

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF OSWEGO

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In the Matter of

Claudia Tenney, candidate for Member of Congress,  
22nd District of New York State.

Petitioner,

-against-

**VERIFIED PETITION**

INDEX NO.: \_\_\_\_\_

Oswego County Board of Elections,

Oneida County Board of Elections,

Cortland County Board of Elections,

Madison County Board of Elections,

Broome County Board of Elections,

Tioga Co. Board of Elections,

Herkimer Co. Board of Elections,

Chenango County Board of Elections,

New York State Board of Elections,

Keith D. Price, Jr., candidate for Member of Congress,  
22nd District of New York State,

and

Anthony Brindisi, candidate for Member of Congress,  
22nd District of New York.

Respondents,

For an ORDER, pursuant to Sections 16-102, 16-106, 16-112 and 16-113 of the Election Law, directing the preservation of all ballots cast in the General Election held on November 3rd, 2020, for the public office of Member of Congress for the 22nd District of New York, and invoking the jurisdiction of the Court to rule upon the casting or canvassing or the refusal to cast or canvass any ballot as set forth in Election Law 16-106(1) and preserving the rights of Petitioner(s) under

Articles Five, Six, Seven, Eight, Ten, Eleven  
Nine and Sixteen of the Election Law and Section 16-113  
of the Election Law and any / all related sections of law; and  
pursuant to Section 16-100 of the Election Law, sec. 9 of the  
Civil Rights Law, as well as Article 78 CPLR and CPLR 3100,  
declaring Petitioner-Candidate the lawfully elected candidate in  
this Election and ordering the certification of said Petitioner  
Candidate by Respondent(s) Board(s) of Election.

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**TO THE SUPREME COURT OF THE STATE OF NEW YORK:**

Petitioner, by her attorney, Joseph T. Burns, Esq., respectfully alleges as follows:

**THE PARTIES**

1. Petitioner, Claudia Tenney at all times hereinafter mentioned is the Republican and Conservative candidate for the public office of Member of Congress, 22nd Dist. of New York, which was voted upon at the General Election held on the 3rd day of November, 2020.
2. Petitioner, candidate has standing to bring the instant proceeding under the Election Law.
3. The subject Congressional District is comprised entirely of and portions of the following counties: Oswego, Oneida, Cortland, Madison, Broome, Tioga, Herkimer, and Chenango.
4. Respondent Commissioners of the New York State Board of Elections are charged with the responsibility under the Election Law of certifying a winner in the election held for the office of Member of Congress, 22nd Congressional District on the Nov. 3, 2020 General Election Day.
5. Respondent County Boards of Elections and the Commissioners of the Boards herein named in the caption are responsible for the canvassing returns of the elections from the various municipalities and/or other political subdivisions within the 22nd Congressional District, and further responsible for certifying the results of elections for the public office of Member of Congress, 22nd District of New York, acting in their capacity as County

Board(s) of Canvassers. The Respondent County Board(s) of Elections and Commissioners, as part of its / their responsibilities, are charged with conducting all of the post-election procedures and those mandated by their rules, so long as such rules are not violative or inconsistent with the law, the rights of the parties and the supervision of the Courts over the exercise of such powers and responsibilities including canvassing, recanvassing voting machine results, canvassing affidavit, absentee and military as well as special ballots, the compilation of the final tallies of the votes cast and the certification of the results of the election.

6. Respondent Keith D. Price, Jr. is the candidate for the public office of Member of Congress, 22nd District of New York of the Libertarian Party for the November 3, 2020 General Election.
7. Respondent Anthony Brindisi is the candidate for the public office of Member of Congress, 22nd District of New York of the Democratic, Working Families, and Independence Parties for the November 3, 2020 General Election.

### **JURISDICTION**

8. This proceeding is commenced pursuant to the provisions of Articles Five, Six, Seven, Eight, Ten, Eleven, Nine and Sixteen of the Election Law, Sections 16-100, 16-106, 16-112, 16-113, 16-116 Election Law, sec. 9 of the Civil Rights Law, and Article 78 of the Civil Practice Law and Rules, which confer authority upon this Court to determine and receive any disputes arising out of or relating to the canvass, recanvass of ballots and returns as well as the handling of memory sticks and to preserve the ballots, including challenged ballots, the machines and the memory sticks employed in the General Election for the public office of Member of Congress, 22nd District of New York.

9. Further, to the extent that it becomes relevant, application is made pursuant to the provisions of CPLR 3001 for a declaratory judgment of the Court declaring any statute, rule or executive order of the State of New York or of the Respondent Boards of Elections as being invalid under the laws of the State of New York and / or unconstitutional under the provisions of the New York State Constitution, as applied.

