

Richard Malagiere (Attorney ID: 037951996)
 Matthew E. Gilson (Attorney ID: 217402016)
 THE LAW OFFICES OF RICHARD MALAGIERE
 A PROFESSIONAL CORPORATION
 250 Moonachie Road, Suite 102
 Moonachie, New Jersey 07074
 Tel: (201) 440-0675
 Attorneys for Petitioners

**BERGEN COUNTY REPUBLICAN
 ORGANIZATION and PERRIN T.
 MOSCA, CANDIDATE FOR ROCHELLE
 PARK TOWNSHIP COMMITTEE IN
 THE 2020 GENERAL ELECTION**

Petitioners

v.

**PATRICIA DICOSTANZO, Bergen County
 Superintendent of Election; JOHN S.
 HOGAN, Bergen County Clerk;
 ELIZABETH KROLL, Township of
 Rochelle Park Municipal Clerk; and
 BERGEN COUNTY BOARD OF
 ELECTIONS**

Respondents

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION: BERGEN COUNTY

DOCKET NO.:

CIVIL ACTION

**VERIFIED PETITION IN SUPPORT
 OF RECOUNT AND RECHECK**

Petitioner, Perrin T. Mosca (“Mosca”), residing at 48 Marinus Street in the Township of Rochelle Park, County of Bergen, in the State of New Jersey, by way of this Petition, pursuant to statute, alleges and says:

1. At all times relevant herein, Petitioner Mosca was the Republican candidate for the office of Township Committee of the Township of Rochelle Park along with his running mate Delmer Thomas Grigsby Jr. (“Grigsby”)
2. At all times relevant herein, Bergen County Republican Organization was a political party organized under N.J.S.A. 19:5-3
3. At all times relevant herein, Linda C. Boniface (“Boniface”) and Michael J. Warren (“Warren”) were the Democratic candidates for Township Commission of Rochelle Park.
4. A General Election was held to elect two candidates to the office of Township

Committee of the Township of Rochelle Park on November 3, 2020.

5. The election results as published by the Bergen County Clerk, for the election for Rochelle Park Township Committee were as follows:

- Linda Boniface (D) 1,544
- Michael Warren (D) 1,543
- Perrin Mosca (R) 1,539
- Delmer Thomas Grigsby (R) 1,499

6. Petitioner Mosca is currently 4 votes behind Warren. It is anticipated that the Clerk will certify Boniface and Warren as the winners for the full terms on the Rochelle Park Township Committee.

7. Upon information and belief, such errors resulted in an error in the overall tabulation resulting in Boniface and Warren being wrongfully declared the winners of their respective committee seats.

8. At all times relevant herein, Respondent, Bergen County Superintendent of Elections, maintains custody and control of the voting machines used in the Board Election. The Bergen County Superintendent of Elections has been made a Respondent in this suit because it has such custody and control.

9. At all times relevant herein, Respondents, the Clerk of Bergen County and the Municipal Clerk of the Township of Rochelle Park, have certain requirements to perform in rechecking machines in accordance with the requirements of N.J.S.A. 19:28-1, et seq., N.J.S.A. 19:52-6 and N.J.S.A. 19:52-6.1.

10. At all times relevant herein, Respondent, Bergen County Board of Elections, is the custodian of the absentee ballot applications, envelopes, absentee ballots, emergency ballots,

provisional ballots, affirmations and envelopes, and other paraphernalia associated with respect thereto. Furthermore, Respondent, Bergen County Board of Elections, is charged with the duty of conducting the recheck and recount of the mail-in ballots and provisional ballots in accordance with the requirements of the election laws at a time and place established by the Board of Elections.

11. Within seventeen (17) days following the election, N.J.S.A. 19:28-1, et seq. provides for a recount of the absentee ballots upon payment of \$25.00. Petitioner, therefore, applies for a recheck and a recount of the absentee ballots, provisional ballots and all other votes cast.

12. Petitioners further request that, because of the narrow margin of votes separating Petitioners from the declared winners in the Election, a recount and recheck will protect the sanctity of the ballot which serves the public interest in the outcome of the Election, thus, both further substantiating the necessity of a recount and recheck and warranting that the \$25.00 per district fee be waived for the recount.

