



TABLE 03/28  
candidates for Member of the U.S. House of Representatives  
for the 20<sup>th</sup> Congressional District

Respondents.

X

Upon the annexed petition of the petitioner, verified on the 30th Day of March, 2009, and upon all of the papers and proceedings heretofore had herein, it is hereby

ORDERED, that respondents herein show cause before an I.A.S. term of this court held in and for the County of Dutchess, at the Courthouse thereof, more specifically, at the Courthouse at 10 Market Street, Poughkeepsie, Dutchess County, New York, at ~~9:30~~<sup>9:15</sup> in the forenoon of the ~~1st~~ Day of April, 2009, or as soon thereafter as counsel may be heard, why an order of this court should not be made and entered pursuant to the provisions of Articles Eight, Nine and Sixteen of the Election Law:

1. Determining the validity of affidavit ballots, emergency ballots, absentee Special Federal Ballots, and military ballots cast for the public office of Member U.S. House of Representatives, 20th Congressional District, in New York.

2. Ordering the respondent New York State Board of Elections and the Commissioners thereof, to certify the name of, James Tedisco as elected to the public office of Member of the U.S. House of Representatives, 20th Congressional District, in Dutchess, New York, at the Special Election held therefor on the 31st Day of March, 2009, or alternatively enjoining the improper issuance of a certificate of election for the said public office,

3. Ordering the testing and inspection of any voting machines which have malfunctioned or been tampered with, and making appropriate findings of fact, orders preserving evidence, and adjustments to the canvass as may be just and proper in the premises,

4. Ordering that the canvass of the votes made by the Boards of Elections be corrected and adjusted to reflect a proper tally of the votes for the said public office, together with such other, further, and different relief as this court may find to be just and proper,

5. Ordering the uniform central canvass of all absentee another paper ballots by local boards of elections, and it is further

**ORDERED**, that Respondent Board of Elections shall complete the recanvass of the voting machines in the 20th Congressional as scheduled by the Board, and that the said Board of Elections shall not count or canvass the paper ballots in the said election pending a final resolution of the recanvassed voting machine totals, and pending the inspection of voting machines which may have malfunction or been tampered with and the hearing, review and determination of any issues raised regarding the voting machines by this Court, except as hereinafter provided, and it is

*to be set*

**ORDERED**, that Respondent Board of Elections produce upon the day of the hearing of ~~this order~~ the ballots, canvass sheets and other records which are the subject of this proceeding, and the determinations of the said Boards of Elections upon any objections and

challenges to voters and/or ballots and/or applications therefor, and any other papers or worksheets relating thereto, and it is further,

**ORDERED**, that Respondent Board of Elections preserve inviolate and separate the ballots for the 20th Congressional District, from all others, *and that all paper ballots [Absentee Ballots, Affidavit Ballots, Military Ballots, Special Federal Ballots, and BMD (ballot marking device) Ballots] be canvassed centrally by the Boards of Elections and NOT be canvassed at the polling places on the day of the election*, and it is further,

**ORDERED**, that the Respondent Board of Elections shall produce for the Petitioners, upon their request, all documents (or copies thereof) including but not limited to, absentee ballot applications, voter registration records, ballot envelopes, poll books, canvass sheets, machine breakdown reports, mechanic's or custodians' logs, affidavits, election day court orders and other election related documents without the need for a subpoena, prior to the canvass of ballots, and that the Board shall not take up the canvass or recanvass of ballots until at the Petitioner's counsel (and Respondent's counsels) shall be provided with copies of all applications, ballot envelopes, mailing envelopes, and other documentation relating to such ballots, and it is

**ORDERED**, that absent a stipulation of the parties hereto to the contrary, all the paper ballots of the subject political subdivision shall be counted and canvassed by the Board(s), and the representatives of the parties hereto shall keep and confirm a hand canvass of the said ballots, and report same to the Court, and it is further

**ORDERED**, that the Respondent Board of Elections prepare all necessary records for the canvass of the votes in the subject political subdivision, including the registration records of voters casting paper ballots, absentee applications, pollbooks, and other related documents, forthwith, and it is further,

