

**JARDIM, MEISNER & SUSSER, P.C.**  
Scott D. Salmon, Esq. (NJ Bar ID 152162015)  
30B Vreeland Road, Suite 100  
Florham Park, NJ 07932  
Attorneys for Petitioner, Susan Poage

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, COUNTY OF UNION

SUSAN POAGE,

Petitioner,

vs.

UNION COUNTY CLERK and the  
UNION COUNTY BOARD OF  
ELECTIONS,

Respondents.

Docket No.: UNN-L-\_\_\_\_-20

Civil Action

**VERIFIED PETITION IN  
SUPPORT OF RECOUNT**

Petitioner, Susan Poage, residing in the Township of Berkeley Heights, County of Union, State of New Jersey, say:

1. Petitioner was a candidate for the office of Councilwoman in the Township of Berkeley Heights in the Municipal Election held November 3, 2020 (the "Election"), for an open position on the Township Council.

2. At all times relevant herein, the Respondents, the Union County Board of Elections, and the Union County Clerk, are responsible for certifying the results of the Election and/or maintain custody and control of the ballots cast in the Election. Each of the Respondents have been made a Respondent in this suit because each has custody and control of materials necessary to effectuate a Recount.

3. At all times relevant herein, the Respondent, the Union County Clerk serves as Clerk to the Union County Board of Canvassers per N.J.S.A. 19:6-26.

4. At all times relevant herein, the Respondent, Union County Board of Elections, is the custodian of the voting machines, mail-in ballot applications, envelopes, mail-in ballots, emergency ballots, provisional ballots, affirmations and envelopes, and other paraphernalia associated with respect thereto. Furthermore, the Respondent, Union County Board of Elections, is charged with the duty of conducting the recheck of voting machines 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 Court.

5. Due to the ongoing COVID-19 pandemic, the Election was effectively an entirely mail-in ballot election. Very few voting machines were available to voters for their use, limited solely for use to disabled voters. Voters were, however, permitted to vote in-person using provisional ballots.

6. In Berkeley Heights, approximately 7,962 ballots were counted in the Election.

7. The Office of the County Clerk for Union County has certified that Jeffrey Varnerin and Jeanne Kingsley were the top two vote getters and winners of the election. Mr. Varnerin, as the second-place finisher, had a margin of victory of 110 (110) votes over the third-highest vote getter, Petitioner Susan Poage.

8. The results of the Election were as follows:

CANDIDATE	VOTES RECEIVED
Jeanne Kingsley	4,160
Jeffrey Varnerin	4,050
Susan Poage	3,940
Bret Sayre	3,751

9. Upon information and belief, errors committed by the arbiters of the election process resulted in an inaccurate overall count, which resulted in Mr. Varnerin erroneously being declared the winner of the Election. Specifically, Petitioner has reason to believe, and does believe, that errors were made in the counting of the votes from each district within the Township of Berkeley Heights. Such errors include abnormalities concerning tabulations by each District Board and by the Union County Board of Elections and/or Board of Canvassers, as well as mistakes in declaring the results of the Election.

10. N.J.S.A. 19:52-6 requires that the voting machines have the counter-compartment locked and remain locked for a period of fifteen (15) days following the election. Within such period, and upon written request of any defeated candidate, a Judge of the Superior Court assigned to the County shall, at a cost of \$2.00 per district to the candidate, order the machines in question opened and the registering counters for mechanical votes and write-in votes/irregular ballots rechecked against the election officer's returns.

11. N.J.S.A. 19:28-2 provides for a recount of the mail-in ballots upon payment of \$25.00 for any one district recount of which is asked, based proportionally on the number of votes to be counted.

12. The Petitioner, therefore, applies for a recheck of the aforesaid voting machines for all districts and a recount of the mail-in ballots and provisional ballots cast, and any other

paper ballots cast in and for the Election in the Township of Berkeley Heights.

13. In light of the closeness of the results, Petitioner further requests a recount to protect the sanctity of the ballot which serves the public interest in the outcome of the Election. Accordingly, the closeness of the Election, further substantiating the necessity of a recount, as well as warranting that the \$25 per district fee be waived for the recount.

14. In order to ensure the recheck will take place while the machines are still in the sealed condition, the Petitioner requests that the Court require the continued impoundment of the machines by the Union County Board of Elections, their agents, servants or employees and others acting in concert with them and, except for the purpose of conducting the Recheck, prohibit the unlocking, resetting or otherwise changing the present status quo of the machines used in the Election until such time as the results of the recount and recheck have been certified.

15. In the event the Court does not enjoin the Union County Board of Elections, their agents, servants or employees from unlocking, interfering with the sealed condition or otherwise resetting the machines, the Petitioner will be immediately and irreparably harmed as being unable to verify the canvass of votes and ascertain the status of the counter at the close of the Election and whether Petitioner should be declared the successful candidate.

**WHEREFORE**, the Petitioner seeks relief as follows:

A. That the Court order a rechecking of machines, emergency ballots, and irregular ballots; a hand recounting of the mail-in ballots and provisional ballots, and all other paper ballots; and examination of both accepted and rejected mail-in and provisional ballots, and all other paper ballots in accordance with N.J.S.A. 19:28-1, et seq. and 19:52-6, et seq.

B. That Petitioner shall now, during, and after the conclusion of the physical recount, 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, provisional ballots, envelope flaps, outer envelopes, inner envelopes, affirmations, signature mismatch cure letters, messenger book, office orders, order lists, orders to vote, challenge lists, challenge sheets, preemptory order lists, District Board returns and canvases, complaint or inquiry records, 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.

