

SUPREME COURT - STATE OF NEW YORK  
DUTCHESS COUNTY

Present:

Hon. JAMES V. BRANDS

Justice.

SUPREME COURT: DUTCHESS COUNTY

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

Petitioners,

-against-

ORDER

Index No: 2254/09

The New York State Board of Elections,  
Gregory Peterson, Douglas Kellner, Evelyn  
Aquila, James Walsh, Commissioners, and The  
Dutchess County Board of Elections, David  
Garnache 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 DeBenidiotus, 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, 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.

This is an application by petitioners seeking court intervention in relation to emergency ballots, military ballots, affidavit ballots and absentee special federal ballots for the Office of Member of the United States House of Representatives 20<sup>th</sup> Congressional District in New York. On or about February 23, 2009 Governor Patterson issued a proclamation declaring that a special election would be held on March 31, 2009 to fill a vacancy for this congressional district comprised of ten counties: Dutchess, Rensselaer, Essex, Columbia, Greene, Warren, Washington, Saratoga, Otsego and Delaware. Following that proclamation an action was instituted by the United States of America v. The State of New York in the United States District Court for the Northern District of New York relating to Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). The necessity of that action was dictated by a requirement under the Election Law for the State of New York that any absentee ballots would have to be received no later than April 7, 2009. The concern of the federal government was that oversea voters would have insufficient time to receive those ballots, fill them out and return them to the Board of Elections of their individual county. Thereafter, on March 26, 2009 a consent decree was entered into and approved by Hon. Gary L. Sharpe, U.S. District Judge, which provided in the portion pertinent for this decision that pursuant to UOCAVA, any ballots received by April 13, 2009 would be deemed timely and the canvass of such ballots would be extended from April 8, 2009 to April 14, 2009.

On the return date of the application before this court, an answer was interposed by respondent James N. Tedisco together with an answer and counterclaim by respondent Scott Murphy. The court heard oral argument on a variety of issues including a determination as to whether canvassing of absentee ballots other than those specifically identified in the consent decree could begin as in the normal course of events that process must commence by April 8, 2009. The other immediate issue concerned the re-canvassing of machines in those counties where it either has not yet commenced or has not been completed.

While this court agrees with counsel that there should be no rush in this process to the detriment of a fair and accurate account, it occurs to this court that both the candidates and the constituency they serve are entitled to a prompt resolution of this contested election which apparently is in a deadlock with each candidate having the same number of votes. This court has reviewed the consent decree of March 26, 2009 relating to those qualified under UOCAVA. While the language contained therein is somewhat imprecise, it is difficult for this court to imagine that it was the intent of the federal government to delay canvassing of absentee ballots which are not included within those defined under the consent decree. The whole premise of the consent decree was to ensure that those abroad who want to exercise their right to vote are not disenfranchised by an artificially short turn around time with their ballots. In order to have the votes counted in an orderly fashion, it would make sense that the canvassing of those absentee ballots other than those particularly identified should commence on April 8, 2009 rather than sit in storage for another six days.

It is therefore

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ORDERED that the re-canvassing of any machine count shall commence within twenty-four (24) hours in those counties so affected in coordination with the Boards of Elections of those counties and counsel for the petitioners and both respondent candidates. It is further

ORDERED that counsel, employees or their agents shall have the right to be present at any canvassing or re-canvassing. It is further

ORDERED that the canvassing of any and all absentee ballots other than those specifically identified under the consent decree of March 26, 2009 shall commence April 8, 2009. It is further


ORDERED that counsel for petitioners, respondents Tedisco and Murphy shall include notification to the County Attorneys of any court proceedings or other communications germane to that particular county outside of the contact they would have with a Board of Elections to set up the ways and the means of canvassing and re-canvassing in the ordinary course of events. It is further

ORDERED that this matter is adjourned until April 13, 2009 at 10:00 a.m. for a further court conference.

The foregoing constitutes the order of this court.

Dated: April 6, 2009  
Poughkeepsie, New York

ENTER:

  
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JAMES V. BRANDS  
SUPREME COURT JUSTICE

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Pursuant to CPLR Section 5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.