ballot is presumptively valid; no proof tear caused by voter	Affirm
ON-56	Valid Ballot	Shiroff	Identifying mark	Nonidentifying voting mark (voter circled and filled in proposition voting target area)	Affirm
ON-57	Valid Ballot	Shiroff	Identifying mark	Nonidentifying voting mark (voter heavily filled in proposition voting target area)	Affirm
ON-58	Valid Ballot	Shiroff	Identifying mark	Nonidentifying, irregular valid voting marks on front of ballot and in proposition voting target area	Affirm
ON-59	Vote Counted (Mannion)	Shiroff	Voter intent	Hesitation mark (dot) in Mannion target area is not valid voting mark	Reverse; no vote to be counted; remove one tallied vote for Mannion
ON-60	Valid Ballot	Shiroff	Identifying mark	Identifying mark (voter placed Initials on ballot)	Reverse; ballot invalid; remove one tallied vote for Mannion
ON-61	Vote Counted	Shiroff	Withdrawn		
ON-62	Valid Ballot	Mannion	Identifying mark	Improper write-in vote in a separate column incorrectly placed in wrong voting square	Affirm

Mannion v Shiroff (009195/2022) / Shiroff v Board of Elections (009200/2022)
Decision and Order - Appendix

Exhibit	BOE Ruling	Objector	Continuing Objection	Court's Finding and Ruling	Court's Order
ON-63	Valid Ballot	Shiroff	Identifying mark (machine should have counted)	Nonidentifying, consistent valid voting marks in voting target areas	Affirm
ON-64	Valid Ballot	Shiroff	Identifying marks	Nonidentifying valid voting marks in proposition voting target area and Supreme Court column	Affirm
ON-65	Invalid Ballot	Shiroff	Withdrawn		
ON-66	Valid Ballot	Shiroff	Identifying mark	Nonidentifying mark (stray scribble) on back of ballot	Affirm
ON-67	Valid Ballot	Shiroff	Withdrawn		
ON-68	Valid Ballot	Mannion	Identifying mark	Valid, consistent voting marks (voter both circled candidates' names and filled in voting target areas)	Affirm
ON-69	Valid Ballot	Shiroff	Withdrawn		
ON-70	Valid Ballot	Shiroff	Identifying mark	Nonidentifying, consistent valid voting marks in proposition voting target area	Affirm
ON-71	Valid Ballot	Shiroff	Identifying mark	Valid, nonidentifying voting mark (voter both circled and filled in proposition voting target area)	Affirm
ON-72	Valid Ballot	Shiroff	Identifying mark	Valid, nonidentifying voting mark (voter both circled and filled in proposition voting target area)	Affirm
ON-73	Valid Ballot	Shiroff	Identifying mark	Nonidentifying mark (pen-point hole in voting target area in Sheriff column)	Affirm
ON-74	Valid Ballot	Mannion	Withdrawn		

Mannion v Shiroff (009195/2022) / Shiroff v Board of Elections (009200/2022)
Decision and Order - Appendix

Exhibit	BOE Ruling	Objector	Continuing Objection	Court's Finding and Ruling	Court's Order
ON-75	Valid Ballot	Shiroff	Identifying mark	Valid, nonidentifying voting mark (voter both circled and filled in proposition voting target area)	Affirm
ON-76	Vote Counted (Shiroff)	Mannion	Voter intent	Spoiled/void State Senate column (voter obliterated voting mark in State Senate race)	Reverse; no vote to be counted; remove one tallied vote for Shiroff
ON-77	Valid Ballot	Shiroff	Withdrawn		
ON-78	Valid Ballot	Shiroff	Identifying mark	Nonidentifying mark (voter crossed out candidate in Supreme Court column)	Affirm
ON-79	Valid Ballot	Shiroff	Identifying mark	Nonidentifying, consistent valid voting marks on front of ballot	Affirm
ON-80	Valid Ballot	Shiroff	Identifying mark	Valid, nonidentifying voting mark (voter both circled and filled in proposition voting target area)	Affirm
ON-81	Valid Ballot	Shiroff	Identifying mark	Stray, nonidentifying mark in proposition voting area	Affirm
ON-82	Valid Ballot	Shiroff	Withdrawn		
ON-83	Vote Counted (Shiroff)	Mannion	Withdrawn		
ON-84	Valid Ballot	Shiroff	Torn ballot	Torn ballot is presumptively valid; no proof tear caused by voter	Affirm
ON-85	Valid Ballot	Mannion	Withdrawn		

