

SUPREME COURT OF THE STATE OF NEW YORK
OSWEGO COUNTY

In the Matter of

CLAUDIA TENNEY, candidate for Member of Congress,
22nd District of New York State,

Petitioner,

MEMORANDUM OF LAW

-against-

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 COUNTY BOARD OF ELECTIONS,
HERKIMER COUNTY BOARD OF ELECTIONS,
CHENANGO COUNTY BOARD OF ELECTIONS,
NEW YORK STATE BOARD OF ELECTIONS,

Index No. EFC-2020-1376

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 State,

Respondents.

Paul DerOhannesian II, Esq.

DerOhannesian & DerOhannesian
677 Broadway, Suite 707
Albany, New York 12207
518.465.6420

Joseph T. Burns, Esq.

Law Office of Joseph T. Burns, PLLC
1811 Northwood Drive
Williamsville, New York 14221
315.727.7636

Attorneys for Petitioner

Dated: December 3, 2020

TABLE OF CONTENTS

INTRODUCTION 1

ARGUMENT 1

I. Respondent Brindisi Is Not Entitled to Relief Cross-Claim Should Be Dismissed or Denied Relief Under the Purported Cross-Claim 1

 A. Respondent Brindisi’s Cross-Claim Should Be Dismissed or Respondent Should Be Denied Relief

 B. Respondent Brindisi’s Order to Show Cause Seeks Article 78 Relief Not Requested in Respondent’s Purported Cross-Claim

II. Respondent Brindisi Campaign Failed to Make Appropriate Objections to Ballots at the Time of Canvass and Therefore the Objections are Not Preserved..... 2

III. The Relief Sought by Respondent Candidate Brindisi Does Not Seek a Recanvass or the Mere Correction of An Error; It Requests A Completely New Canvass that Is Not Permissible Relief Under Election Law Section 16-106 and Would Delay the Proceeding for Weeks 5

 A. “Translation” of Objections Constitutes A Canvass.

 B. The Use of Extrinsic Testimony To Establish Ballot and Ballot Envelope Objections Constitutes a New Canvass.

IV. Recently “Discovered” Affidavit Ballots in Chenango County Should Not Be Canvassed and are Not Before the Court as Canvassed Results 7

V. Respondent Brindisi’s Requested Relief Will Unnecessarily Burden County Boards of Elections and Delay the Certification of This Contest 8

VI. Respondent Brindisi’s Order to Show Cause is Invalid Because it Treats Voters in Different Counties Differently and Treats Voters Within Those Counties Differently. 10

VII. Respondent Brindisi’s Requested Relief Is a Prescription for a Public Health Crisis in the 22nd Congressional District 12

CONCLUSION..... 16

TABLE OF AUTHORITIES

Cases

Application of O’Shaughnessy v. Monroe County Board of Elections, 15 A.D. 2d 183 (Fourth Dept. 1961) 6

Bush v. Gore, 531 U.S. 9 (2000)..... 10, 11

Benson v. Prusinski, 151 A.D.3d 1441 (3rd Dept. 2017) 2, 6

Delgado v. Sunderland, 97 N.Y.2d 420, 422 (2002) 5

Dorman v. Scaringe, 222 A.D. 2d 887 (Third Dept. 1995) 6

Matter of Tobacco v. Vitucci, 59 A.D.3d 645 (2d Dep’t 2009) 3

Stewart v. Chatauqua County Board of Elections, 69 A.D. 3d 1298, 1302 (Fourth Dept. 2010) .. 6

Sheils v. Flynn, 275 N.Y. 446 (1937) 6

Stern v. Garfinkle, 22 A.D. 3d 695 (Second Dept. 2005) 6

Pataki v. Hayduk, 87 Misc.2d 1095, 1098 (Sup. Ct. Westchester 1976)..... 3

RETRIEVED FROM DEMOCRACYDOCKET.COM

INTRODUCTION

Petitioner Candidate Claudia Tenney submits this memorandum in response to the Memorandum of Respondent Anthony Brindisi In Support Of Proposed Order to Show Cause which was filed by Respondent Candidate Brindisi on December 2nd, 2020, pursuant to this Court's Order dated November 30th, 2020, to submit opposition papers and any cross-motions to proposed orders to show cause and supporting papers by the parties. (Dkt. 70).