#### VENUE

10. This action is brought in Oswego County and based upon the fact that Respondent Oswego County Board of Elections is located within Oswego County and maintains its office in Oswego County.
11. Oswego County is the proper venue for this Election Law proceeding.

#### THE REASONS FOR THIS ACTION

12. This petition is made in order to preserve Petitioner's and the public's rights under the Election Law including Election Law 16-112 thereof to preserve all voting materials, in the canvass and return as well as the recanvass of returns from the General Election of November 3, 2020 for the public office of Member of Congress, 22nd District of New York. Such voting materials include unopened and/or non-scanned ballots including absentee ballots, applications for absentee ballots, special ballots and applications for such ballots, affidavit ballots and envelopes containing such ballots, special ballots and military ballots, machine breakdown reports, mechanic or custodian logs, election day affidavits, election day court orders, poll books, ballot stubs, spoiled ballots, voided or defective ballots, unused ballots and all copies of close of polls reports, all printed and electronic records and vote tallies, for the public office and relative to the public office of Member of Congress, 22nd District of New York; preserve inviolate and separate the ballots voted upon by the voters of the subject counties cast for the office of Member of Congress, 22nd District of New York,

from all others, and that such listed items be preserved, separated and held under a security system requiring bipartisan participation in order to access such material by the use of a two lock system with a Commissioner of each party having the key to only one lock of the storage facility in which election materials and ballots and other materials, and further together with court review of the canvass, recanvass, and or audit of the electronic voting machines, ballot marking devices and or ballot scanners and the direction of an expanded audit and if so determined an audit pursuant to Election Law 16-113 and also to allow for comprehensive review of the matters under the jurisdiction of this Court.

13. Due to the COVID-19 related state of emergency, and changes to the laws of the State of New York, this election already has an unprecedented number of paper (absentee) ballots being cast, many of which are being sent via the mail (which may be received after Election Day if postmarked timely and in accordance with the requirements of the Election Law).
14. Due to changes in the Laws of the State of New York there may be an increase in the number of Affidavit Ballots and requirement for additional layers of research and review of same.
15. This influx of mailed and other paper ballots necessarily means that the outcome of most elections in this state have not been determined by the unofficial election night canvass.
16. The current state of affairs and the facts surrounding this election require that this Court use its powers under Section 16-112 Election Law to preserve the ballots and election materials related thereto so that any contest related thereto, and any administrative determination of the Respondent Boards of Elections may be heard and reviewed by this Court.
17. Boards of Elections may be planning to alter canvassing processes so as to reduce or eliminate poll watchers from having meaningful and effective access to election materials

and ballots so they might make objections to absentee, military, special, affidavit, or federal ballots.

18. Upon information and belief, the abbreviation of ordinary and statutorily required canvassing procedures may include an elimination of the recording and preservation of records of objections, depriving Petitioner of due process and depriving this Court of the ability to review board Actions.
19. New procedures for “cures” for defective ballot envelopes may adversely affect Petitioner’s rights under the Election Law and related laws. This Court is required to order full disclosure of the “cure” process so as to protect Petitioner’s rights and allow for the Court to review actions of the Respondent Boards of Elections.
20. New procedures for the Board(s) of Elections to review signatures on ballot envelopes and related documents are in place for the first time in New York’s history.
21. The Ar. II, sec. 7 of the State Constitution and the Election Law require identification of each voter by signature. The judgment that a signature on an application, ballot envelope or affidavit is within the exclusive jurisdiction of this Court.
22. Upon information and belief, due to the historically high number of absentee ballots submitted because of the COVID-19 pandemic, some Boards of Elections are planning to not administer the constitutionally required voter signature verification in order to save time to meet statutory certification deadlines.
23. Upon information and belief, the Respondent Board(s) – should they administer the constitutionally required signature verifications – may/will make errors in their determinations as to cures and the authenticity of signatures. Such matters are properly before this Court for review. Further, the Respondent Board(s) must be ordered to preserve and produce the records relating to such processes.

24. Any determinations as to signatures must, therefore, come before this Court for review where that is objection made at the Board.
25. Further, upon information and belief, predicated upon news reports, unofficial election night returns, early voting numbers, absentee ballot numbers, and reports of polls and the like, the outcome of this election based upon the public information disclosed so far demonstrate that the election is close.
26. In the past experience of counsel, when the outcome appears to be very close the result of the election will hinge upon the recanvass of voting machines, the condition and reliability of the memory sticks, and the canvass of paper ballots including emergency, affidavit, absentee and military as well as special ballots.
27. In any event, this court should order the advance production of relevant elections materials to the Petitioner so that the canvass can proceed expeditiously, and Petitioner can adequately prepare for the canvass.
28. The canvass of absentee ballots in this race will almost certainly determine the winner of this contest.
29. Recent changes in the law require that affidavit ballots be checked against a statewide database before they can be considered for canvassing.
30. There is an unprecedented number of “absentee ballots” and “military ballots” to be fully reviewed and/or canvassed by the Respondent Board(s) of Elections.
31. Further, upon information and belief, many of these ballots are yet to be received by the Respondent Board(s). Under Election Law 8-412(2), properly postmarked absentee ballots may be received by Respondent Boards of Elections for canvassing until seven days after the election and Military Ballots may be received until Nov. 16, 2020.

