

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF OSWEGO

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CLAUDIA TENNEY,

Petitioner,

-against-

INDEX NO.

EFC-2020-1376 (Justice DelConte)

OSWEGO COUNTY

BOARD OF ELECTIONS, et al.,

AFFIRMATION

Respondents.

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John Ciampoli, Esq., an attorney admitted to practice in the Courts of the State of New York, affirms under penalty of perjury pursuant to New York Civil Practice Law and Rules § 2106 that the following is true and correct to the extent of his knowledge:

1. He is an attorney for the Petitioner Claudia Tenney in the above captioned proceeding.

INTRODUCTION

2. This affirmation is offered in support of the Petitioner’s motion to have the Oneida County Board of Elections ordered to certify the results of the 2020 General Election for the office of Member of Congress from the 22<sup>nd</sup> Congressional District of New York, consistent with this Court’s Decision and Order of January 20, 2021.
3. It is further offered in support of petitioner’s motion to order the New York State Board of Elections to certify the canvass of returns for the 2020 General Election for the office of Member of Congress from the 22<sup>nd</sup> Congressional District of New York, consistent with this Court’s Decision and Order of January 20, 2021.
4. It is further offered in support of petitioner’s motion to vacate the stay issued from the bench as against the Oneida County Board of Elections, prohibiting them from

issuing the certification of the results of the 2020 General Election for the office of Member of Congress from the 22<sup>nd</sup> Congressional District of New York, consistent with this Court's Decision and Order of January 20, 2021.

5. The election before the Court is the last congressional race in the nation without a certified winner.
6. This fact demonstrates that over seven-hundred-thousand citizens of the 22<sup>nd</sup> Congressional District are, and continue to be, deprived of representation in the House of Representatives during this period where important decisions are being made in the nation's capital affecting their lives.
7. The question before this Court is whether it is proper in the premises to issue any injunction / stay of the final order of the Court that the results of the election be certified.
8. Respondent Brindisi has falsely asserted that entry of such an order would cause him irreparable harm.
9. It is beyond any doubt that after the court-ordered and supervised canvassing in this election, Republican-Conservative candidate Claudia Tenney has won this race.
10. Every Board of County Board of Elections has fulfilled their statutory duties. Only one county Board of Elections — Oneida — has been enjoined from certifying the canvass of the votes.
11. The State Board of Elections acts pursuant to its statutory duties. See Article 3 Election Law and Election Law § 9-210.
12. Petitioner is entitled to a final order of this Court directing her certification as the winner.

13. Respondent Brindisi is also entitled to a final order of the Court from which he may appeal.
14. This Court should not set up a situation where the results, even if appealed, require a remand, and a return to the trial court to vacate a stay and obtain final certification.
15. Each and every County Board of Elections has completed their canvass. The corrections ordered by this Court have been, in every instance, carried out.
16. It is time for the citizens of New York's 22<sup>nd</sup> Congressional District to have a final decision in this election and representation in the U.S. House of Representatives.
17. This in no way interferes with Brindisi's right to appeal.

#### LAW AND HISTORY OF ISSUANCE OF CERTIFICATES OF ELECTIONS BY COURT ORDER

18. Any certification issued by a state or county board of elections is subject to correction by a court order. In the event that the state board of canvassers or a county board of canvassers must reconvene "by order of a court of competent jurisdiction, for the purpose of correcting an error or of performing a duty imposed by law or by an order of the court granted pursuant to law . . . any new or corrected statement, determination or certificate which is made to give effect to the order shall stand in lieu of the original statement, determination or certificate." Election Law § 9-218(1).
19. Election Law § 9-218(2) provides the remedy requiring the Board of Elections to issue a new or corrected statement or certificate of election when ordered by a court. The Election Law provides that if "a new or corrected statement or certificate, to give effect to an order of the court, shall vary from the original statement or

certificate' issued by a county board of election, it may become necessary for the state board of canvassers to reconvene and make a new determination of the candidate duly elected to the affected office." Election Law § 9-218 (2). See also Johnson v. Martins, 79 A.D.3d 913, 917 (2nd Dept. 2010), aff'd in part, 15 N.Y.3d 584 (2010).

20. History shows that where the appellate courts reverse (or modify) a trial court order that changes the results of the election – that is to say who is certified as the winner – the system works seamlessly.
21. In Amedore v. Peterson, 102 A.D.3d 995, 998 (3d Dept. 2013), lv denied 20 N.Y.3d 1006 (2013)), the Supreme Court ordered that Amedore be certified by the New York State Board of Elections. He was certified as elected to the State Senate pursuant to that order before the close of the year.
22. Amedore took the oath of office and filed his certificate of election with the State Senate.
23. In January of 2013, the Third Department modified the order of Special Term. The modified order from the Third Department left Cecilia Tkaczyck the winner of the race over George Amedore who was ordered certified. Pursuant to the Appellate Division's Order, a revised certificate of Election was issued, and she was seated in the New York State Senate upon executing the oath of office and presenting her certificate of election.
24. The provisions of the State Constitution, *see* Art. III Sec. 9, and the Federal Constitution, Art. I, Sec. 5, regarding the seating of legislators mirror each other –

that is to say that the respective houses of each legislative body judge the qualifications of their members.

25. In the case at bar, the certified winner of the election must present the certificate of election to the House of Representatives.
26. If there is a change in the result of the election on appeal, a new certificate of elections is issued by the New York State Board of Elections.
27. The process of taking office here is the same as that in the Amedore case.

#### STANDARDS FOR ISSUING TEMPORARY RELIEF

28. The Standard of Proof required for the issuance of an injunction is the tri-pronged test of likelihood of success on the merits, showing of irreparable harm and balancing of the equities. The standard is clear and convincing evidence.
29. For the reasons set forth herein, it is submitted that this Court should not use its discretion to impose a stay pending appeal.

