

AT A SPECIAL TERM OF THE  
SUPREME COURT OF THE STATE  
OF NEW YORK FOR THE  
COUNTY OF MONROE, ON THE  
\_\_\_\_ DAY OF DECEMBER 2019

PRESENT, \_\_\_\_\_ J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF MONROE

-----X  
In the Matter of  
NICHOLAS A. LANGWORTHY, New York  
Republican State Committee Chairman,  
TODD SHERO, aggrieved voter, and  
ED MORGAN, aggrieved voter

Petitioners.

-against-

VERIFIED PETITION  
INDEX NO.

ANDREW CUOMO, in his official capacity as  
Governor of the State of New York

Respondent

-and-

DOUGLAS KELLNER, PETER KOSINSKI,  
ANDREW SPANO AND GREGORY PETERSON,  
Commissioners constituting the NEW  
YORK STATE BOARD OF ELECTIONS

Respondent Board of Elections.

For an ORDER, pursuant to Sections 16-100, 16-104  
of the Election Law, directing the respondent New York  
State Board of Elections to produce a political calendar and  
election ballot for a special election for the 27<sup>th</sup> Congressional  
District and pursuant to CPLR Section 7803 (1), CPLR sec.  
3001, New York State Constitution Article XIII, Section 3, the  
U.S. Constitution and Public Officers Law Section 42 (3)

compelling and directing respondent Governor to immediately  
fix a date for a special election for the 27<sup>th</sup> Congressional District

-----X

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

Petitioners, respectfully show and allege as follows:

1. This proceeding is the direct result of the failure of respondent Governor Andrew Cuomo to call a special election for the vacancy in public office for Member of the U.S. House of Representatives – 27<sup>th</sup> Congressional District – an office that has been vacant since September 30, 2019.

2. Petitioner Nicholas A. Langworthy resides at 10 Colonial Dr., Amherst, New York, Town of Amherst, Erie County, and is the duly elected Chairman of the New York Republican State Committee. Petitioner Langworthy has standing to commence this proceeding pursuant to Article 16 of the Election Law, Article 78 of the CPLR, sec. 3001 of the CPLR, and the U.S. and New York State Constitutions. Petitioner Langworthy brings this proceeding on behalf of himself and on behalf of all enrolled Republican voters in Congressional District 27.

3. Petitioner Todd Shero resides at 102 Heather Lane, Scottsville, New York 14546, Town of Wheatland, and is a registered voter from Monroe County within the 27<sup>th</sup> Congressional District. Petitioner is enrolled in the Republican Party and has standing to commence this proceeding pursuant to sec. 3001 of the CPLR, Article 78 of the CPLR, Article 16 of the Election Law, and the U.S. and New York State Constitutions.

4. Petitioner Ed Morgan resides at 3132 Hulberton Road, Holley, New York 14470, Town of Murray, and is a registered voter from Orleans County within the 27<sup>th</sup> Congressional District. Petitioner is enrolled in the Republican Party and has standing to commence this proceeding pursuant to sec. 3001 of the CPLR, Article 78 of the CPLR, Article 16 of the Election Law, and the U.S. and New York State Constitutions..

5. Plaintiffs, and the other approximately 750,000 residents similarly situated within the congressional district, are being denied their right to representation in the U.S. Congress and are being further denied their right to vote for a Representative in the vacant 27<sup>th</sup> Congressional District of New York due to the failure of the respondent Governor to call a special election to fill the vacancy for such public office. All other congressional districts in New York State have representation in the U.S. Congress.

6. Respondent Andrew Cuomo, is a citizen of the United States and a resident of the State of New York, serving in an official capacity as Governor of the State of New York and amongst his duties is the duty to promptly call special elections for vacant public offices including those vacancies within the U.S. Congress.

7. Respondent New York State Board of Elections is charged with administering elections in New York State including for elections for public offices encompassing more than one county where they have the duty to establish a political calendar and election ballot.