Mannion v Shiroff (009195/2022) / Shiroff v Board of Elections (009200/2022)
Decision and Order - Appendix

Exhibit	BOE Ruling	Objector	Continuing Objection	Court's Finding and Ruling	Court's Order
ON-86	Valid Ballot	Mannion	Identifying mark	Identifying and distinguishing lines placed by voter in different colored (blue) ink outside of voting areas; voter made other identifying marks in blue ink on face of ballot	Reverse; Ballot invalid; remove one tallied vote for Shiroff
ON-87	Valid Ballot	Shiroff	Withdrawn		
ON-88	Valid Ballot	Shiroff	Withdrawn		
ON-89	Valid Ballot	Shiroff	Withdrawn		
ON-90	Invalid Ballot	Mannion	Withdrawn		
ON-91	Valid Ballot	Shiroff	Identifying mark	Scribbles and stray marks made by voter are nonidentifying and not distinguishing	Affirm
ON-92	Valid Ballot	Mannion	Withdrawn		
ON-93	Invalid Ballot	Shiroff	Withdrawn		
ON-94	Valid Ballot	Shiroff	Identifying mark	Stray mark is nonidentifying	Affirm
ON-95	Valid Ballot	Shiroff	Identifying mark	Valid, nonidentifying voting mark (voter both circled and filled in proposition voting target area)	Affirm
ON-96	Valid Ballot	Mannion	Withdrawn		
ON-97	Valid Ballot	Shiroff	Identifying marks	Stray marks are nonidentifying	Affirm

Mannion v Shiroff (009195/2022) / Shiroff v Board of Elections (009200/2022)
Decision and Order - Appendix

Exhibit	BOE Ruling	Objector	Continuing Objection	Court's Finding and Ruling	Court's Order
ON-98	Valid Ballot	Shiroff	Identifying mark	Identifying and distinguishing marks (voter placed and crossed out words on the back of ballot outside of voting square)	Reverse; ballot invalid; remove one tallied vote for Mannion
ON-99	Valid Ballot	Mannion	Withdrawn		
ON-100	Valid Ballot	Shiroff	Withdrawn		
OS-2¹	Valid Ballot	Shiroff	Identifying marks	Identifying and distinguishing marks where voter wrote same name three times in separate columns outside of write-in square in Row A above nominated candidates' printed names	Reverse; ballot invalid; remove one tallied vote for Mannion
OS-3	Valid Ballot	Shiroff	Withdrawn		
OS-4	Valid Ballot	Shiroff	Withdrawn		
OS-5	Valid Ballot	Shiroff	Withdrawn		
OS-6	Valid Ballot	Shiroff	Withdrawn		
OS-7	Valid Ballot	Shiroff	Withdrawn		
OS-8	Valid Ballot	Mannion	Withdrawn		
OS-9	Invalid Ballot	Mannion	Identifying mark	Identifying and distinguishing mark (voter crossed-out name and wrote "sorry" in write-in square)	Affirm

¹ There was no ballot marked as OS-1.

