

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,
Plaintiff,

v.

ONEIDA COUNTY BOARD OF ELECTIONS,
Defendant.

CIVIL ACTION NO.

6:21-cv-793 (MAD/ATB)

COMPLAINT

Plaintiff United States of America alleges:

1. The Attorney General files this action for declaratory and injunctive relief to enforce Section 8 of the National Voter Registration Act of 1993 (“NVRA”), 52 U.S.C. § 20507, and Section 302 of the Help America Vote Act of 2002 (“HAVA”), 52 U.S.C. § 21082.

JURISDICTION AND VENUE

2. Jurisdiction is vested in this Court pursuant to 28 U.S.C. §§ 1331, 1345, and 2201, and 52 U.S.C. §§ 20510(a) and 21111.

3. Venue is proper in this District pursuant to 28 U.S.C. §§ 112(a) and 1391(b).

PARTIES

4. Plaintiff United States of America seeks declaratory and injunctive relief pursuant to Section 11 of the NVRA, 52 U.S.C. § 20510(a), and Section 401 of HAVA, 52 U.S.C. § 205111, which authorize the Attorney General to bring suit to enforce those federal statutes.

5. Defendant Oneida County Board of Elections (“Oneida BOE”) is a state-created bipartisan two-member commission appointed by the legislative body of Oneida County, New York. The Oneida BOE is responsible, *inter alia*, for voter registration—including accepting and

processing applications and determining the eligibility of applicants to vote—for United States citizens residing in Oneida County, New York; for supervising the conduct of elections in that county; and for canvassing all ballots cast in the election, including provisional ballots, and reporting election returns in that county.

FACTUAL ALLEGATIONS

The Federal General Election in New York's 22nd Congressional District

6. On November 3, 2020, election jurisdictions across the United States of America, including in the 22nd congressional district of New York, conducted a general election in which candidates for President of the United States and the Congress of the United States were on the ballot.

7. New York's 22nd congressional district encompasses all of Oneida County, New York, within the election jurisdiction of Defendant Oneida BOE.

State Court Litigation

8. On November 4, 2020, Claudia Tenney, a candidate for United States Representative in New York's 22nd congressional district, initiated an election challenge against numerous defendants, including the Oneida BOE and other county boards of elections, in the Oswego County Supreme Court to preserve her right to judicial review relating to several disputed ballots cast or attempted to be cast in the election. The incumbent candidate, Anthony Brindisi, crossclaimed for similar relief. *Tenney v. Oswego Cnty. Bd. of Elec.*, No. EFC-2020-1376 (N.Y. Sup. Ct.) (Hon. Scott J. DelConte).

9. The court heard 11 days of testimony from 19 witnesses and reviewed a vast evidentiary record. *Tenney v. Oswego Cnty. Bd. of Elec.*, No. EFC-2020-1376, 2021 WL 454409, at *2 (N.Y. Sup. Ct. Feb. 5, 2021). It found that the defendant county boards of

elections, including the Oneida BOE, had committed numerous state election law violations regarding the processing of voter registrations and the review and canvassing of ballots. *Tenney v. Oswego Cnty. Bd. of Elec.*, 136 N.Y.S.3d 853, 861 (N.Y. Sup. Ct. 2020)

Facts Relevant to the NVRA and HAVA

10. New York’s voter registration deadline is 25 days before the ensuing election. N.Y. Elec. Law § 5-201(3). For the November 3, 2020, federal general election, that deadline was October 9, 2020.

11. County boards of elections must review and process each voter application form upon its receipt. *Id.* § 5-201(8).

12. A qualified individual is “registered” to vote as soon as her completed voter registration application is received by the appropriate county board of elections. *Id.* § 5-210(3).

13. All registered voters must be entered into New York’s statewide voter registration database, known as “NYSVoter.” *Id.* § 5-614.

14. The Oneida BOE ceased processing online voter registration applications—including those submitted at and received electronically from Department of Motor Vehicle (“DMV”) offices—beginning on September 25, 2020, 15 days before the October 9, 2020, statutory deadline.