8. This is public interest litigation in which each of the named Petitioners, all of whom are experiencing irreparable harm by being denied representation, denied the opportunity to vote, and denied other constitutional and civil rights.

9. Section 16-100 (1) grants plenary authority to the Supreme Court to determine on and expedited basis any subject matter arising out of the Election Law including the call and conduct of special elections for the U.S. Congress. The Supreme Court's jurisdiction is to be liberally construed to promote the interests of justice.

10. Representative Chris Collins from the 27<sup>th</sup> Congressional District tendered a resignation letter on September 30, 2019.

11. The effective date of Chris Collins' resignation was immediate.

12. Petitioners Todd Shero and Ed Morgan are residents and registered voters of the 27<sup>th</sup> Congressional District and currently have no representation in the U.S. Congress at a time when important national policy debates are occurring.

13. These Petitioners represent a sample of the roughly 750,000 people who comprise the 27<sup>th</sup> Congressional District.

14. The 27<sup>th</sup> Congressional District is comprised of portions of Monroe, Erie, Genesee, Livingston, Orleans, Wyoming, Niagara and Ontario Counties. As such, venue for this proceeding in Monroe County is proper. Additionally, venue is proper in Monroe County because petitioner Todd Shero is a resident of Monroe County.

15. Controlling precedent maintains, that a Governor's constitutional duty to issue a Proclamation of Election, is triggered by the occurrence of a vacancy in one of the state's congressional districts.

16. In New York, the time, place, and manner of special elections has been determined, by the Legislature, and is expressed in Public Officers Law § 42 [3], which states that a special election is to take place not less than 70 and no more than 80 days from the Governor's Proclamation of Election. During this period, constituents in the congressional district, including petitioners, remain unrepresented in the U.S. Congress.

17. The Proclamation should provide for both the call for the special election to the respondent New York State Board of Elections and should prescribe the date upon which the election shall be held, in compliance with the New York Public Officers Law.

18. Respondent Governor Cuomo has failed to exercise his constitutional duty to issue a Proclamation of Election to the respondent New York State Board of Elections to fill the vacancy that resulted from the resignation of Representative Collins.

19. No Proclamation of Election has been issued since Chris Collins' resignation, up to, and including the time of the filing of this action.

20. As a result, no special election will be soon had in and for the 27<sup>th</sup> Congressional District of New York, and the Petitioners, and all those similarly situated, have been, and will continue to be, without a representative in Congress.

21. Respondent Governor Cuomo has a history of dilatory practice regarding the calling of special elections for Congressional offices. In 2015, he called a special election for the 11<sup>th</sup> Congressional District only after being so ordered by a federal court (See Rossito – Canty v. Cuomo, 86 Fed Supp 3d 175 (E.D.N.Y. 2015)). In 2018, he allowed residents of the 25<sup>th</sup> Congressional District (wholly within Monroe County) to go

unrepresented in the U.S. Congress for almost eight months until a special election was held.

22. Petitioners contend that the Governor's failure to issue a Proclamation violates their civil rights under the Article I, Section XI Equal Protection clause of the New York State Constitution, the United States Constitution, the First Amendment and, the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. Section 1983.

23. Article I. Section II. Clause IV of the United States Constitution states that "When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Elections to fill such Vacancies."

24. The plain meaning of the language of Article I. Section II, Clause IV including the use of the word "shall" is mandatory.

25. Where the plain meaning of the terms in the Constitution are discernible, no construction or interpretation is required and the terms are to be enforced as set forth.

26. Respondent Governor was on notice of the 27<sup>th</sup> Congressional District vacancy as of September 30, 2019.

27. The Respondent Governor could and should have been prepared to issue a Writ/Proclamation of Election, whereas a prompt and timely special election could have already been called, pursuant to New York Public Officers Law S 42 [3].