Mannion v Shiroff (009195/2022) / Shiroff v Board of Elections (009200/2022)
Decision and Order - Appendix

Exhibit	BOE Ruling	Objector	Continuing Objection	Court's Finding and Ruling	Court's Order
OS-10	Valid Ballot	Shiroff	Stipulation	Parties stipulated to invalidate (voter placed language on back of ballot)	Reverse per stipulation; ballot invalid; remove one tallied vote for Mannion
OS-11	Valid Ballot	Shiroff	Withdrawn		
OS-12	Valid Ballot	Mannion	Withdrawn		
OS-13	Invalid Ballot	Shiroff	Withdrawn		
OS-14	Valid Ballot	Shiroff	Withdrawn		
OS-15	Valid Ballot	Shiroff	Identifying mark	Identifying and distinguishing mark (voter placed initials in write-in square)	Reverse; ballot invalid; remove one tallied vote for Mannion
OS-16	Valid Ballot	Mannion	Withdrawn		
OS-17	Valid Ballot	Shiroff	Stipulation	Parties stipulated to invalidate (voter placed language in write-in square)	Reverse per stipulation; ballot invalid; remove one tallied vote for Mannion
OS-18	Valid Ballot	Shiroff	Withdrawn		
OS-19	Valid Ballot	Shiroff	Withdrawn		

Mannion v Shiroff (009195/2022) / Shiroff v Board of Elections (009200/2022)
Decision and Order - Appendix

Exhibit	BOE Ruling	Objector	Continuing Objection	Court's Finding and Ruling	Court's Order
OS-20	Valid Ballot	Shiroff	Withdrawn		
OS-21	Valid Ballot	Shiroff	Withdrawn		
OS-22	Valid Ballot	Shiroff	Identifying mark	Nonidentifying, legible write-in vote in Member of Assembly column placed in empty voting square in Row A above nominated candidate's printed name	Affirm
OS-23	Valid Ballot	Shiroff	Withdrawn		
OS-24	Valid Ballot	Mannion	Withdrawn		
OS-25	Valid Ballot	Mannion	Withdrawn		
OS-26	Valid Ballot	Mannion	Withdrawn		
OS-27	Valid Ballot	Mannion	Withdrawn		
OS-28	Valid Ballot	Mannion	Stipulation	Parties stipulated to invalidate (voter placed language in write-in square)	Reverse per stipulation; ballot invalid; remove one tallied vote for Shiroff
OS-29	Valid Ballot	Mannion	Withdrawn		
OS-30	Valid Ballot	Mannion	Withdrawn		
OS-31	Invalid Ballot	Mannion	Withdrawn		

Mannion v Shiroff (009195/2022) / Shiroff v Board of Elections (009200/2022)
Decision and Order - Appendix

Exhibit	BOE Ruling	Objector	Continuing Objection	Court's Finding and Ruling	Court's Order
OS-32	Valid Ballot	Mannion	Torn ballot	Torn ballot is presumptively valid; no proof tear caused by voter	Affirm
OS-33	Valid Ballot	Mannion	Torn ballot	Torn ballot is presumptively valid; no proof tear caused by voter	Affirm
OS-34	Valid Ballot	Mannion	Torn ballot	Torn ballot is presumptively valid; no proof tear caused by voter	Affirm
OS-35	Valid Ballot	Mannion	Withdrawn		
OS-36	Valid Ballot	Mannion	Torn ballot	Torn ballot is presumptively valid; no proof tear caused by voter	Affirm
OS-37	Invalid Ballot	Shiroff	Withdrawn		
OS-38	Invalid Ballot	Mannion	Withdrawn		
OS-39	Valid Ballot	Mannion	Withdrawn		
OS-40	Valid Ballot	Mannion	Withdrawn		
OS-41	Valid Ballot	Mannion	Withdrawn		
OS-42	Valid Ballot	Shiroff	Identifying mark	Nonidentifying mark where voter legibly wrote-in name in town council election column (last column on ballot) on Row A, which has no nominated candidates for election and no printed names appear in column	Affirm

Mannion v Shiroff (009195/2022) / Shiroff v Board of Elections (009200/2022)
Decision and Order - Appendix