ARGUMENT

I Respondent Brindisi Is Not Entitled to Relief Cross-Claim Should Be Dismissed or Denied Relief Under the Purported Cross-Claim.

A. Respondent Brindisi's Cross-Claim Should Be Dismissed or Respondent Should Be Denied Relief

Petitioner Tenney moved in their Order to Show Cause for Dismissal of the Respondent Brindisi's Cross-Claim on the grounds he never obtained an order permitting a cross-claim. (Dkt. No. 87, pp. 4-5). Petition repeats this point in opposition to Respondent's Order to Show Cause. Petitioner noted that any request for relief requires a valid petition or cross-claim. (Dkt. No. 23). In addition, Petitioner moved to dismiss on the ground that the Respondent's cross-claim is limited in the relief it seeks.¹ The basis for any relief requires the assertion of a valid cross-claim or petition. Without a valid cross-claim or petition, the Respondent is not entitled any relief.

¹ "The Respondent specifically denied that the Court had any jurisdiction under Article 16 other than "to preserve ballots and to rule on the validity or invalidity of ballots for which the candidates have protested the Boards' of Election decision to either canvass or refuse to canvass the ballots." Dkt.23, ¶3. As the court has noted the record is devoid of candidates' protests and rulings of the Boards of Election as to any ballot, which is the premise of Respondent Brindisi's alleged cross-claim." Dkt. 87, p.6

B. Respondent Brindisi's Order to Show Cause Seeks Article 78 Relief Not Requested in Respondent's Purported Cross-Claim

In addition to denying relief for the reasons set forth in Petitioner's Memorandum filed in support of her Order to Show Cause. (Dkt. No. 87, pp. 4-5). Respondent's Order to Show Cause requests additional relief never requested and outside of Article 16 of the Election Law. Respondent's Order to Show Cause in multiple instances seeks to compel Respondents Boards to engage in specific conduct and highly detailed procedures, mandating them to engage in multiple procedures. (Dkt. No. 92, ¶1-7). Such relief is in the nature of Article 78. Respondent has never sought Article 78 relief or asserted that he's entitled to Article 78 relief.² The Respondent has no authority to seek relief under a provision of law it has never requested. Respondent Brindisi's Cross-Claim specifically limits the relief the court may provide.

II Respondent Brindisi Campaign Failed to Make Appropriate Objections to Ballots at the Time of Canvass and Therefore the Objections are Not Preserved.

The Court is limited in its ability to direct the Boards of Elections to review the absentee and affidavit ballots that were supposedly objected to during its administrative proceedings. The Appellate Division, Third Department holds that to preserve arguments for the canvassing or refusal to canvass absentee or affidavit ballots, a candidate must "raise an objection" before a Board of Elections, and just as importantly, *a candidate must state the "specific ground" for the objection to the ballot.* Benson v. Prusinski, 151 A.D.3d 1441 (3rd Dept. 2017) (emphasis added). Failure to follow the detailed processes laid out by the Election Law leaves the Court without the ability to order the canvassing or non-canvassing of absentee and affidavit ballots. It is the candidate who has the responsibility and duty to make an appropriate objection within the

² For example, Petitioner's petition reserved the right to request relief under Article 78 should Petitioner have deemed it necessary to seek such relief. Dkt. 1, ¶45

statute, which the Respondent Brindisi did not do. Just as an attorney cannot ask to reopen a trial record to lodge an objection to our leave for appellate review, Respondent Candidate cannot reopen the canvass process, an administrative procedure, to lodge an objection for judicial review. See Matter of Tobacco v. Vitucci, 59 A.D.3d 645 (2d Dep't 2009) (holding no basis to reconsider the Board's administrative decision with respect to petition signatures); Pataki v. Hayduk, 87 Misc.2d 1095, 1098 (Sup. Ct. Westchester 1976) ("The board of elections may not reverse the gears, reopen that door and upset the chain of events. Nor may respondent Allgaier be given a second bite at the apple by being given a second opportunity to court review the petitions, having forfeited her first. She should not be permitted to enter the back door after standing idly by while the front door was being closed.").