28. The Respondent Governor's failure to obey the aforementioned legal mandate has the effect of disenfranchising the petitioners and other similarly situated voters within the 27<sup>th</sup> Congressional District and has further denied the petitioners and other voters representation in Congress in contravention to their rights under Article I, Section XI of the New York State Constitution, the U.S. Constitution and the First and Fourteenth Amendments thereto and 42 U.S.C. Section 1983.

29. Voting for and representation in the US Congress are fundamental civil and political rights under both the New York and federal constitutions. "As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect

legislators in a free and unimpaired fashion is a bedrock of our political system.”

Reynolds v. Simms, 377 U.S. 533, 562 (1964).

30. Article I Section XI of the New York State Constitution states that "No person shall be denied the equal protection of the laws of this state or any subdivision thereof.”

31. The Respondent Governor's failure to issue a Writ/Proclamation of Election in a reasonably timely manner has denied each of the Petitioners equal enjoyment of their civil and political rights in violation of Article I Section XI of the New York State Constitution.

32. New York Courts hold that when a vacancy in elective office occurs, the vacancy must be filled by election in the “shortest space of time reasonably possible” Skelos v. Paterson, 13 NY3d 141, 150 (2009); Roher v. Dinkins, 32 NY2d 180 (1973). A federal court ruled that a New York State special election must be called forty days after the creation of a congressional office vacancy. (Rossito – Canty Id.) The vacancy in the 27<sup>th</sup> Congressional District has now lasted for over 60 days. The vacancy missed qualifying for a special election contemporaneous with the 2019 general election ballot by only 33 days (See Public Officers Law Section 42 (1) – 8/27/19 was the cut off date). Since the special election could not have been legally called to coincide with the 2019 general election, now that the general election is over public interest dictates that the special election must be immediately called.

33. The injury to petitioners is ongoing and irreparable and caused by respondent Governor’s failure to act.

34. Petitioners have no other remedy at law other than that applied for herein. Leave is respectfully requested and the Petitioners respectfully reserve the right to amend these pleadings as needed.

35. 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.

36. Leave is respectfully requested and the Petitioners respectfully reserves the right to make further applications to the Court for interim relief as may be needed.

37. Petitioners reserve the right to submit further proof by way of witnesses, affidavits, and evidence upon the date set by this Court for the trial and hearing of this matter.

38. No prior application for the relief requested has heretofore been made by Petitioners to this or any Court.

39. Pursuant to Part 130 of the rules of the Court, Petitioners' attorney certifies that this matter is not frivolous.

**WHEREFORE**, Petitioner respectfully demands a judgment of this Court

1. Declaring that the failure of the respondent Governor to promptly issue a writ/proclamation for a special election for 27<sup>th</sup> Congressional District and causing the residents of the 27<sup>th</sup> Congressional District to go without representation in the U.S. Congress is a violation of equal protection clause of Article I, Section XI of the New York State Constitution, the U.S. Constitution and the First and Fourteenth Amendments thereto and 42 U.S.C. Section 1983;

2. Declaring that the failure of the respondent Governor to issue the required writ/proclamation is a violation of the constitutional and civil rights of petitioners pursuant to Article I, Section XI of the New York State Constitution, the U.S. Constitution and the First and Fourteenth Amendments thereto and 42 U.S.C. Section 1983;

3. Ordering respondent Governor to issue a writ/proclamation for a special election for the office of Member U.S. House of Representatives, 27<sup>th</sup> Congressional District within five (5) days of entry of the Order;

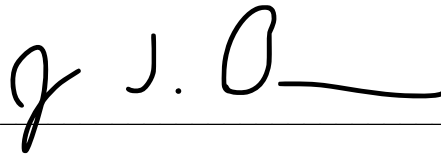
4. Directing the respondent New York State Board of Elections to immediately produce a political calendar and election ballot for a special election for the 27<sup>th</sup> Congressional District called by the respondent Governor within five (5) days of entry of the Order; and

5. Awarding to petitioners attorneys fees and costs as may be deemed reasonable by the Court pursuant to 42 U.S.C. Section 1988; and

6. Granting Petitioners such other and further relief as this Court deems just and proper.

Dated: Amherst, New York

December 11, 2019

A handwritten signature in black ink, appearing to read "J. T. Burns", is written over a horizontal line.