Exhibit	BOE Ruling	Objector	Continuing Objection	Court's Finding and Ruling	Court's Order
OS-43	Valid Ballot	Mannion	Identifying mark	Nonidentifying mark where voter legibly wrote-in name in town council election column (last column on ballot) on Row B, which has no nominated candidates for election and no printed names appear in column	Affirm
OS-44	Valid Ballot	Mannion	Identifying mark	Nonidentifying mark where voter legibly wrote-in name in town council election column (last column on ballot) on Row B, which has no nominated candidates for election and no printed names appear in column	Affirm
OS-45	Valid Ballot	Shiroff	Identifying mark	Nonidentifying mark where voter legibly wrote-in name in town council election column (last column on ballot) on Row A, which has no nominated candidates for election and no printed names appear in column	Affirm
OS-46	Valid Ballot	Shiroff	Identifying mark	Nonidentifying mark where voter legibly wrote-in name in town council election column (last column on ballot) on Row A, which has no nominated candidates for election and no printed names appear in column	Affirm
OS-47	Invalid Ballot	Mannion	Withdrawn		
OS-48	Valid Ballot	Mannion	Identifying mark	Nonidentifying mark where voter legibly wrote-in name in town council election column (last column on ballot) on Row B, which has no nominated candidates for election and no printed names appear in column	Affirm
OS-49	Valid Ballot	Shiroff	Identifying mark	Nonidentifying mark where voter legibly wrote-in name in town council election column (last column on ballot) on Row B, which has no nominated candidates for election and no printed names appear in column	Affirm

Mannion v Shiroff (009195/2022) / Shiroff v Board of Elections (009200/2022)
Decision and Order - Appendix

Exhibit	BOE Ruling	Objector	Continuing Objection	Court's Finding and Ruling	Court's Order
OS-50	Valid Ballot	Mannion	Identifying mark	Nonidentifying mark where voter legibly wrote-in name in town council election column (last column on ballot) on Row B, which has no nominated candidates for election and no printed names appear in column	Affirm
OS-51	Valid Ballot	Mannion	Identifying mark	Nonidentifying mark where voter legibly wrote-in name in town council election column (last column on ballot) on Row B, which has no nominated candidates for election and no printed names appear in column	Affirm
OS-52	Valid Ballot	Shiroff	Identifying mark	Identifying and distinguishing mark where voter wrote and then crossed out write-in name in town council election column (last column on ballot) on Row D, and wrote same name in write-space at bottom of column	Reverse; ballot invalid; remove one tallied vote for Mannion
OS-53	Invalid Ballot	Shiroff	Withdrawn		
OS-54	Valid Ballot	Mannion	Identifying mark	Nonidentifying mark where voter legibly wrote-in name in town council election column (last column on ballot) on Row B, which has no nominated candidates for election and no printed names appear in column	Affirm
OS-55	Vote Counted (Shiroff)	Mannion	Voter intent; improper voting mark	Hesitation mark (dot with stray line) in Shiroff target area is not valid voting mark	Reverse; no vote to be counted; remove one tallied vote for Shiroff
OS-56	Valid Ballot	Shiroff	Identifying mark	Nonidentifying mark where voter legibly wrote-in name in town council election column (last column on ballot) on Row A, which has no nominated candidates for election and no printed names appear in column	Affirm

Mannion v Shiroff (009195/2022) / Shiroff v Board of Elections (009200/2022)
Decision and Order - Appendix

Exhibit	BOE Ruling	Objector	Continuing Objection	Court's Finding and Ruling	Court's Order
OS-57	Valid Ballot	Shiroff	Stipulation	Parties Stipulated to Invalidate (voter placed language on ballot)	Reverse per stipulation; ballot invalid; remove one tallied vote for Mannion
OS-58	Valid Ballot	Mannion	Colored Ink (red)	Colored ink on absentee ballot is allowed	Affirm
OS-59	Valid Ballot	Shiroff	Identifying mark	Identifying and distinguishing mark (initials intentionally placed on side of ballot)	Reverse; ballot invalid; remove one tallied vote for Mannion
OS-60	Valid Ballot	Shiroff	Withdrawn		
OS-61	Valid Ballot	Mannion	Withdrawn		
OS-62	Valid Ballot	Mannion	Withdrawn		
OS-63	Valid Ballot	Shiroff	Withdrawn		
OS-64	Valid Ballot	Shiroff	Identifying mark	Identifying and distinguishing mark (initials intentionally placed in State Senate column)	Reverse; ballot invalid; remove one tallied vote for Mannion
OS-65	Valid Ballot	Mannion	Identifying mark	Identifying and distinguishing mark where voter wrote "Donald Trump Jr." in Member of Assembly column immediately below nominated candidate's printed name	Reverse; ballot invalid; remove one tallied vote for Shiroff