Representatives from the Brindisi campaign testified to engaging in a ballot-objection procedure that does not comply with Section 9-114 of Election Law. (Tr. 323; 8-15) ("I do not recall observing or hearing the Tenney campaign make any objections to the affidavit ballots."). In Oneida County, the representative from Brindisi's campaign, the candidate's sister, testified that she never wrote down the specific objections she made on each separate ballot. (Tr. 325; 8-11, 17-25). There were no individual challenges to the ballots in Oneida County nor were there continued objection discussions with the Commissioners for the canvassing period³. (Tr. 322; 10-18). Another representative from the Brindisi campaign testified that she made no record of any rulings or discussion the Commissioners were making regarding the alleged challenged ballots in Chenango County. (Tr. 295; 11-13). Similarly, a Brindisi representative testified he failed to make any notes or records concerning his objections to the ballots. (Tr. 269; 11-15). The

³ Nor are there any documents reflecting objections, nor even poorly documented records, reflecting objections by Respondent Brindisi.

representative also admitted he heard no rulings by the Commissioners prior to making the alleged objections. (Tr. 267; 5-7).

Petitioner Tenney maintains the same position as set forth in her Memorandum of Law dated November 24, 2020, that there are no documented objections, if they were even made, and as such, this Court is unable to engage in any meaningful review on the validity of ballots and the basis for the party's alleged objections. (Dkt. No. 61).

Respondent Brindisi seeks to have the Boards ordered to revisit and open affidavit and absentee ballots that they believe were objected to and attempt to remedy specific issues in regard to those ballots that are unaccompanied by valid, written, and recorded objections by the Board in violation of their duties under Section 9-114 of the Election Law. Election Law § 9-114. Proof of any objections to the ballots is non-existent and therefore the Court should find that no valid objections were made nor preserved.

Moreover, the representatives from the Brindisi campaign testified on the record that not only did they fail to record proper objections to the absentee and affidavit ballots, but they also failed to object to the Boards of Elections failure to record or make any rulings on their alleged objections. In Chenango County, the Brindisi campaign representative when asked whether the campaign made any objection that the Commissioners had not made a ruling on any objection, the representative responded with, "not to my knowledge." (Tr. 268; 8-10). In Oneida County, the Brindisi campaign representative testified she never personally objected to anything and that she did not ask the Commissioner to note the objection on any individual ballot. (Tr. 347; 21-25). Also in Oneida County, the Brindisi campaign representative testified that she didn't ask for the Commissioners to note her objections to each and every one of the objected-to ballots. (Tr. 323; 20-25, Tr. 324; 2-5; Tr. 326; 1-3).

Accordingly, Respondent Brindisi campaign failed to make appropriate objections to ballots at the time of canvass, therefore the objections are not preserved for review.

III The Relief Sought by Respondent Candidate Brindisi Does Not Seek a Recanvass or the Mere Correction of An Error; It Requests A Completely New Canvass that Is Not Permissible Relief Under Election Law Section 16-106 and Would Delay the Proceeding for Weeks.

Any action the Court takes with respect to a General Election challenge must find authorization and support in the express provisions of the Election Law. Delgado v. Sunderland, 97 N.Y.2d 420, 422 (2002). Election Law §16-106 (4) authorizes the Court to order a recanvass or the correction of canvass mistakes⁴. The statute does not authorize the Court to order a new canvass as governed by Election Law §9-209⁵. A recanvass is, in short, a verification of the canvass and is governed by Election Law §9-208⁶. Respondent candidate Brindisi's requested relief is not a recanvass but constitutes a new canvass under the guise of correcting mistakes that will prolong this proceeding by weeks.⁷

A. "Translation" of Objections Constitutes A Canvass.

Decretal Paragraph (1) of the respondent candidate Brindisi's Order to Show Cause requests that the respondent Board of Elections "translate" in writing their current record of objections ("sticky notes, spreadsheets or stacks") onto the ballot or ballot envelope itself. Included with this translation request is "a written memorandum of the objection" (i.e. the grounds for the objection). The relief requests the Board of Elections to "translate" rather than "transpose" the objections. "Translation" is more subjective and more prone to narrative than

⁴ Respondent Brindisi never originally sought relief under Section 16-106(4).