C. That the Court waive the \$25 per district fee for the hand recount of the mail-in and provisional ballots.

D. The Union County Clerk and all other officials shall cooperate with the Union

County Board of Elections in the recount process.

E. That the Respondents shall preserve, inviolate and separate, all materials stated above and, except for the purpose of conducting the Recount and Recheck, shall not unseal, open, remove, or otherwise change the present status quo of the voting materials used in the Election until the result of the Recount and Recheck has been certified.

F. Any and all just and equitable relief consistent with this application as may be deemed necessary by the Court.

Dated: November 20, 2020

**JARDIM, MEISNER & SUSSER, P.C.**

/s/ Scott D. Salmon, Esq.  
Scott D. Salmon, Esq.

### Verification

I, Susan Poage, hereby certify as follows:

1. I am the 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 my knowledge, information, and belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: November 20, 2020

  
\_\_\_\_\_  
Susan Poage

**JARDIM, MEISNER & SUSSER, P.C.**  
Scott D. Salmon, Esq. (NJ Bar ID 152162015)  
30B Vreeland Road, Suite 100  
Florham Park, NJ 07932  
Attorneys for Petitioner, Susan Poage

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, COUNTY OF UNION

WILLIAM MCKOY,

Petitioner,

vs.

PATERSON MUNICIPAL CLERK,  
UNION COUNTY CLERK, and the  
UNION COUNTY BOARD OF  
ELECTIONS,

Respondents.

Docket No.: UNN-L-\_\_\_\_-20

Civil Action

**CERTIFICATION OF SERVICE**

I, Scott D. Salmon, Esq., of full age, hereby certifies as follows:

1. I am an attorney-at-law and a partner at the law firm of Jardim, Meisner & Susser, P.C., attorneys for Petitioner, William McKoy, in the above captioned matter.

2. On May 22, 2020, I caused the Verified Petition in Support of Application for Recount, Certification of Service and proposed form of Order, to be both e-filed and e-mailed to Joanne Rajoppi (Union County Clerk), Nicole DiRado (Union County Board of Elections Administrator), and Jeffrey Varnerin.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: November 20, 2020

**JARDIM, MEISNER & SUSSER, P.C.**

/s/ Scott D. Salmon, Esq.  
Scott D. Salmon, Esq.

**JARDIM, MEISNER & SUSSER, P.C.**

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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION, COUNTY OF UNION

SUSAN POAGE,

Petitioner,

vs.

UNION COUNTY CLERK and the UNION  
COUNTY BOARD OF ELECTIONS,

Respondents.

Docket No.: UNN-L-\_\_\_\_-20

Civil Action

**ORDER**

Petitioner, Susan Poage, residing in the Township of Berkeley Heights, County of Union, State of New Jersey, say:

**THIS MATTER** having been presented to the Court by Scott D. Salmon, Esq., an attorney at the law firm of Jardim, Meisner & Susser, P.C., attorneys for Petitioner, Susan Poage, and the Court having considered the Petitioner’s Application for an Order Granting Recount of the November 3, 2020 Municipal Election for the office of Councilwoman, the Court having considered the papers and arguments made by counsel, if any, and good cause having been shown; **IT IS** therefore, on this \_\_\_ day of November, 2020;

**ORDERED** as follows:

A. The Petitioner’s application for a Recount and Recheck, as set forth in the Verified Petition, of a rechecking of machines, emergency ballots, and irregular ballots; a hand recounting of the mail-in ballots and provisional ballots, and all other paper ballots; and examination of both accepted and rejected mail-in and provisional ballots, and all other paper ballots cast in all districts in the Election for the Township of Berkeley Heights is hereby granted; and

B. The Recount is to commence on November \_\_\_, 2020 at \_\_\_ a.m. and continue daily thereafter until completed, unless otherwise agreed to by the parties and those officials responsible for the Recount; and

C. The fee of \$25 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 parties to the Petition or their representatives, and all other candidates in the Election shall now, during, and after the conclusion of the physical recount, 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, provisional ballots, envelope flaps, outer envelopes, inner envelopes, affirmations, signature mismatch cure letters, messenger book, office orders, order lists, orders to vote, challenge lists, challenge sheets, peremptory order lists, District Board returns and canvases, complaint or inquiry records, 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; and

E. That the Respondents shall preserve, inviolate and separate, all materials stated above and, except for the purpose of conducting the Recount, shall not unseal, open, remove, or otherwise change the present status quo of the voting materials used in the Election until the result of the Recount has been certified; and

F. The Petitioner shall serve a copy of the Petition and this Order upon the Respondents named herein, within \_\_\_\_ business days hereof, by e-mail, personally, or by overnight, or certified mail.

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Karen M. Cassidy, A.J.S.C.



# Civil Case Information Statement

## Case Details: UNION | Civil Part Docket# L-003896-20

**Case Caption:** IN THE MATTER OF POAGE SUSAN

**Case Initiation Date:** 11/20/2020

**Attorney Name:** SCOTT D SALMON

**Firm Name:** JARDIM MEISNER & SUSSER PC

**Address:** 30 B VREELAND RD STE 100

FLORHAM PARK NJ 07932

**Phone:** 9738457640

**Name of Party:** PETITIONER : Poage, Susan

**Name of Defendant's Primary Insurance Company**

(if known): None

**Case Type:** OTHER Elections

**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: Susan Poage?** 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/ SCOTT D SALMON

Signed