Mannion v Shiroff (009195/2022) / Shiroff v Board of Elections (009200/2022)
Decision and Order - Appendix

Exhibit	BOE Ruling	Objector	Continuing Objection	Court's Finding and Ruling	Court's Order
OS-66	Valid Ballot	Mannion	Withdrawn		
OS-67	Valid Ballot	Mannion	Withdrawn		
OS-68	Valid Ballot	Mannion	Withdrawn		
OS-69	Valid Ballot	Mannion	Withdrawn		
OS-70	Valid Ballot	Mannion	Withdrawn		
OS-71	Valid Ballot	Mannion	Withdrawn		
OS-72	Valid Ballot	Mannion	Withdrawn		
OS-73	Invalid Ballot	Mannion	Withdrawn		
OS-74	Valid Ballot	Shiroff	Stipulation	Parties stipulated to invalidate (voter placed language on back of ballot)	Reverse per stipulation; ballot invalid; remove one tallied vote for Mannion
OS-75	Valid Ballot	Mannion	Withdrawn		
OS-76	Valid Ballot	Shiroff	Withdrawn		
OS-77	Valid Ballot	Mannion	Withdrawn		
OS-78	Valid Ballot	Mannion	Withdrawn		

Mannion v Shiroff (009195/2022) / Shiroff v Board of Elections (009200/2022)
Decision and Order - Appendix

Exhibit	BOE Ruling	Objector	Continuing Objection	Court's Finding and Ruling	Court's Order
OS-79	Valid Ballot	Mannion	Withdrawn		
OS-80	Valid Ballot	Mannion	Stipulation	Parties stipulated to invalidate (voter placed language on back of ballot)	Reverse per stipulation; ballot invalid; remove one tallied vote for Shiroff
OS-81	Valid Ballot	Mannion	Stipulation	Parties stipulated to invalidate (voter placed language on back of ballot)	Reverse per stipulation; ballot invalid; remove one tallied vote for Shiroff
OS-82	Valid Ballot	Shiroff	Stipulation	Parties stipulated to invalidate (voter placed language on front of ballot)	Reverse per stipulation; ballot invalid; remove one tallied vote for Mannion
OS-83	Valid Ballot	Mannion	Withdrawn		
OS-84	Valid Ballot	Shiroff	Identifying mark	Identifying and distinguishing mark where voter wrote and crossed out name in Member of Assembly column immediately below nominated candidate's printed name and wrote "Mickey Mouse" and "Donald Duck" in write-in spaces	Reverse; ballot invalid; remove one tallied vote for Mannion
OS-85	Valid Ballot	Mannion	Withdrawn		
OS-86	Vote Not Counted	Shiroff	Voter intent	Hesitation mark or stray line in Shiroff target area is not valid voting mark	Affirm

Mannion v Shiroff (009195/2022) / Shiroff v Board of Elections (009200/2022)
Decision and Order - Appendix

Exhibit	BOE Ruling	Objector	Continuing Objection	Court's Finding and Ruling	Court's Order
OS-87	Invalid Ballot	Mannion	Withdrawn		
OS-88	Valid Ballot	Shiroff	Identifying marks	Identifying and distinguishing marks where voter wrote "Clown" in six write-in spaces	Reverse; ballot invalid; remove one tallied vote for Mannion