⁵ If the statute did authorize the Court to order a new canvass, the statute would explicitly state as such.

⁶ A recanvass is not a recount.

⁷ It is respectfully submitted that delay of this proceeding may benefit respondent candidate Brindisi. As Respondents point out in their papers the U.S. Constitution requires a Member from the 22nd Congressional District be seated by January 3, 2021. Mr. Brindisi is a candidate of the Democratic Party which will be the Majority Party in the U.S. House of Representatives in 2021 (See U.S. Constitution Article I, Section 4, cl. 1)

mere “transposition” (especially when preparing memorandum). “Translation” inherently involved interpretation. “Translation” will inevitably create instances of debate and dispute as the candidates advocate to strengthen the narrative of their own objections and weaken their opponents. This newly translated BOE narrative for the objection memorandum will in many cases be challenged by a candidate or may result in rulings of competing memorandum narratives by each Board of Election Commissioner. These challenges and split rulings would require judicial resolution due to their legal significance. Properly stated grounds constitute a necessary element for a lawful challenge or objection to a ballot or ballot envelope. Without a properly stated challenge, the Court lacks subject matter jurisdiction to hear the challenge (Stewart v. Chatauqua County Board of Elections, 69 A.D. 3d 1298 at 1302 (Fourth Dept. 2010); Application of O’Shaughnessy v. Monroe County Board of Elections, 15 A.D. 2d 183 (Fourth Dept. 1961); See also Sheils v. Flynn, 275 N.Y. 446 (1937); Stern v. Garfinkle, 22 A.D. 3d 695 (Second Dept. 2005); Dorman v. Scaringe, 222 A.D. 2d 887 (Third Dept. 1995)) “Translating” the objections onto the ballots constitutes a new canvass which is not permissible relief under Election Law Section 16-106(4). It is also a process likely to inject more doubt, error and confusion in the process.

B. The Use of Extrinsic Testimony To Establish Ballot and Ballot Envelope Objections Constitutes a New Canvass.

The canvass process is governed by Election Law Section 9-209 and contains specific provisions for objections (See Election Law Section 9-209(2)(d). The recanvassing provisions of Election Law Section 9-208 do not provide for the making of objections. Objections must be made at the time of canvass. If not the ability to object is lost. (Benson v. Prusinski, 151 A.D. 3d 1441 (3rd Dept. 2017). If Board of Election errors occur at the canvass regarding the documentation of objections, the candidate objector is as much as fault as the Board of Election

by failing to insist upon and ensure proper documentation. Election Law Section 16-106 does not authorize the court to order a new canvass in order to allow candidates a second attempt to make objections. A new canvass is not a means to “correct an error” under Election Law 16-106.

Objections to specific ballots and ballot envelopes are governed by Election Law Section 9-114 and provide for specific documentation prepared in a bipartisan manner and written on the subject ballot or ballot envelope. Unfortunately, the respondent Boards of Elections have failed to comply with many of the documentation elements of Election Law Section 9-114. Respondent candidate Brindisi, however, in decretal paragraphs (2) and (3) of his Order to Show Cause seeks the Court to order that the respondent Boards of Elections records and documentation of objections (including the lack of documented objections) be disregarded and set aside and that they create new objection records and documentation based upon the testimony of partisan Brindisi campaign workers including Brindisi family members. This extraordinary partisan relief is the antithesis of the intent of Election Law Section 9-114 to create bipartisan Board of Election objection documentation and further constitutes a new canvass with new objections which is not permissible relief under Election Law Section 16-106 (4).⁸

IV. Recently “Discovered” Affidavit Ballots in Chenango County Should Not Be Canvassed and are Not Before the Court as Canvassed Results.