Joseph T. Burns, Esq.  
Attorney for Petitioners  
1811 Northwood Dr.  
Williamsville, New York 14221  
315-727-7636  
Burns217@verizon.net



**ATTORNEY'S VERIFICATION**

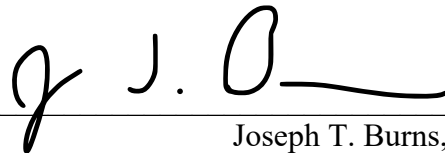
STATE OF NEW YORK     )  
                                      ) ss:  
COUNTY OF ERIE         )

JOSEPH T. BURNS, an attorney duly admitted to the practice of law before the Courts of the State of New York does hereby affirm pursuant to the provisions of the CPLR as follows:

1. He is the attorney for the petitioner(s) in this proceeding.
2. He has personally reviewed copies of the relevant alleged documents, together with other ancillary papers thereto, and upon the conclusion of the said review, believes the within allegations to be true, to his personal knowledge.
3. He has reviewed the contents of the within petition with his client(s) and, at the conclusion of said review, believes the contents thereof to be true.
4. All allegations made upon information and belief he believes to be true, based upon a review of any and all pertinent documents and an investigation of the attendant facts and circumstances.
5. This verification is used pursuant to the provisions of the CPLR as counsel has offices in the County of Erie and Petitioners Todd Shero and Ed Morgan reside outside said county.

DATED: Amherst, New York

December 11, 2019

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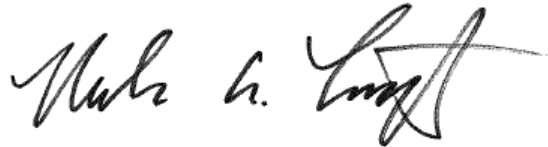
Joseph T. Burns, Esq.  
Attorney for Petitioners  
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315-727-7636  
Burns217@verizon.net

**VERIFICATION**

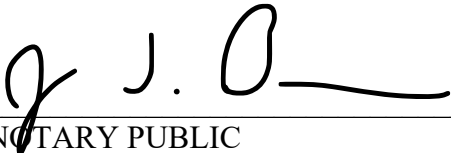
STATE OF NEW YORK     )  
  ) ss:  
COUNTY OF ERIE         )

NICHOLAS A. LANGWORTHY, being duly sworn deposes and says that he is a petitioner in this action(s), that he has read the foregoing and knows the contents thereof, that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief or based on pertinent documents on file with a governmental entity, and that as to those matters he believes it to be true.



\_\_\_\_\_  
NICHOLAS A. LANGWORTHY

Sworn to before me this 11th day  
of December, 2020.

  
\_\_\_\_\_  
NOTARY PUBLIC

Joseph Thomas Burns  
Notary Public, State of New York  
Qualified in Erie County  
Reg. No. 01BU6026743  
Expiration date 6-21-23

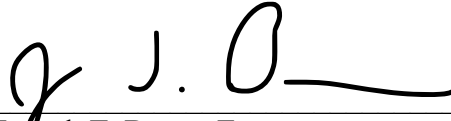
**CERTIFICATION**

Joseph T. Burns, an attorney admitted to practice law in the courts of the State of New York, affirms under penalties of perjury, that the following statements are true:

That I am the attorney for petitioners in the within case.

That I certify to the best of my knowledge, information and belief, formed after an inquiry reasonable under circumstances, that presentation of Petitioners' Verified Petition and the contentions therein are not frivolous as defined in 22 NYCRR 130-1.1-a, et seq.

Dated: Amherst, New York  
December 11, 2019

A handwritten signature in black ink, appearing to read "J. T. Burns", followed by a horizontal line.

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