32. Upon information and belief, absentee or military ballots on hand with Respondent Boards of Elections may have their envelopes burst/opened, the ballots separated therefrom, and then the ballots will be cast, canvassed and in many cases, scanned. All of which will deprive your Petitioner of the ability to inspect, and where appropriate object to same. Further, this Court will be deprived of the ability to review the determinations of Respondent Board(s) made upon such ballots.
33. Absent the immediate intervention of this Court, the said ballots may be cast and canvassed, compromising the rights of the Petitioner, who will have no right or opportunity to inspect the documents supporting those ballots prior to their canvassing (*see Jacobs v. Biamonte*, 15 Misc3d 233, *affd*, 38 A.D.3d 777 [2<sup>nd</sup> Dept., 2007]).
34. Accordingly, the Petitioner has requested an order of this Court preserving such ballots until the canvass and recanvass of paper ballots is conducted by the Board.
35. Upon information and belief Respondent Board(s) of Elections, acting as Boards of Inspectors in canvassing ballots, may have tie votes, be unable to determine the validity of individual ballots, exceed the ministerial powers delegated to the Board(s) of Elections (by entering into the area reserved by the State Legislature for judicial review only), or err in determining the invalidity of individual ballots.
36. Upon information and belief, the time required for the canvass of these ballots will exceed the 3-day preservation period provided for in Election Law Section 9-209. This is particularly true here as the number of absentee ballots has grown exponentially due to the changes in the Election Law, Executive Orders of the Governor, and the COVID-19 health emergency.
37. Upon information and belief, the facts alleged in the paragraphs hereinabove, point to the fact that the final results of this election hinges upon the canvass of the various types of

paper ballots mentioned hereinabove, as well as a review of the canvass of the machine cast ballots, voting machines, ballots, scanners, “sticks” or flash drives (the electronic record of voting similar to USB port devices), the ballot images, and ballot stubs, and the audit of the voting machines and possibly a review of the paper ballots contained in said machines (or otherwise preserved).

38. In the event the Court chooses not to preserve objections made by the Petitioner-Candidate and the Respondent-Candidates, it is requested that the Court employ the objection preservation method as set forth in O’Keefe v. Gentile, 757 N.Y.S.2d 689 (S.Ct. Kings Co., 2003) for all ballots objected to by any party but canvassed.
39. To the best of counsel’s knowledge, no Court has been requested to, or has taken jurisdiction over the canvass and recanvass of votes in the subject congressional district. Petitioner has not requested the relief set forth herein or similar relief from any Court.
40. Should there not be any order entered with regard to races statewide or such an overarching order be withdrawn or vacated prior to this Court taking jurisdiction of this matter, there will be no protection of the machines and paper ballots in the subject congressional district. Such a situation would present a lapse in security for the electoral process in this congressional district and leave the election returns vulnerable to fraud.
41. Any lapse in security or breach of protective measures for the voting machines, ballots, scanners, “sticks” or flash drives (the electronic record of voting similar to USB port devices), and ballot stubs relating to the election for Member of Congress, 22nd District, would irreparably harm petitioner and undermine public confidence in the electoral process.
42. Petitioner requests leave to and reserves the right to submit further proofs by way of witnesses, affidavits, and evidence upon the date set by this court for the trial and hearing of this matter, and to amend these pleadings to reflect the facts adduced by way of further

investigation and/or a canvass of the ballots for election to the subject public office by the Board of Elections.

43. This action is being brought via e-filing which was authorized for Elections Matters in 2020 by the Chief Administrative Judge of the Courts of New York. The immediate attention of the Court to the Order to Show Cause submitted herewith is required so as to ensure preservation of the ballots and the election materials.
44. This proceeding is commenced pursuant to the provisions of Article Five, Six, Seven, Eight, Ten, Eleven, Nine and Sixteen of the Election Law, and related statutory provisions, which confers authority upon this Court to preserve the ballots and voting materials, and to determine and resolve any disputes arising out of or relating to the canvass of ballots and returns for public office.
45. Anticipatorily, Petitioner respectfully brings this matter before the Court under CPLR Article 78 and CPLR Section 3100, to the extent that the facts adduced require application relief under said provisions of law.
46. In order to assure that the ballots and voting machines in the subject political subdivision(s) are immediately protected, and that every step is taken to prevent tampering and fraud, it is respectfully submitted that service of the within requested order must be made as soon as possible.
47. In the event necessary, further application is made to this Court, pursuant to CPLR 304, for commencement of this proceeding by the signing of the Order (before it is posted with NYSCEF) and for leave to serve a copy of the within order and papers upon the parties hereto.
48. It is respectfully submitted that the circumstances described herein present the Court with an emergency situation requiring immediate action by the Court. Additionally, the very nature

