

At a Special Term of Supreme Court, Steuben County, held at the Court House in Bath, New York on _____, 2008.

PRESENT: HON. Peter C. Bradstreet
Presiding Acting Justice

STATE OF NEW YORK
SUPREME COURT COUNTY OF STEUBEN

In the Matter of the Application of
JOHN RANDY KUHL, JR. Candidate,
Petitioner,

CONSENT ORDER

v.

Index No. 101280

ERIC J.J. MASSA, Candidate
SANDRA J. DENNISON, Election Commissioner,
SHARLENE J. THOMPSON, Election Commissioner
THOMAS FERRARESE, Election Commissioner
PETER QUINN, Election Commissioner
MARY SALOTTI, Election Commissioner
MICHAEL NORTHRUP, Election Commissioner
KEVIN BURLESON, Election Commissioner
SUSAN FRIES, Election Commissioner
JOHN COLLIGAN, Election Commissioner
JAMES GALLMAN, Election Commissioner
KEITH OSBORNE, Election Commissioner
MARILYN O'MARA, Election Commissioner
ROBERT F. BRECHKO, Election Commissioner
PAMELA A. WELKER, Election Commissioner
JOHN VONA, Election Commissioner
JOSEPH FAZZARY, SR., Election Commissioner

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STEUBEN COUNTY
CLERK

Respondents

UPON the mutual application of the respective political campaigns represented by William W. Pulos, Esq. for the Kuhl campaign and Edward M. O'Brien, Esq. for the Massa campaign, and upon the Campaign Consent Letter Counting Rules signed by attorney Pulos for

the Kuhl campaign and attorney O'Brien for the Massa campaign dated November 7, 2008, a copy of which is appended hereto and the terms of which are incorporated herein, and

UPON joint motion of both parties to incorporate the terms of said letter (with modifications) into an Order of this Court upon which the various Boards of Election (BOE) in the 29th Congressional District can rely, the terms and conditions of said consent letter are

SO ORDERED, with the following modifications:

- The attachment of the voter registration cards to the absentee ballot envelopes for review in each county BOE is eliminated. However, each county BOE shall make the voter registration cards available for review if requested by either campaign.
- Each county BOE shall make the actual application for absentee ballot available for review with each absentee ballot, either by producing the actual paper application for review with each absentee ballot or by access to the application through electronic means via at least two (2) computer terminals.
- In Monroe County, counting of absentee ballots may begin Thursday, November 13th, 2008. In Monroe County, the affidavit ballots may be separated into piles of "cast" and "no cast" ballots, all available to attorneys and review staff of both campaigns. Scan review of documents and scanning (counting) of absentee ballots may be done with the consent of the counsel for each campaign present in the counting room in Monroe County.
- In all counties, the BOE Commissioners may be represented by their deputies.
- For all counties with "paper packs" or paper machine reports, those reports shall be canvassed by the BOE and campaign representatives in the BOE offices, with

counsel and campaign staff to participate in all aspects of the "machine paper pack" re-canvass.

- Any Sequoia voting machines shall be picked up and securely stored by each BOE until such time as the BOE and campaign representatives can re-canvass those votes.

All other terms and conditions of the attached letter shall apply, subject to further Order of this Court.

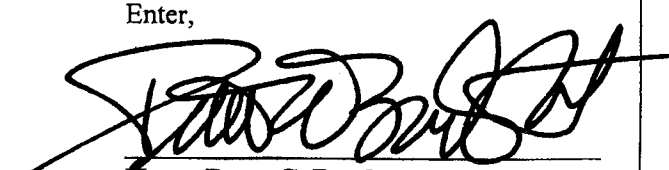
THIS ORDER and the terms of the attached letter are approved as to form and content:

William W. Pulos Date: November 12, 2008
William W. Pulos
Attorney for Kuhl Campaign

Edward M. O'Brien Date: November 11, 2008
Edward M. O'Brien
Attorney for Massa Campaign

DATED: November 12, 2008
Bath, New York

Enter,


Hon. Peter C. Bradstreet
Acting J.S.C.

If your County BOE can follow these rules, we authorize you to count the votes as follows:

I. RE-CANVASS

- Except in Monroe (where there is a central location for re-canvass), the two commissioners (D & R) ride together to each voting machine in each district in their county.
- Each campaign shall be allowed two operatives to accompany the commissioners.
- The commissioners and the operatives shall open each machine in each district and allow all present to read the results and then record the results.
- Each BOE shall provide each operative a copy of the Congressional race results from each voting district to compare (in the field) with the actual machine counter being observed.
- The process shall not start until the operatives from each campaign are present. It is up to the BOE as well as the respective campaigns to insure that each party makes contact with the other, with adequate notice for starting times and so forth. The operatives may choose to ride together for the machine re-canvass or ride separately.
- Each operative shall have the full opportunity to look at each counter number on each machine.