**ORDERED**, that the Respondent Board of Elections appoint Boards of Inspectors composed of two of the Commissioners of Elections thereof, or alternatively, any two clerks thereof (in each case, one of each political persuasion) for the purposes of conducting a canvass of all votes for the election to the House of Representatives from the 20th Congressional District, said Boards of Inspectors shall be empowered to hear and make a determination upon any and all objections to the canvassing of any and all ballots pursuant to the provisions of Article 9 of the Election Law, and it is further,

**ORDERED**, that any attorney or his employee representing petitioners be admitted to the polling places used in this election and be allowed full participation in the administrative proceedings of the Boards of Elections held in relation thereto, upon the production and filing of a poll watcher's certificate, and it is further,

**ORDERED**, that whenever a voter is challenged by a pollwatcher in the subject election, that the appropriate respondent Board of Elections, by its inspectors, make and maintain a written record of the said challenge for Court review, including, but not limited to the affidavit ballot issued to the said voter, and it is further

**ORDERED**, that any attorney or his employee representing petitioners be admitted to the place of canvass or recanvass of the votes in this election and be allowed full participation in the administrative proceedings of the Boards of Elections held in relation thereto, without the need for production and filing of a poll watcher's certificate, and it is further,

**ORDERED**, that said Boards of Inspectors shall follow ordinary canvassing procedures and shall canvass each and every vote unanimously found to be valid and/or proper by said Boards of Inspectors, except as hereinafter provided. Any and all ballots unanimously found to be invalid and/or improper shall be laid aside and preserved by said Boards and shall not be canvassed, except as provided herein, and it is further

**ORDERED**, that said Inspectors shall preserve a record of all objections entered against the canvassing of any ballot, together with a record of the vote upon the objection thereon (sustained, overruled or split vote), and shall further preserve any ballot and supporting documentation upon a split vote of said Inspectors for the time necessary so that this Court may review same, however, in no instance shall said Boards of Inspectors compromise the secrecy of any voter's ballot by way of preserving an objection thereto in violation of Election Law 17-126 (1), (2) or (3); Article 2, Section 7 of the New York State Constitution and relevant provisions of Article 8 and Article 9 of the Election Law, and it is further

**ORDERED**, that upon the unanimous vote of the Board of Inspectors to canvass any ballot objected to by the petitioners, *the said ballot shall be set aside and shall not be canvassed*

*ONLY in the event Petitioners' counsel persists in the objection and requests same be set aside for this Court's review, and it is*

**ORDERED**, that in the interests of justice, the efficient administration of the law, and judicial economy, the objection(s) of the petitioner hereto to any ballot, ballot envelope, affidavit, application or documents relating to the ballots of the 2009 Special Election for the subject public office are hereby ordered to be preserved until the time of the canvass and recanvass of such ballots, and the hearing before this Court, regardless of whether three days have elapsed, *and all such ballots and documents shall be preserved for the review of this court, and it is*

**ORDERED**, that upon the return date hereof, a schedule be set for the canvass and recanvass of the ballots in the 20<sup>th</sup> Congressional District, and that the canvass and recanvass of paper ballots by the county Boards of Elections proceed not earlier than 48 hours after the production of documents requested by counsel as provided herein, subject to the schedule set by this Court or by stipulation of the parties, or as soon thereafter as the paper ballots and supporting records can be made available, and it is further

**ORDERED**, that the New York State Board of Elections and Counsel for the Parties shall meet to establish a schedule or order for the canvass of votes in the 20<sup>th</sup> Congressional District,

**And it is hereby,**

**ORDERED**, that any Military Ballots, and/or Special Federal Ballots to be canvassed, in accordance with the above schedule or as soon as is practicable, and in accordance with the directives of the U.S. District Court which has allowed for an extended time for receipt and canvassing of such ballots, with petitioners' representatives being present for the canvass thereof, and it is

**ORDERED**, that the Respondent Boards of Elections shall assure the preservation and security of all voting machines to ensure the integrity of the machines and the ballots cast thereon, and may at the option of said Boards, call upon the local Police or Sheriff's Departments to secure same, as is provided in the Election Law, and it is further,

