

PRESENT, HON. SCOTT J. DELCONTE

Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF OSWEGO

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CLAUDIA TENNEY,	:	
	:	
Petitioner,	:	INDEX NO. EFC-2020-1376
	:	
-against-	:	
	:	
OSWEGO COUNTY BOARD OF	:	[PROPOSED] ORDER TO SHOW
ELECTIONS, et al.,	:	CAUSE
	:	
Respondents.	:	
	:	
For an Order, etc.	:	
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Upon the affirmation of Martin E. Connor, attorney for Respondent Anthony Brindisi, Respondent Brindisi’s Memorandum in Support of his Proposed Order to Show Cause, and upon all of the papers and proceedings heretofore had herein, it is hereby:

ORDERED, that Petitioner and Respondents herein show cause before this Justice of the Supreme Court, held in and for the County of Oswego, at the Supreme Court Courthouse thereof on Monday, December 7, 2020 at 1:00 p.m., via Microsoft Teams, or as soon thereafter as counsel may be heard, why an order of this Court should not be made and entered pursuant to Election Law § 16-106(4):

1. Ordering each of the Respondent Boards of Elections (hereinafter “Board” or “Boards”) to retrieve their ballots and ballot envelopes and, in a public session of its Board of Canvassers with watchers present, translate their current record of objections—be they “sticky notes,” spreadsheets, or stacks—into a record of the objection and disposition written on the back of the ballot or ballot envelope itself. Specifically, the Boards shall, on the contested ballot or ballot envelope itself, indicate the Board’s disposition of the ballot or ballot envelope (i.e., whether such ballot was “Counted” or “Not Counted”), and that a notation should also include a written memorandum of the objection beginning with the words “Objected to.” *See, e.g.*, Election Law § 9-114(1); *id.* at § 8-506; 9 N.Y.C.R.R. § 6210.12; November 10 Order. To avoid any further

confusion, this same practice of memorializing all objections shall also be applied to all ballots and all absentee and affidavit ballot envelopes.

2. Ordering the Oneida Board, to the extent it cannot determine to which affidavit ballots the Brindisi Campaign objected based upon the arrangement of the affidavit ballots in the Oneida Board's boxes, to immediately inform the Court and candidates of same, so that the Court may issue findings of fact consistent with testimony and other evidence in the record regarding objections preserved by the Brindisi Campaign.

3. Ordering all other Boards, to the extent they similarly cannot determine to which ballots either candidate objected based upon their records, to immediately advise the Court and the candidates of same so the Court may issue findings of fact consistent with testimony and other evidence in the record regarding objections preserved by either candidate.

4. Ordering the Oneida Board to immediately initiate a limited manual audit of any election districts affected by their inability to determine whether contested ballots had been counted. In particular, if an objected-to ballot lacks a clear record of whether the ballot was counted, the Oneida Board shall, in a public session with watchers present, compare the objected-to ballot with the electronic images of ballots scanned and retained by the Board's automatic tabulation machines for that election district. If the Board is able to locate a scanned electronic image of the objected-to ballot, the Board shall mark on the objected-to ballot that it was counted. If the Board is unable to locate a scanned electronic image of the objected-to ballot, the Board shall mark on the objected-to ballot that the ballot was not counted. The Board shall provide copies of all TIFF images of scanned ballots from the election districts at issue to the candidates. To the extent that method described above is technologically infeasible, the Oneida Board shall proceed as follows with a limited manual audit:

- a) First, the Board shall obtain the machine tabulation of the ballots scanned in the election district of the objected-to ballot.
- b) Next, the Board shall manually count the total number of ballots scanned in the election district of the objected-to ballot (excluding the objected-to ballot from the total).
- c) Next, the Board shall compare the total number of scanned ballots from the machine tabulation to the total number of scanned ballots from the board's manual count.
- d) If the two totals are the same, the Board shall mark on the objected-to ballot that it was not counted. If the machine tabulation total is one greater than the hand count total, the Board shall mark on the objected-to ballot that it was counted.

5. Ordering that all other Boards—to the extent that they are similarly unable to determine whether any contested ballots had been counted—to comply with the same process as set forth herein at Paragraph Four.

6. Ordering all Boards to provide the candidates the following documents, to ensure that all parties have all relevant information pertaining to how the Boards arrived at their current counts, and to ensure that all parties are operating from the same information:

- a) Recanvass reports generated per Election Law § 9-208, on an election district by election district basis, separated out by the following categories:
- Ballots cast during early voting and on election day;
 - Absentee, military, affidavit, federal and special ballots, as well as unscannable and abandoned ballots from election day;

Note: Such reports should be directly generated by the Boards' tabulation software, and should not take the form of a summary document (such as a spreadsheet) into which the Board has manually entered results.

- b) Discrepancy reports and written statements required if a discrepancy occurs pursuant Election Law § 9-208(3);
- c) A report of all hand counted ballots on an election district by election district basis, pursuant to Election Law §§ 9-208(1) and 9-209(2)(c)(ii);
- d) The detailed logs pertaining to the maintenance and testing procedures of voting equipment. *See* 9 § NYCRR 6210.2(i) ("Each county shall keep a detailed log of maintenance performance and testing procedures. Such logs shall be in a format provided by the State Board and the same shall have been reviewed by the vendor."); 9 § NYCRR 6210.2(j) ("Such logs shall be provided upon completion of any testing, including pre-qualification testing or as requested by the State Board, for their review and inspection, and shall be made available to the public, upon request.");
- e) All audit reports generated by Respondent Boards of Elections per Election Law § 9-211, and NYCCR 6210.18, 6210.20, which should include explanations of any discrepancies discovered during each Board's audit;
- f) Any other records kept or created by the Respondent Board of Elections regarding known errors or discrepancies in vote tabulations as to the November 3 Election and their resolution.

7. Ordering the Chenango Board to canvass the 55 affidavit ballots referenced in Dkt. No. 82 in a public session of its canvassing board in the presence of watchers, after providing

at least 48 hours' notice, including an opportunity for the parties to object to the Board's refusal to count any of the affidavit ballots.

Dated: December ____, 2020

ENTER,

Honorable Scott J. DelConte
Justice of the Supreme Court