13. In the event that the Court does not enjoin the Bergen County Superintendent of Elections, its agents, servants or employees from unlocking, interfering with the sealed condition or otherwise resetting the machine and/or discarding of the mail-in ballot or provisional ballots and their providence, Petitioner will be immediately and irreparably harmed as being unable to verify the canvas of votes and ascertain the status of the counter at the close of the election and whether Petitioner should be declared the successful candidate.

14. Issues arose regarding the sending of a Vote by Mail ("VBM") ballot to all persons who were registered to vote regardless of whether they requested one

15. The change in law that permitted VBM ballots to be counted until November 10, 2020, a week after election day.

16. Potential miscounts could have occurred based upon the absence of a postmark, blurry post mark, missing signatures and missing affidavits or ballots not delivered because of insufficient postage.

17. Pursuant to the provisions of N.J.S.A. 19:28-1 (Recount), N.J.S.A. 19:52-6 and N.J.S.A. 19:52-6.1 (Recheck of Machine), the aforesaid Petitioner demands a recheck and recount of the irregular ballots, emergency ballots, absentee ballots, fax ballots, email ballots and provisional ballots for all votes cast within the Township of Rochelle Park

WHEREFORE, the Petitioner seeks relief as follows:

A. That, in accordance with the statutes in such cases made and provided, the Court Order a recounting and rechecking of emergency ballots and irregular ballots, a handcount of the fax, email, mail-in and provisional ballots, and an examination of the rejected emergency, irregular, fax, email, absentee and provisional ballots for the Election in accordance with *N.J.S.A.* 19:28-1 and 19:52-6.1.

B. That, pending such recheck and recount of said ballots and until further Order of this Court, the Bergen County Superintendent of Elections, the Bergen County Board of Elections, the Bergen County Clerk and the Township Clerk of Rochelle Park be restrained and enjoined from unlocking, unsealing, opening, resetting, zeroing, stripping, disposing of or otherwise interfering with the voting machines, voting authorities and voting records, and that they further preserve and secure all emergency ballots, voting authorities, canvas sheets, absentee ballots, envelopes, envelope flaps, applications, rejected absentee ballots, provisional ballots, affirmations, and envelopes, messenger records, and other documents, records or memoranda regarding the conduct or results of the election.

C. That the parties or their representatives shall now, during and after the conclusion of

the physical recount and recheck, be allowed to examine, copy and/or scan the registry books, voter authorizations, mail-in ballots, and mail-in ballot applications, rejected and late arriving mail-in ballots, envelope flaps, outer envelopes, inner envelopes, provisional ballots, affirmations, messenger book, office orders, order lists, orders to vote, challenge lists, challenge sheets, peremptory order lists, District Board returns and canvases, repair records, complaint, or inquiry records, irregular and emergency ballots, and any or all other papers, documents and records related to the Election, as may be requested by them, under the supervision of the officials in whose custody those items may be.

D. That the Court waive the \$25.00 per district fee for the hand recount and recheck of the mail-in and provisional ballots.

E. Such other relief that is just and equitable and consistent with this Petition as may be deemed necessary by the Court.

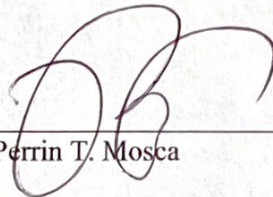
By: /s/Richard Malagiere
Richard Malagiere
Attorney for Petitioners, Perrin T. Mosca and BCRO

DATED: November 20, 2020

VERIFICATION

Perrin T. Mosca, hereby certify as follows:

1. I am a Petitioner in the foregoing matter.
2. I have read the contents of the petition and incorporate same by reference and state that the contents therein are true to the best of our knowledge, information and belief.
3. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Perrin T. Mosca

DATED: November 20, 2020

Richard Malagiere (Attorney ID: 037951996)
 Matthew E. Gilson (Attorney ID: 217402016)
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 A PROFESSIONAL CORPORATION
 250 Moonachie Road, Suite 102
 Moonachie, New Jersey 07074
 Tel: (201) 440-0675

Attorneys for Petitioners, Perrin T. Mosca, Candidate for Rochelle Park Township Committee
 and Bergen County Republican Organization