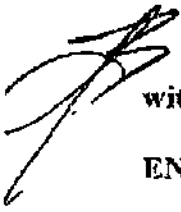
**ORDERED**, that the Respondent Boards of Elections shall assure that all paper ballots, records and keys for voting machines are secured and placed and secured in a safe or locked storage facility of the Boards of Elections for which there are two separate locks required for access, with each commissioner of elections having a key or combination for only one of the two locks, Further, the respective Boards of Elections shall maintain a record of all persons accorded access to the ballots and related materials, and shall assure that the handling of ballots is done on a bipartisan basis, and it is further

**ORDERED**, that the Boards of Elections shall allow the parties hereto, together with the Court or the Court's designee, to inspect voting machines with irregular returns as needed, and to report the findings of said inspection to the Court, and it is

Sufficient reason appearing therefore, leave is hereby granted to the petitioners to submit on the date set for the hearing or the trial of this matter additional witnesses, exhibits, proofs and other evidence as may be necessary, and,

Sufficient reason appearing therefor, leave is hereby granted to the petitioner to amend his/her pleadings as may be necessary, and,

Sufficient reason appearing therefor, it is further

 ~~ORDERED, that pending the hearing and determination of this court upon the~~  
within petition, the respondent Boards of Elections are hereby TEMPORARILY ENJOINED AND RESTRAINED FROM CERTIFYING ANY CANDIDATE AS BEING THE CANDIDATE DULY ELECTED TO THE SUBJECT PUBLIC OFFICE, and it is further,

ORDERED that in the event the canvass and recanvass of ballots continues beyond the return date specified hereinabove, counsel for the parties hereto may adjourn same by stipulation, and counsel shall obtain approval of the Court by telephone of same immediately upon agreeing thereon, so that the canvass may proceed with all due speed, and,

Sufficient cause appearing therefore, it is further,

**ORDERED**, that petitioners shall cause a copy of this order together with all of the ancillary papers thereto, upon which this order was granted upon Respondent New York State Board of Elections, and the commissioners thereof, by personally delivering same to the offices thereof, or by personally delivering same to any of the Commissioners, or Deputy Commissioners, Director or Deputy Director or Counsel, or other employee thereof authorized to accept service of papers, on or before March 31, 2009, and that upon receipt thereof that Respondent State Board of Elections shall electronically transmit same to each of the County Boards of Elections named as respondents herein (as is the practice of the State Board of Elections, and

That petitioner(s) shall cause a copy of this order together with all of the ancillary papers thereto, upon which this order was granted upon Respondent County Boards of Elections, by enclosing same in a sealed, post paid wrapper addressed to each of the Respondent Boards of Elections, and the commissioners thereof, at the office address

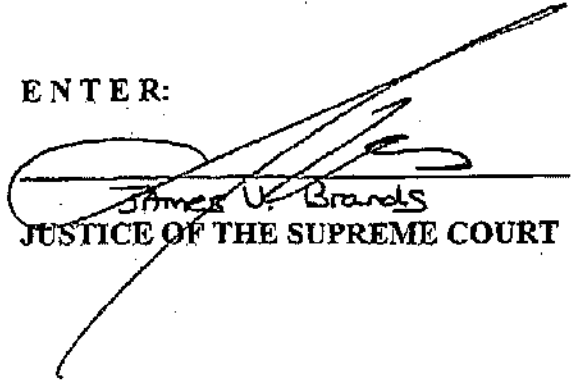
and upon Respondent Candidates, by personally delivering same to him or any attorney designated by him, on or before March 31, 2009, or at the option of the Petitioner, alternatively, at the option of the petitioner, service may be made by enclosing same in a securely sealed and post paid wrapper addressed respondent candidates via Express Mail and depositing same with an office or depository of the United States Postal Service, addressed to such candidate at the residence address appearing for him on any record on file with a respondent Board of Elections, on or before March 31, 2009, or by facsimile transmission to any of the above named parties on or before March 31, 2009, or any

other means of service allowed by the CPLR on or before March 31, 2009, and that such service shall be deemed good and sufficient service thereof.