II. ABSENTEE – AFFIDAVIT – MILITARY – EMERGENCY BALLOTS

- The counting of all paper ballots listed above shall begin in each BOE on Monday, November 17, 2008 at 9:00 a.m.
- Each BOE shall provide a table big enough to accommodate the BOE staff and two operatives from each campaign.
- Prior to November 17, 2008 the absentee ballots shall be organized by district by a bi-partisan team of BOE employees. Each absentee/paper ballot shall have the voter registration card and the absentee ballot application attached to the absentee envelope before it is opened. The voting bags containing these ballots may be opened on a bi-partisan basis to accomplish this purpose.
- Each absentee/paper ballot shall be examined one at a time at the table. Before opening, each campaign shall have the opportunity to examine the voter registration card and the absentee ballot application, compare the signatures on those documents to the signature that appears on the absentee ballot envelope, inspect the dates, etc.

- Upon examination of the paperwork, each campaign shall then have the opportunity to object to the opening of the envelope. If objections are filed by either campaign, those ballots shall be isolated and set-aside for the Judge.
- Then, for each ballot that has no objections, the ballot shall be opened by the BOE, shuffled with all other ballots, the result announced at the table, each party has time to write down the result and then physically examine the ballots.
- It is anticipated that all paper ballots for each district will be organized in advance of November 17 so that when an envelope for each district is opened, all ballots (absentee, military, emergency, affidavit) will be counted, district by district.
- At the end of the process, all objected ballots shall be locked and secured by the BOE until further joint notification by the campaigns and/or Court order.

III. LAWSUIT STATUS

- The Kuhl Campaign Court order was filed 9:46 a.m. November 5, 2008. The Massa Campaign Court order was filed 3:56 p.m. November 5, 2008.
- The campaigns have tentatively agreed to proceed jointly and cooperatively. Any questions and argument regarding legal sufficiency of the orders and venue shall be held in abeyance until further notice. This consent letter shall constitute a notice of appearance in both proceedings, without prejudice.
- The parties consent to adjournment of the November 12, 2008 Court return dates. The Massa Campaign will contact Judge Valentino with a copy of this Consent Letter on notice to attorney Pulos; the Kuhl Campaign will contact Judge Bradstreet with a copy of this Consent Letter on notice to attorney O'Brien.
- Depending on the outcome of the ballot count, there may be further Court action. Each campaign will not move ex-parte nor unilaterally to either Judge unless and until any contested matter is fully discussed between counsel and oral notice of intent to seek Court relief is given followed by notice of same. At such time, any Court papers shall be served upon opposing counsel by telefax and by e-mail, those methods expressly agreed as proper for service.

SUMMARY

All counting of all ballots to be done in a civilized, orderly and professional process with representatives of each campaign present and participating at all times. If one or both campaigns do not have representatives present there shall be no counting or examination of any ballots by any BOE.

Re-Canvass - both Commissioners - same vehicle to be followed by the campaign representatives (2 each), all operatives to have full access to each machine during the re-canvass.

Absentees – Beginning Monday, November 17, 2008 at 9:00 a.m. the process shall begin with representatives of each campaign present at all times to examine and make objections as appropriate.

Operatives - The campaigns are not to send rabid, bitter, untrained, unsophisticated partisans to participate in this process.

Each BOE commissioner has the right to call a recess in the count (with witnesses from both sides present) if, for any good-faith reason, the process does not play out as contemplated in this letter.

If that occurs (and that is neither anticipated nor desired) email written reports shall be filed with both lawyers simultaneously and then the matter will be fully discussed by both lawyers before any further action is taken.

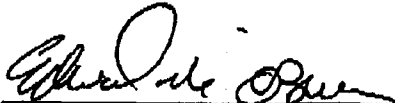
This procedure does not run afoul of Judge Bradstreet's order nor does it run afoul of Judge Valentino's order. We believe that if each county attorney and election commissioner receives a fax of this signed letter that they would be well protected.

If you are agreeable with these terms, please commence the process. If you have objections, or will not take further action without Court order, please notify us in writing.

Please accept our thanks for your courtesy and cooperation during this period.

The terms of this letter are approved as to form and substance.

Dated: November 7, 2008



EDWARD O'BRIEN, ESQ.
Attorney for the Massa Campaign

Dated: November 7, 2008



WILLIAM W. PULOS, ESQ.
Attorney for the Kuhl Campaign

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