On December 1, 2020, almost one month after Election Day 2020, the parties to this proceeding were informed by the attorney for Respondent Chenango County Board of Elections that the commissioners of the Chenango County Board of Elections had discovered over 50 uncanvassed affidavit ballots. (Dkt. No. 82). This occurred after Respondent Chenango County Board of Elections had provided final results for the 22nd Congressional District election on November 30, 2020 as directed by the Court (Dkt. No. 72). Upon the discovery of these

⁸ The granting of this relief will also result in Petitioner candidate Tenney calling witnesses to establish their objections further delaying this proceeding.

affidavit ballots, the attorney for Respondent Chenango County Board of Elections sought direction from the Court in the form of an e-mailed letter as to what should be done with these ballots (Dkt. No. 82). As of this writing, the Court has not responded to this request from the Chenango County Attorney.

The late discovery of these affidavit ballots raises serious questions about their chain of custody as well as the Respondent county Board of Elections' ballot accountability practices. It remains unanswered as to how these alleged ballots were discovered as well as where they may have been for approximately one month, long after the election and the Court's orders with respect to the ballots and the reporting of final counts. (Dkts. No. 40, 54, 70) The attorney for Respondent Chenango County Board of Elections has failed to provide any information or details as to how these ballots were missing for almost a month and then discovered. In addition, details as to who these supposed voters are and the validity of each ballot have not been provided to the campaigns.

Further complicating a review of these ballots is that they have not been included in any canvass of results, which is required for the court's jurisdiction. (Dkt. No. 69). At a minimum, an evidentiary hearing should be held before these ballots could even be considered for an initial canvassing.

V. Respondent Brindisi's Requested Relief Will Unnecessarily Burden County Boards of Elections and Delay the Certification of This Contest.

Respondent Anthony Brindisi — while arguing that time is of the essence and that a winner of the 22nd Congressional District race must be expeditiously certified — requests relief from the Court that would unnecessarily impose a series of complicated and convoluted mandates upon the Respondent county Boards of Elections (evidence recreation, ballot hand

counts, and extensive document/record production) and quite possibly delay this proceeding's resolution for weeks.

Respondent Brindisi had ample opportunity to seek most if not all of the information from Respondent county Boards of Elections that he is now seeking. This request that the county Boards of Elections produce this information now clearly shows that the request is made only to delay a final resolution of this contest. As far back as November 10, 2020, the Court ordered Respondent county Boards of Elections to produce information and documents at the request of the attorneys for candidates Tenney and Brindisi, and the Court further ordered that should there be a delay in obtaining documents or information, the candidates' attorneys could immediately raise this issue with the Court. (Dkt. No. 40). Both candidates raised issues of document production with the Court. (Dkts. No. 43, 44). These requests are only made now due to the 22nd Congressional District race coming down to a handful of votes and is an effort to hinder the certification of Petitioner Claudia Tenney as the winner of the contest.

Additionally, the final results of the 22nd Congressional District race have already been provided to each campaign and the Court by the Respondent county Boards of Elections. The information sought on final canvass numbers from each county Board of Elections was already ordered to be produced by the Respondent county Boards of Elections. (Dkt. No. 70). This information was provided to each candidate's attorneys. (Dkts. No. 71-84). This additional request from Respondent Brindisi clearly unfairly burdens the Respondent county Boards of Elections and delays an outcome that Respondent Brindisi dislikes.

Respondent Brindisi, in paragraphs 4 and 5 of his proposed order to show cause, attempts to concoct a lengthy system for determining if ballots had been canvassed or not that would likely require county Boards of Elections commissioners to locate the electoral equivalent of a

needle in a haystack. The process proposed by Respondent Brindisi imposes an almost impossible burden on county Boards of Elections commissioners (divining whether particular ballots had been canvassed through the viewing of countless ballot images) while also wasting time and further delaying a final certification of a winner of this race. Respondent Brindisi's proposed process also fails to remain faithful to the process for determining valid votes that is mandated by the regulations of the New York State Board of Elections. (NYCRR §6210.13, 6210.15). Respondent Brindisi attempts to portray this proposed process as an audit when in reality it is another canvassing of ballots.