DATED: March 31, 2009

POUGHKEEPSIE, NEW YORK

ENTER:

  
James V. Brands  
JUSTICE OF THE SUPREME COURT

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS**

**In the Matter of**  
**Joseph Mondello, Chairman of the New York State  
Committee of the Republican Party, and Patricia Killian,  
Chairman of the Dutchess County Conservative  
Committee**

**Petitioner,**

Index No. **22 SF/09**

**VERIFIED PETITION**

**-against-**

**The New York State Board of Elections,  
Gregory Peterson, Douglas Kellner, Evelyn Aquilla,  
James Walsh, Commissioners, and  
The Dutchess County Board of Elections,  
David Gamache and Fran Knapp, Commissioners, and  
The Columbia County Board of Elections,  
Donald Kline and Virginia Martin, Commissioners, and  
The Rensselaer County Board of Elections,  
Larry Bugbee and Edward McDonough, Commissioners, and  
The Essex County Board of Elections,  
Lew Sanders and David Mace, Commissioners, and  
The Greene County Board of Elections,  
Thomas Burke and Frank DeBenedictus, Commissioners, and  
The Saratoga County Board of Elections,  
William Fruci and Diane Wade, Commissioners, and  
The Warren County Board of Elections,  
Mary Beth Casey and William Monfort, Commissioners and  
The Washington County Board of Elections,  
Jeffrey Curtis and Donna English, Commissioners, and  
The Delaware County Board of Elections,  
Janice Brudick and William Campbell, Commissioners, and  
The Otsego County Board of Elections,  
Henry Nicola and Sheila Ross, Commissioners, and  
James Tedisco and Scott Murphy,  
candidates for Member of the U.S. House of Representatives  
for the 20<sup>th</sup> Congressional District**

**Respondents.**

\_\_\_\_\_ X

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

The petitioner respectfully shows:

1. Petitioner Mondello is the Chairman of the Republican Party State Committee of the State of New York. Petitioner is a resident of Nassau County.
2. Petitioner Killian is the Chairman of the Dutchess County Conservative Committee, and is a resident of Dutchess County.
3. Petitioners have standing under Article 16 of the Election law to bring this proceeding.
4. Respondents Tedisco and Murphy are candidates for the office of Member of the U.S. House of Representatives, 20th Congressional District in New York which is to be voted upon at the Special Election held therefor on the 31st day of March, 2009.
5. The election in this District is expected to be close according to local media accounts. The race has been hotly contested and is "within the margin of error" according to recent polls.
6. More than eight thousand absentee military and special federal ballots have been distributed in this election.
7. Because the contest is expected to be particularly close, the final outcome may hinge upon the recanvass of voting machines and the canvass of paper ballots including emergency ballots, affidavit ballots, absentee ballots special federal ballots, BMD ballots, and military ballots.
8. In addition there are likely to be irregularities in the various polling places in the subject District. Such irregularities will be more fully elucidated upon the return date before the Court.

9. Respondent State Board of Elections is responsible for setting the ballot and certifying the returns of the election in the subject district.
10. Commissioners Gregory Peterson, Douglas Kellner, James Walsh and Evelyn Aquilla constitute the New York State Board of Elections
11. The Respondent County Boards of Elections are responsible for canvassing the returns of the elections from the several counties within the congressional district and certifying the election results for the subject public office to the State Board of Elections.
12. The County Boards, and the commissioners constituting the said Boards in the 20<sup>th</sup> Congressional District are: The Dutchess County Board of Elections, David Gamache and Fran Knapp, Commissioners, and The Columbia County Board of Elections, Donald Kline and Virginia Martin, Commissioners, and The Rensselaer County Board of Elections, Larry Bugbee and Edward McDonough, Commissioners, and The Essex County Board of Elections, Lew Sanders and David Mace, Commissioners, and The Greene County Board of Elections, Thomas Burke and Frank DeBenidictus, Commissioners, and The Saratoga County Board of Elections, William Fruci and Diane Wade, Commissioners, and The Warren County Board of Elections, Mary Beth Casey and William Monfort, Commissioners, and The Washington County Board of Elections, Jeffrey Curtis and Donna English, Commissioners, and The Delaware County Board of Elections, Janice Brudick and William Campbell, Commissioners, and The Otsego County Board of Elections, Henry Nicols and Sheila Ross, Commissioners.
13. Several of the Respondent Boards of Elections engage in the practice of distributing absentee, military, and other paper ballots to the polling places for canvass on election night.