**BERGEN COUNTY REPUBLICAN
 ORGANIZATION and PERRIN T.
 MOSCA, CANDIDATE FOR
 ROCHELLE PARK TOWNSHIP
 COMMITTEE IN THE 2020 GENERAL
 ELECTION**

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SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION: BERGEN COUNTY

DOCKET NO.:

CIVIL ACTION

ORDER

THIS MATTER being opened to the court by The Law Offices of Richard Malagiere, P.C.,
 (Richard Malagiere, Esq., appearing), attorneys for Petitioners Perrin T. Mosca and Bergen County
 Republican Organization; and the Court being satisfied of the sufficiency of the application based
 upon the Verified Complaint and brief; and it appearing that only a margin of four (4) votes
 currently separates Democratic candidate Michael Warren and Petitioner in the November 3,
 2020 General Election; and Petitioner having reason to believe that there was an error in counting
 and tabulating the votes; and Petitioner having timely petitioned for a recount and recheck of the
 mail-in and provisional ballots; and the Court having considered the submissions of the parties, and
 for other good cause shown:

IT IS on this _____ day of November 2020 **ORDERED** that;

A. The Petitioners' application for a Recheck and Recount, by hand, as set forth in the Verified Petition, of all machines, emergency ballots, and irregular ballots; a hand-count of the mail-in ballots and provisional ballots; and examination of the accepted mail-in ballots and provisional ballots case in all districts within the Township of Rochelle Park General Election, is hereby granted; and

B. The recount and recheck is to commence on _____, 2020, at _____ a.m./p.m, and continue daily thereafter (Saturdays, Sundays, and holidays excepted) until completed unless otherwise agreed to by the parties and those officials responsible for the recount and recheck, and each machine in each district shall be done separately and in numerical order, and provisional and mail-in ballots thereafter; and

C. The fee of \$25.00 per district to recount the paper ballots under N.J.S.A. 19:28-2 is hereby waived as the recount is in the public interest; and

D. The Bergen County Clerk and other officials shall cooperate with the Bergen County Board of Elections in the recount and recheck process; and

F. The parties to the Petition or their representatives, and all other candidates in the General election for the subject Borough Council seats, shall now, during and after the conclusion of the physical recount and recheck, be allowed to examine, copy and/or scan hereafter the registry books, voter ballots, envelopes flaps, out envelopes, inner envelopes, provisional ballots, affirmations, messenger book, office orders, order lists, orders to vote, challenge lists, challenge sheets, preemptory order lists, District Board returns and canvasses, repair records, voting machine audit trails and related records, complaint or inquire records, irregular and emergency ballots, and any or all other papers, documents and records related to the Township of Rochelle Park General Election for the Office of Township Committee, as may be requested by them, under the supervision of the officials in whose custody those items may be.

G. The Bergen County Clerk, Bergen County Board of Elections, Bergen County Commissioner of Registration, and Municipal Clerk of the Township of Rochelle Park, shall be restrained and enjoined from unlocking, unsealing, opening, resetting zeroing, stripping, disposing of, or otherwise interfering with the voting machines, voting authorities, voting records, and that they further preserve and secure all emergency ballots, voting authorities, canvas sheets, vote-by-mail ballots, envelopes, inner envelopes, envelope flaps, applications, rejected vote-by-mail ballots, accepted and rejected provisional ballots, affirmations, and envelopes, messenger records and other documents, documents or memoranda regarding the conduct or results of the Election.

H. A copy of this Order shall be served within ____ days by facsimile transmission (where available) or email, and overnight delivery to the Clerk of the Township of Rochelle Park; Board of Elections of the County of Bergen; all candidates for the position of Rochelle Park Township Committee in the Election and the Clerk for the County of Bergen

, J.S.C.