The proposed relief requested by Respondent Brindisi would ensure that the 310,000 voters of the 22nd Congressional District who voted on November 3, 2020, are not heard on January 3, 2021 when the House of Representatives convenes, and likely for much longer. Delaying certification creates a grave risk that the Representative for the 22nd Congressional District will be chosen not by the 310,000 November 3 voters but rather by partisan politicians with no connection to the 22nd Congressional District.

VI. Respondent Brindisi's Order to Show Cause is Invalid Because it Treats Voters in Different Counties Differently and Treats Voters Within Those Counties Differently.

The Supreme Court in *Bush v. Gore* established principle of obtaining and maintaining uniformity in election proceedings which prohibits states from applying "arbitrary and disparate treatment" to different voters participating in the same election. Bush v. Gore, 531 U.S. 9 (2000). The Court stated that:

"The question before the Court is not whether local entities, in the exercise of their expertise, may develop different systems for implementing elections. Instead, we are

presented with a situation where a state court with the power to assure uniformity has ordered a statewide recount with minimal procedural safeguards. When a court orders a statewide remedy, there must be at least some assurance that the rudimentary requirements of equal treatment and fundamental fairness are satisfied.”

Id. at 109.

The *Bush v. Gore* majority, when looking at the Florida recount procedures, held that they violated the Equal Protection Clause of the 14th Amendment to the U.S. Constitution. Id. at 126. The decision’s underlying theory of five Justices brought agreement from Justices Stephen Breyer and David Souter.. Id. at 98.

According to Respondent Brindisi’s Order to Show Cause, he is attempting to order the Boards of Elections to perform different policies in their examination of the absentee and affidavit ballots in different counties as well as within a county. (Dkt. No. 92). The Order attempts to direct the Oneida Board to initiate an audit of any election district they arbitrarily believe have been compromised by their lack of memory. (Dkt. No. 92, ¶4). The Order also attempts to direct the Oneida Board to arbitrarily determine which affidavit ballots they believe were the ballots that were counted so as to not re-count and which ones were the ballots that were objected to, all to be determined based on the placement of the ballots in the boxes that were undoubtedly handled by the Parties during the court proceedings. (Dkt. No. 92, ¶2). The Court would be issuing findings of fact based on testimony of partisan campaign representatives, including the candidate’s sister, but only in the counties and districts for which no notation or record of objection was made. (Dkt. No. 92). The Respondent is also seeking relief in specific election districts, which they presumably believe are favorable to Respondent.

The Order to Show Cause also attempts to authorize the canvassing of the 55 ballots found in Chenango County, referenced in Dkt. No. 82. These ballots were found after the deadline provided by the Court was issued to complete and inform the Parties of the final vote count of each county. By allowing the 55 ballots in Chenango County to be canvassed, the Court would also allow certain voters ballots to be cast without any showing of security or chain of custody, unlike voters in other counties.

In any event any relief offered by the court should be applied equally to all voters, in all counties, and to all candidates in a uniform manner pursuant to the principles established in *Bush v. Gore*.

VII. Respondent Brindisi's Requested Relief Is a Prescription for a Public Health Crisis in the 22nd Congressional District.