14. This makes a meaningful review of the said ballots virtually impossible.
15. Several of the Respondent Boards of Elections have adopted the practise of opening and canvassing by mechanical device all absentee ballots beginning on the eighth day after the election in accordance with law.
16. Therefore, a temporary order staying the immediate canvass of absentee ballots is requested, and will prejudice no candidate or party hereto.
17. The keeping of a hand count of the paper ballots canvassed ensures accuracy in the process, and the accuracy of any mechanical equipment used to count ballots.
18. The recanvass of the voting machines can proceed as scheduled. It is most important for the machine tabulated vote totals to be resolved before the canvass of paper ballots proceeds.
19. This proceeding is commenced pursuant to the provisions of Articles Five, Eight, Nine and Sixteen of the Election Law, which confer authority upon this Court to determine and resolve any disputes arising out of or relating to the canvass of ballots and returns for public office, and to preserve the ballots and machines employed in a Special election for a contest relating thereto.
20. This petition is brought to continue to preserve the ballots, review irregular and possibly fraudulent returns from voting machines, preserve the voting machine ballots and determine where Petitioner's candidates were deprived of votes by malfunctioning or tampered with voting machines, to protect the Petitioner's rights to have this Court review all determinations of the Boards of Elections as is provided for in the Election Law, more fully set the parameters for the recanvass and canvass of votes, allow for this Court to make adjustments in the canvass as may be necessary, enjoin any certification

of election results which would prejudice the rights of the petitioners, and to bar or prevent any procedural defect which might be asserted to defeat this Court's determinations.

21. Moreover, in this a Special Election, an injunction against issuance of a certificate of election might be the only remedy available to the petitioner so as to allow for the determination of the rightful claimant to the subject public office without resort to an action *quo warranto* by the Attorney General, or the appropriate body determining the proper claimant to the subject public office under the Constitution.
22. Subject to the supervision and review of this Court, the Respondent County Boards of Elections will be conducting a canvass of the results of this election recorded on voting machines as required by law.
23. Said canvass, obviously, is not complete, and the petitioners await the final numbers to be compiled by the County Boards of Elections. It is important for the Petitioner and the Respondent Candidates to have this information before the canvass of paper ballots proceeds.
24. Upon information and belief, the unofficial canvass of the votes cast by machine for the subject public office may be, and often is, incomplete and or inaccurate.
25. Further, upon information and belief, several of the voting machines in the subject political subdivision may have malfunctioned or broken down and failed to count all of the votes cast for the petitioner.
26. Such an occurrence may require the Court ordered testing of the subject voting machine(s) and the subsequent adjustment of the canvass to correct the error in vote totals.

27. Continued protection of the voting machines and ballots is essential, because any lapse in security or breach of protective measures for the machines and ballots relating to this election would irreparably harm the petitioner, and, indeed, undermine public confidence in the electoral process.
28. Only a review of the final voting machine canvass numbers from the Board of Elections and a physical inspection of the subject voting machines and related documents on file with the Boards of Elections will reveal any irregularity or fraud.
29. At the very least, the subject machines must be preserved for inspection and review.
30. Petitioner requests leave to and reserves the right to submit further proofs by way of witnesses, affidavits and evidence on the date set by this court for the trial and hearing of this matter, and to amend these pleadings to reflect the facts of the conduct of the subject election and/or facts adduced by the way of further investigation and/or a canvass of the ballots for the election for the subject public office by the Boards of Elections.
31. In the course of the canvass of ballots there may be erroneous determinations made by the Boards of Elections, and such determinations may be sustained by a unanimous vote.
32. Without Court intervention at this juncture such ballot envelopes would be burst, the ballot removed therefrom and intermingled with others, depriving the petitioner of the ability to have the administrative determination of the Board of Elections reviewed by the Court.
33. In the event that there is a split vote and the count at the Boards of Elections, or the return date set by the Court is more than three days from the entry of an objection,

absent a protective order of this Court, the ballot envelopes would be hurst, the ballot removed therefrom and intermingled with others, depriving the petitioner of the ability to have the administrative determination of the Boards of Elections reviewed by the Court.