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**BERGEN COUNTY REPUBLICAN
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SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION: BERGEN COUNTY

DOCKET NO.:

CIVIL ACTION

**ORDER TO SHOW CAUSE WITH
 TEMPORARY RESTRAINTS**

THIS MATTER being brought before the court by The Law Offices of Richard Malagiere, P.C., (Richard Malagiere, Esq. appearing) attorneys for Petitioners, Perrin T. Mosca (“Mosca”) and the Bergen County Republican Organization (“BCRO”) seeking relief by way of temporary, preliminary restraints and permanent injunction pursuant to R. 4:52, based upon the facts set forth in the Petition filed herewith; and prior notice having been given to the Respondents, Patricia DiCostanzo, Bergen County Superintendent of Elections (“DiCostanzo”), John S. Hogan, Bergen County Clerk (“Hogan”), Elizabeth Kroll, Rochelle Park Municipal Clerk (“Kroll”) and the Bergen County Board of Elections, the Court having determined that immediate and irreparable damage will result before the return date of this Order to Show Cause, and for good cause shown.

IT IS on this _____ day of _____, 2020, ORDERED that:

1. Pending a hearing on the return date of this Order to Show Cause, and to maintain the status quo, Respondents are hereby temporarily enjoined from doing, engaging in, or directing anyone else from doing or engaging in any and all of the following:

a. Unlocking the voting machines used in the 2020 Rochelle Park General Election and/or destroying any records related to the East Rutherford General Election including but not limited to machine voting tabulations, mail-in ballots and provisional ballots

2. Respondents' may move to dissolve or modify these temporary restraints on _____ days' notice to Petitioner's attorney;

3. Respondents shall appear and show cause on the _____ day of _____, 2020 before the Superior Court at the Bergen County Courthouse in Hackensack, New Jersey at _____ o'clock in the _____ noon, or as soon thereafter as counsel can be heard, why an Order should not be entered converting the above stated temporary restraints into a permanent injunction, and entering such other relief as the Court may deem equitable and just; and it is,

FUTHER ORDERED that:

1. A copy of this order to show cause, verified complaint and all supporting affidavits or certifications submitted in support of this application be served upon Respondents via _____ within _____ days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process.

2. Mosca and BCRO must file with the court his proof of service of the pleadings on the defendant(s) no later than three (3) days before the return date.

3. The Respondents shall file and serve a written answer, an answering affidavit or a

motion returnable on the return date to this order to show cause and the relief requested in the Petition and proof of service of the same by _____, 2020. The answer, answering affidavit or a motion as the case may be, must be filed with the Clerk of the Superior Court in the county listed above and a copy of the papers must be sent directly to the chambers of Judge _____.

4. Mosca and BCRO must file and serve any written reply to the Defendant's order to show cause opposition by _____, 2020. The reply papers must be filed with the Clerk of the Superior Court in the county listed above and a copy of the reply papers must be sent directly to the chambers of Judge _____.

5. If the Respondents do not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that Mosca and BCRO files a proof of service and a proposed form of order at least three days prior to the return date.

6. If Mosca and BCRO have not already done so, a proposed form of order addressing the relief sought on the return date must be submitted to the court no later than three (3) days before the return date.

7. Respondents take notice that the plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer, an answering affidavit or a motion returnable on the return date to the order to show cause and proof of service before the return date of the order to show cause. These documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of these offices is available in the Civil Division Management Office in the county listed above and online at

http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf. Include a \$175.00 filing fee payable to the “Treasurer State of New Jersey.” You must also send a copy of your answer, answering affidavit or motion to the Petitioner’s attorney whose name and address appear above, or to the plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your answer, answering affidavit or motion with the fee or judgment may be entered against you by default.

8. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJLAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf.

9. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the court and parties are advised to the contrary no later than _____ days before the return date.

J.S.C.

Civil Case Information Statement

Case Details: BERGEN | Civil Part Docket# L-007238-20

Case Caption: IN THE MATTER OF MOSCA PERRIN T

Case Initiation Date: 11/20/2020

Attorney Name: MATTHEW EDWARD GILSON

Firm Name: RICHARD MALAGIERE, PC

Address: 250 MOONACHIE ROAD SUITE 102
MOONACHIE NJ 07074

Phone: 2014400675

Name of Party: PETITIONER : Mosca, Perrin, T

Name of Defendant's Primary Insurance Company
(if known): None

Case Type: OTHER ELECTION RECOUNT

Document Type: Petition

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Are sexual abuse claims alleged by: Perrin T Mosca? NO

Are sexual abuse claims alleged by: Bergen County Republican Organ? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

11/20/2020
Dated

/s/ MATTHEW EDWARD GILSON
Signed