This Court should decline to stay the instant order (see generally CPLR 5519(c); Genet v. Delaware & Hudson Canal Co., 113 N.Y. 472, 474-476 (1889); Schaffer v. VSB Bancorp, Inc., 68 Misc.3d 827, 834 (Sup Ct, Richmond County 2020); Application of Mott, 123 N.Y.S.2d 603 (Sup Ct, Oswego County 1953).

#### LIKELIHOOD OF SUCCESS ON APPEAL

30. It is speculation at best as to the Respondent's likelihood of success on appeal.
31. It is beyond dispute that, after carrying out this Court's Order of January 20<sup>th</sup>, the certified results of this election will show that Petitioner Tenney has won this election by more than 120 votes.

32. We believe that this Court should be confident in the decision it has rendered after more than two months of proceedings before the Boards of Elections and this Court.

#### IRREPARABLE HARM

33. As for any irreparable harm, we submit that, again, Respondent's assertions are speculative at best.

34. In the first instance, it is clear from the history of the Courts in this State that the Appellate Division and then the Court of Appeals have the final say in deciding any appeals in this case.

35. The Election Law as noted in ¶¶ 18-19 hereinabove provides a statutory pathway for the issuance of amended certifications.

36. The history of Appellate Division decisions cited hereinabove demonstrates that the New York State Board of Elections can and does issue amended / revised certificates of elections to conform with Court rulings.

37. These certificates are routinely honored by legislative bodies which have the power to judge the qualifications of their members.

38. To the personal experience of your affiant, based upon over thirty years of experience in the practice of Election Law, no legislative body has ever refused to accept a late or amended certificate of election. We can locate no reported cases in this state where such a refusal has occurred.

39. This defeats Brindisi's claim of irreparable harm.

40. The process for seating a member of any legislative body (Federal or State) is that the State Elections authorities conduct the election subject to the oversight of the Courts.

41. State Elections Authorities issue a certificate of election to the winner based on a canvass of the returns.
42. The recipient of the certificate of election must then, in turn, present the certificate of election to the legislative body, here, the U.S. House of Representatives.
43. Pursuant to the Qualifications clause of the United States Constitution, the legislative body then determines to seat its members.
44. Not only is it speculative to assert that an Appellate Court would direct an amended / revised certificate of election be issued to him; it is speculation upon speculation to say what action the House of Representatives would take upon such certificate.
45. We point out to the Court that the House has recently seated the winner of a congressional race in Iowa – *provisionally* – while a contest of the election results proceeds, *see* <https://www.politico.com/news/2020/12/30/pelosi-seats-iowa-mariannette-miller-meeks-452332>; and <https://www.desmoinesregister.com/story/news/politics/2020/12/30/miller-meeks-seated-congress-provisionally-rita-hart-election-challenge/4073901001/> .
46. Such action applied to the instant case rebuts Respondent Brindisi's claims of irreparable harm.
47. The Respondent cannot tell us what would happen in this process without making up facts out of thin air.
48. It is also speculation, and beyond the jurisdiction of this Court, to determine what will happen when a certificate of election (or amended certificate) is presented to the House of Representatives. This is beyond the scope of this Court's jurisdiction.

49. A temporary remedy cannot be issued on the basis of speculation, particularly where the standard of proof is clear and convincing evidence.

THE MOTION DOES NOT PESENT A CASE OR CONTROVERSY TO THIS COURT

50. It is respectfully submitted that there is no case or controversy before the Court as presented by the Respondent's papers.

51. Moreover, the Courts are not in the business of providing advisory opinions based upon speculative claims.

52. The election results in this contest are clear and all parties need a final and appealable order – not an academic review of the law on seating members of the House.

53. Respondent presents absolutely no authority for the proposition that the issuance of a certificate of election would harm him, nor that he would be prejudiced by the seating (yet another speculation) of the winner of the election, nor that he would be prejudiced by having to present an amended certificate of election (more speculation) should an appellate Court reverse Your Honor's decision in this case (again, a speculation).

54. This case is resolved, except for an order directing the needed certification of results. Every such post-election litigation carried to its conclusion results in the winner being issued a certificate of election. Brindisi offers nothing to depart from this precedent.



## EQUAL PROTECTION

55. The stay issued from the bench on February 1, 2021 and Order of February 2, 2021 (Dkt. 211) affects only the Oneida County Board of Elections.
56. There is no basis in this record to treat the voters of Oneida County differently from the voters of the other seven counties in the 22<sup>nd</sup> Congressional District.
57. It is respectfully submitted that the issuance of such a stay going forward would offend the Equal Protection Clause of the New York State Constitution.
58. Finally, this Court must reject the Respondent's attempts to stay the final results of this election by way of his February 1, 2021 motion for the reasons set forth hereinabove.

WHEREFORE, it is respectfully demanded that this Court vacate any stay / injunction issued from the Bench on February 1, 2021, and the Court's order of February 2, 2021 (Dkt. 211) enjoining the Oneida County Board of Elections from issuing their certification of the votes of the 2020 General Election for the office of Member of Congress from the 22<sup>nd</sup> Congressional District of New York, consistent with this Court's Decision and Order of January 20, 2021, and that this Court Order the New York State Board of Elections to certify the canvass of returns for the 2020 General Election for the office of Member of Congress from the 22<sup>nd</sup> Congressional District of New York, consistent with this Court's Decision and Order of January 20, 2021, together with such other, further and different relief as may be accorded to the Petitioner in the premises.

DATED: February 2, 2021

/s/ John Ciampoli, Esq.  
John Ciampoli, Esq.