34. In the event there are unanimous votes of the commissioners or inspectors against the objections of the petitioners, the ballot envelopes would be opened, and the ability of this Court to review the objection and the ruling thereon would be mooted.
35. In the event the Court chooses not to preserve objections which are unanimously rejected by the Board, it is requested, in the alternative that he Court employ the objection preservation method adopted by the Supreme Court, Kings County, Tomei, J., in O'Keffe v. NYC Board of Elections, 1 Misc.3d 153 (2003).
36. Similarly, the Petitioners have requested an order of this court preserving a record of every voter challenged at the polling place so that a meaningful review might be conducted.
37. Failure to preserve objections would irreparably harm your petitioner.
38. Petitioners may request various information, data and documents to be provided by the Boards of Elections. This information is required for Petitioners to have a meaningful participatory role in the canvass of paper ballots.
39. In order to expedite the canvass, an order is requested providing for the production of documents before the canvass of ballots without the need for subpoena.
40. Moreover, without the information requested, this Court and your Petitioner will be unable to see that the mandates of the New York State Constitution, Article II, Section

- 7, which requires that identification of voters be made by their signatures "in all cases" are followed.
41. This information will allow for the full and proper implementation of Sections 8-302, 8-304, 9-104(1) (d), 9-209 (2) (a) (1) of the Election Law and other sections of the law which codify the Constitution's mandate of signature verification to establish the identity of all voters.
42. The information requested by your petitioner is needed for the Petitioner to have the ability to participate in the canvass. The Election Law which entitles a candidate to have watchers present who may object to the casting or canvassing of any ballot or the refusal to cast or canvass any ballot, Election Law Section 9-209 (2)(d), to object to the qualifications of any voter, and to have any determination reviewed by the Supreme court, Election Law, Section 16-106.
43. The canvass of ballots may include objections to affidavit and absentee ballots by voters who are not qualified to vote same.
44. The canvass of votes may include challenges to registrations of certain voters, requiring Court intervention to have law enforcement authorities verify registrations as required by the Election Law in an expedited fashion.
45. The failure to enforce the statute, and the inability adduce the underlying facts would irreparably harm your petitioner, and prevent a review on the merits of his challenges made on the basis of registration.
46. Upon information and belief, the State Board of Elections, and all local boards of elections in this state allow attorneys and those working for attorneys to be present in the polling place as poll watchers, without regard to the individual's place of residence

- within the state, so that they might participate in any administrative proceedings before the Boards on behalf of the candidate / committee that they represent.
47. Upon information and belief, respondent candidate(s) has previously and presently intends to use attorneys and their workers as poll watchers for the recanvass who are not residents of the County.
  48. Upon and information and belief the Election Law fails to address the question of the participation of counsel in proceedings on election day at the polling place, or at the canvass and recanvass of paper ballots. The Election Law merely requires that a poll watcher be a resident of the County.
  49. Additionally, this requirement would limit residents of the district from serving as watchers throughout the district they live in.
  50. Moreover, any residency requirement for the circulation of petitions has been stricken by the Court of Appeals in LaBrake v. Dukes and McGuire v. Gamache. It is respectfully submitted that this residency requirement is similarly unconstitutional.
  51. The relief requested to allow attorneys and those working for attorneys to be present in the Board of Elections Offices which are "polling places" as poll watchers without regard to their county of residence within the State of New York.
  52. Additionally, no rational basis appears for the prevention of attorneys from outside the County from practicing law before the Boards of Election on or after Election Day, constituting an illegal and improper restriction on the practice of a state licensed profession.
  53. Such applications are routinely granted by the Courts of this state to counsel's personal experience.