At a time when state leaders and public health officials are asking—and in some situations mandating- citizens avoid group and public gatherings, Respondent's requested relief ask this Court to require board workers, campaign representatives and attorneys to congregate in Board offices, share multiple documents in “public sessions.” The Respondent begins his request for “each of the Respondent Boards . . .to retrieve their ballots and ballot envelopes and *in a public session of its Board of Canvassers with watchers present,*” (Dkt. No. 92, ¶1). (emphasis added). The Respondent Brindisi seeks a manual audit not only in Oneida, but possibly other counties “*in a public session with watchers present.*” (Dkt. No. 92, ¶¶4,5). (emphasis added). Respondent seeks a “public session” of the Chenango Board to canvass 55 ballots. (Dkt. No. 92, ¶7). As outlined the requested relief would be protracted and impact many individuals. The requested relief would be a significant public health and safety hazard to the staff of the campaign, the Boards of Election and the general public, particularly in light of

available information on COVID in counties of the 22nd Congressional District, as detailed below. At no point does Respondent address safety considerations and demonstrate Respondent Boards have the ability to safely engage in the mammoth in-person proceedings.⁹

In Oneida County alone, County Executive Anthony Picente announced on December 2 that the county has 1,862 active cases, the most ever during the pandemic, with 197 new cases on that day alone.¹⁰ Picente noted that hospitalizations were also on the rise, with 73 patients in Oneida County hospitals.¹¹ School districts have been hit especially hard over the past few weeks, with several districts including Camden Central Schools that had not seen a case until November remaining closed through this week due to positive cases and spikes within their district¹². The district was supposed to return on November 30, but remains remote. On November 18, Picente told members of the County Board of Legislators that the City of Utica, the City of Rome and the Town of Camden may qualify for New York State's yellow zone designation given their rising COVID-19 cases. The Oneida County Board of Elections office is in the City of Utica, and therefore is in the zone of rising cases.¹³

Figure 1.1¹⁴: Oneida County COVID Cases to date

⁹ All these proceedings with the Respondent Boards would be the precursor to a review of the documents and paper in Court.

¹⁰ <https://www.uticaod.com/story/news/2020/12/02/active-covid-19-cases-reach-new-high-oneida-county/3795070001/>

¹¹ <https://www.syracuse.com/coronavirus/2020/11/oneida-county-coronavirus-cases-nearly-double-the-record-very-alarming.html>

¹² <https://www.localsyr.com/news/local-news/camden-csd-going-remote-through-november-30/>

¹³ <https://www.uticaod.com/story/news/2020/11/18/utica-rome-camden-could-labeled-covid-19-yellow-zones/3766581001/>

¹⁴ <https://hoccpp.maps.arcgis.com/apps/opsdashboard/index.html#/d88f4e10d59d4553b24c3add5abcbb0b>

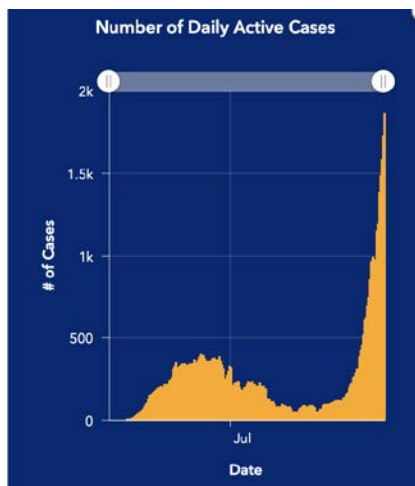
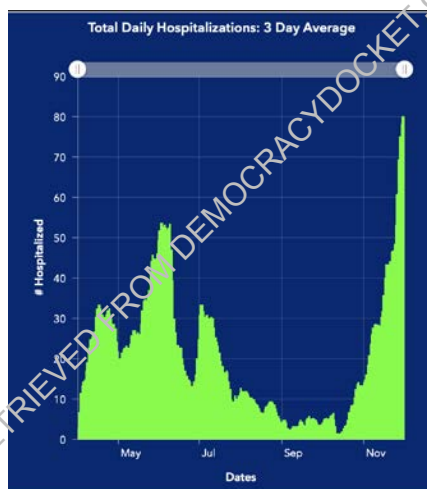


Figure 1.2: Oneida County COVID Hospitalizations to date



In Oswego County, the County Administrator stated via Twitter on December 1 “To put some perspective on it: the number of people in quarantine in Oswego County today is equal to the entire population of the Town of Amboy.”¹⁵