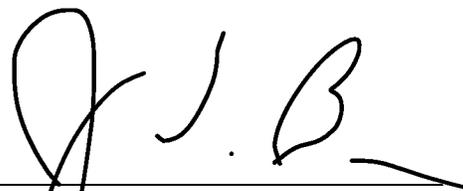
of an Election Law proceeding – particularly with regard to election/ballot integrity – presents an exemption to any rule which might bar the Court’s action in other circumstances (*see Banko v. Webber*, 7 NY2d 758 [1959]).

49. Pursuant to Part 130 of the rules of the Court, Petitioner’s attorneys certify that this matter is not frivolous.
50. No prior application for the relief requested has heretofore been made by Petitioner to this or any Court.

**WHEREFORE**, Petitioner respectfully demands a judgment of this Court

1. Verifying the tallies of votes as tabulated by electronic voting equipment on election night and during the early voting period, and as may include any updated tabulations by Respondent Boards of Elections after the initial tallies were prepared.
2. Determining the validity of all ballots cast on paper and the cure documentation for any ballots sent to voters to be cured in the General Election for the office of Member of Congress, 22nd District of New York and further determining the validity of all affidavit ballots, absentee ballots, military ballots, special ballots and any other such ballots cast for the public office of Member of Congress, 22nd District of New York.
3. Ordering the Respondent Boards of Elections and the Commissioners thereof, to certify the name of the Petitioner-Candidate, CLAUDIA TENNEY, as elected to the public office of Member of Congress, 22nd District of New York, at the General Election held therefor on the 3rd day of November 2020,
4. Ordering the joinder of such parties as are determined appropriate;
5. Ordering that the canvass of the votes made by the Respondent Boards of Elections corrected and adjusted to reflect a proper tally of the votes for the said public office,
6. Granting Petitioner such other and further relief as this Court deems just and proper.

DATED: Amherst, New York  
November 4, 2020



Joseph T. Burns, Esq.  
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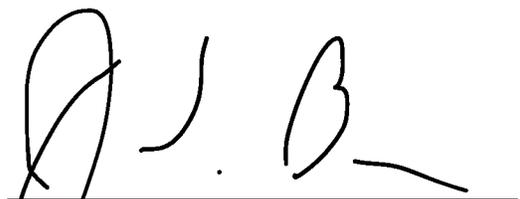
**ATTORNEY'S VERIFICATION**

STATE OF NEW YORK     )  
  )  
COUNTY OF ERIE         ) s.ss:

Joseph T. Burns, an attorney duly admitted to the practice of law before the Courts of the State of New York does hereby affirm pursuant to the provisions of the CPLR as follows:

1. He is the attorney for the Petitioner(s) in this proceeding.
2. He has personally reviewed copies of the relevant documents on file with the Board(s) of Elections, together with other ancillary papers thereto, and upon the conclusion of the said review, believes the within allegations to be true, to his personal knowledge.
3. He has reviewed the contents of the within petition with his client(s) and/or his/her workers and at the conclusion of said review believes the contents thereof to be true.
4. All allegations made upon information and belief he believes to be true, based upon a review of the subject documents and an investigation of the attendant facts and circumstances.
5. This verification is used pursuant to the provisions of the CPLR at counsel has offices in the County of Erie and the Petitioner(s) herein maintain a residence in another county of New York State.

DATED: AMHERST, NEW YORK  
NOVEMBER 4, 2020



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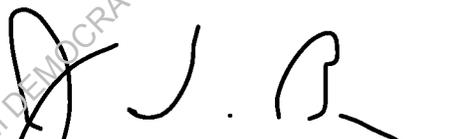
## **CERTIFICATION**

Joseph T. Burns, an attorney admitted to practice law in the Courts of the State of New York, affirms under penalties of perjury, that the following statements are true:

That I am the attorney for the petitioner in the within case.

That I certify to the best of my knowledge, information and belief, formed after an inquiry reasonable under circumstances, that presentation of Petitioner's Verified Petition and the contentions therein are not frivolous as defined in 22 NYCRR 130-1.1-a, et seq.

Dated: Amherst, New York  
November 4, 2020

  
\_\_\_\_\_  
Joseph T. Burns

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