54. Upon information and belief, the facts alleged in the paragraphs hereinabove, point to the fact that the final result 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.
55. As this is a Special Election, petitioner has requested that the Boards of Elections, acting in its capacity as the County Boards of Canvassers, be enjoined from certifying the results of this election until such time as these court proceedings are finally resolved and determined, and alternatively asked that a permanent injunction be issued against the issuance of an improper certificate of election. Absent such injunction Petitioner may lose her right to proceed directly before the courts of this state to correct the canvass of the returns of the Special election, and the matter will be removed from the jurisdiction of this Court, except by way of a *quo warranto* proceeding initiated by and at the sole discretion of the Attorney General of the State of New York, or such other means of relief as may be provided for in the Constitution.
56. The local Boards of Elections are required by law to certify to the New York State Board of Elections the results of the contests conducted in their jurisdictions by March 29, 2009 (Section 9-214 Election Law). The New York State Board of Elections is required to certify the results of the 2009 Special Election forty days after the special election (Section 9-216 Election Law), May 11, 2009. A restraining order is requested to prevent certification ONLY in the event the proceedings before this Court extend beyond these statutory deadlines, or is made prematurely by the Respondent Board.
57. No prior application for the relief requested herein has been made by the petitioners to any court.

- 58. Petitioners hereby designate DUTCHESS County as venue for the within action on the basis that it is one of the counties in the 20<sup>th</sup> Congressional District.
- 59. Petitioners have no other remedy at law other than that applied for herein.
- 60. Leave is respectfully requested and the Petitioners respectfully reserve the right to amend these pleadings as needed.
- 61. Leave is respectfully requested and Petitioners respectfully reserve their right to produce evidence in support of this petition by way of testimony, affidavits, and other evidence at the trial or hearing of this matter.
- 62. Leave is respectfully requested and the Petitioners respectfully reserve the right to make further applications to the Court for interim relief as may be needed.
- 63. Because of the foregoing, the petitioners are apt to be without any protection or Court supervision of the post election processes without the relief prayed for in the order to show cause.
- 64. No application for the within relief has been made to any Court.
- 65. These proceedings represent the Petitioner's only recourse under the Election Law.
- 66. These pleadings are hereby certified as non-frivolous by counsel.

**WHEREFORE, Petitioner respectfully demands a judgment of this court ordering:**

- 1. That the County Boards of Elections secure the ballots and machines used in this election, and account to the Court therefor;

2. Staying the canvass of paper ballots in accordance with the schedule set forth in the Order to Show Cause, and
3. Ordering the central counting of all paper ballots.
4. Preserving records of all voter challenges at the polling places.
5. Enjoining the canvass of the paper ballots pending the completion and overseeing finalization of the recanvass of the machine cast votes by the Boards of Elections, and
6. Ordering the continued security and impounding of voting machines which appear to have malfunctioned, or have been tampered with, and
7. Ordering the preservation, testing and Court inspection of voting machines which appear to have malfunctioned, been tampered with or to have been compromised, and
8. Ordering the respondent Boards of Elections and the Commissioners thereof, to preserve for the review of this Court all ballots, ballot envelopes, and documents relating thereto which may be subject to objection by the petitioner hereto at the Special Election held therefor on the 31st Day of March 2009, and
9. Determining the validity of affidavit ballots, emergency ballots, absentee, special federal, and military ballots cast for the subject public office(s), as may be required, and
10. Correcting, adjusting and finalizing the canvass of returns for election to the House of Representatives for the 20<sup>th</sup> District and further ordering that the Respondent Boards of Elections certify the name of James Tedisco, as duly elected to the said public office, and ordering the issuance of a certificate of election to him, or alternatively enjoining the issuance of an improper certificate of election,
11. Award such other, further, and different relief that this Court may deem to be just and proper.

DATED: March 31, 2009  
Albany, New York



JOHN CIAMPOLI, ESQ.  
677 Broadway, Suite 202  
Albany, New York 12207  
518 - 436 - 3865 / 518 - 527 - 1217

**ATTORNEY'S AFFIRMATION**

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

JOHN CIAMPOLI, an attorney duly admitted to the practice of law  
before the Courts of the State of New York, does hereby affirm under the penalties of perjury:

1. He is the attorney for the petitioner (s) in this action.
2. He has personally reviewed the contents of this document with his client(s), and their campaign workers, and upon the conclusion of said review as to the facts alleged therein, believes same to be true.
3. He has personally reviewed the copies of election returns from each of the relevant the Boards of Elections, together with the other ancillary papers thereto, contacted each of the respondent boards, and upon the conclusion of the said review, believes the within allegations to be true, to his personal knowledge.
4. This affirmation is being used pursuant to the provisions of the CPLR and applicable case law, due to the fact that time is of the essence and that petitioner and his counsel are in different counties. Counsel having offices in the County of Albany and Petitioner(s) residing in the County of Nassau and the County of DUTCHESS.