Figure 1.3: Oswego County COVID-19 Daily Update: December 1¹⁶

¹⁵ <https://twitter.com/OswegoCounty/status/1333918089981939714?s=20>

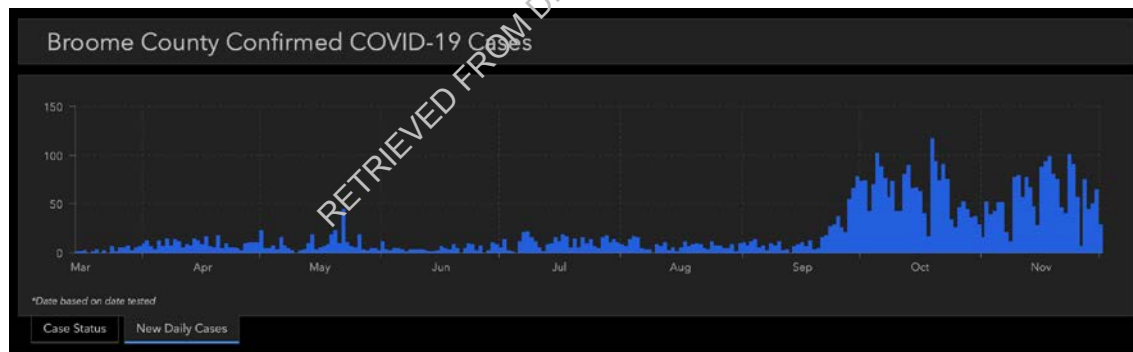
¹⁶ <https://twitter.com/OswegoHealthDpt/status/1333891144015622147/photo/1>

Oswego County COVID-19 Daily Update:
This report is current as of 3:00 p.m. December 1st

Total # of tests conducted	Total # of positive cases	Total positive cases recovered	Total # of deaths	Total # of positive cases active	Total # of negative results	Total # of people in mandatory isolation/quarantine
81,853	1,965	1,518	5	442	79,643	1,260

Furthermore, Broome County was designated a “Yellow Zone” according to Gov. Cuomo’s Micro Cluster executive order in mid-October and was under increased restrictions until November 18th.¹⁷ The “Yellow Zone” designation was a result of an increased positivity rate in Broome county.¹⁸ In Cortland county alone, 11% of positive tests to date were taken on 12/02 alone, including 26% of the county’s hospitalizations to date.¹⁹

Figure 1.4²⁰: Broome County COVID-19 cases to date



¹⁷ <https://www.pressconnects.com/story/news/public-safety/2020/11/18/binghamton-covid-broome-yellow-zone-orange/3765617001/>

¹⁸ Ibid.

¹⁹ <https://www.cortland-co.org/432/Health-Department>

²⁰ <https://coronavirus-resources.esri.com/datasets/d2a67392169942f8a2782c7d49d61c48>

CONCLUSION

Based on the foregoing, Petitioner Tenney respectfully submits this Court should 1) direct the Respondents County Boards to certify the results submitted to this Court in response to this Court's Order of November 30, 2020 (Dkt. No. 70) and transmit those results to the Respondent New York State Board of Elections; 2) direct the New York State Board of Elections to certify the results for Member of Congress, 22nd District of New York State held on the 3rd day of November, 2020, forthwith upon receipt of certified results from the Respondents County Boards of Elections as submitted to this Court in response to the Court Order of November 30, 2020 (Dkt. No. 70); and dismiss the cross-claim of Respondent Brindisi, or in the alternative, deny relief under Respondent Brindisi's cross-claim and deny the relief sought in Respondent's Order to Show Cause.

Dated: December 3, 2020
Albany, New York

/s/ Paul DerOhannesian II
Paul DerOhannesian II, Esq.
DerOhannesian & DerOhannesian
677 Broadway, Suite 707
Albany, New York 12207
518.465.6420

Joseph T. Burns, Esq.
Law Office of Joseph T. Burns, PLLC
1811 Northwood Drive
Williamsville, New York 14221
315.727.7636

Attorneys for Petitioner