DATED: ALBANY, NEW YORK  
March 30, 2009



677 Broadway, Suite 202  
Albany, New York 12207  
518 - 436 - 3865 / 518 - 527 - 1217

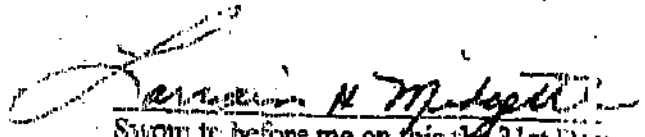
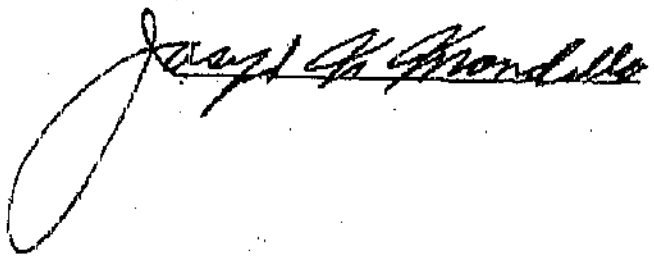
# VERIFICATION

STATE OF NEW YORK )  
COUNTY OF NASSAU ) S. 98:

**JOSEPH MONDELLO, CHAIRMAN OF THE NEW YORK STATE COMMITTEE OF THE REPUBLICAN PARTY, being duly sworn does hereby depose and says:**

1. He is the Petitioner in these proceedings.
2. He is the Chairman of the Republican Party State Committee and has standing to bring the within proceedings.
3. He has read the annexed verified petition and after reading same avers that the contents thereof are true to my personal knowledge, excepting as to matters alleged herein upon information and belief, which I believe to be true.

DATED March 30, 2009



Sworn to before me on this the 31st Day of March, 2009.

Notary Public, State of New York

**LORRAINE H. MIDGETTE**  
Notary Public, State of New York  
No. 30-4863880  
Qualified in Nassau County  
Commission Expires February 24, 2011

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

In the Matter of

Joseph Mondello, Chairman of the New York State  
Committee of the Republican Party, and Patricia Killian,  
Chairman of the Dutchess County Conservative  
Committee

Petitioner.

Index No.

-against-

VERIFIED PETITION

The New York State Board of Elections,  
Gregory Peterson, Douglas Kellner, Evelyn Aquilla,  
James Walsh, Commissioners, and  
The Dutchess County Board of Elections,  
David Gamache and Fran Knapp, Commissioners, and  
The Columbia County Board of Elections,  
Donald Kline and Virginia Martin, Commissioners, and  
The Rensselaer County Board of Elections,  
Larry Bugbee and Edward McDonough, Commissioners, and  
The Essex County Board of Elections,  
Lew Sanders and David Mace, Commissioners, and  
The Greene County Board of Elections,  
Thomas Burke and Frank DeBenedictis, Commissioners, and  
The Saratoga County Board of Elections,  
William Fruci and Diane Wade, Commissioners, and  
The Warren County Board of Elections,  
Mary Beth Casey and William Monfort, Commissioners and  
The Washington County Board of Elections,  
Jeffrey Curtis and Donna English, Commissioners, and  
The Delaware County Board of Elections,  
Janice Brudick and William Campbell, Commissioners, and  
The Otsego County Board of Elections,  
Henry Nicols and Sheila Rass, Commissioners, and

James Tedisco and Scott Murphy,  
candidates for Member of the U.S. House of Representatives  
for the 20<sup>th</sup> Congressional District

Respondents.

X

ORDER TO SHOW CAUSE  
& VERIFIED PETITION

JOHN CIAMPOLI, ESQ.  
677 Broadway, Suite 202  
Albany, New York 12207  
518 - 436 - 3865 / 518 - 527 - 1217