15. Between September 25, 2020 and October 9, 2020, the Oneida BOE received by electronic means approximately 2,418 voter registration applications completed by Oneida County residents attempting to register to vote at offices of the DMV.

16. Defendant Oneida BOE failed to review or otherwise process those approximately 2,418 timely submitted voter registration applications.

17. As a result of that failure, the Oneida BOE failed to add the names of those DMV

applicants qualified to register to vote to the official list of eligible voters for the November 3, 2020, general election.

18. On information and belief, Defendant Oneida BOE failed to notify the approximately 2,418 DMV voter registration applicants as to the disposition of their voter registration application in time for the November 3, 2020, general election.

19. The Oneida BOE did not publicly disclose its failure to process the 2,418 timely submitted DMV applications until January 6, 2021, over two months after election day.

20. At least 68 qualified and eligible voters from among the 2,418 DMV applicants attempted to vote in the November 3, 2020, general election, but were notified by polling officials that they were not registered. Poll officials required those voters to cast provisional ballots (known in New York as “affidavit ballots”) instead of regular ballots.

21. The Oneida BOE subsequently rejected those approximately 68 provisional ballots cast by DMV registrants on the ground that those registrants were “not registered.”

22. The Oneida BOE rejected those 68 provisional ballots cast by DMV registrants without first reviewing the unprocessed registration records in its possession.

23. It is unknown how many additional qualified and eligible voters among the approximately 2,418 DMV registrants may have appeared to vote in the November 3, 2020, general election, but left the polling place without completing an affidavit ballot after being informed that they were not registered to vote.

24. Following the November 3, 2020 federal general election, Defendant Oneida BOE administratively rejected approximately 1,797 provisional ballots cast in Oneida County without reviewing or otherwise canvassing them.

25. At least 700 of those 1,797 rejected provisional ballots were cast by voters listed in NYSVoter as being duly registered and entitled to vote under state law.

26. In the state court proceeding, the court ordered the Oneida BOE to review its records and recanvass all affidavit ballots submitted in the November 3, 2020, federal general election to ensure that every validly cast vote was counted. *Tenney v. Oswego Cty. Bd. of Elections*, No. EFC-2020-1376, 2021 WL 234253, at *8 (N.Y. Sup. Ct. Jan. 20, 2021). But for the state court's efforts, hundreds of affidavit ballots submitted by qualified and eligible voters in New York's 22nd congressional district would have gone uncanvassed and uncounted in the November 3, 2020 federal general election.

Applicable Federal Law: The NVRA

27. Congress enacted the NVRA to “(1) to establish procedures that will increase the number of citizens who register to vote in elections for Federal office; (2) to ... enhance[] the participation of eligible citizens as voters in elections for Federal office; (3) to protect the integrity of the electoral process; and (4) to ensure that accurate and current voter registration rolls are maintained.” 52 U.S.C. § 20501(b).

28. Section 5 of the NVRA requires states such as New York to offer and accept voter registration applications in connection with certain driver's license and identity card transactions through motor vehicle offices such as the New York DMV. *Id.* § 20503; *see* N.Y. Elec. Law § 5-210.

29. Section 8(a)(1) of the NVRA mandates that all eligible applicants must be registered to vote in time for an upcoming federal election if their valid voter registration applications are postmarked, submitted to an authorized voter registration agency (such as a DMV office), or otherwise received by an appropriate election official 30 days (or such lesser

period allowed by state law) before the election. 52 U.S.C. § 20507(a)(1); *see* N.Y. Elec. Law § 5-201(3) (establishing that voter registration deadline is 25 days before the ensuing election).

30. In New York, therefore, the NVRA required that all eligible citizens submitting valid voter registration forms through DMV offices as of October 9, 2020—the 25th day before the November 3, 2020 federal general election—must be added to the official list of registered voters entitled to vote in that election.

31. Section 8(a)(2) of the NVRA requires states to notify all applicants of the disposition of their voter registration application. 52 U.S.C. § 20507(a)(2).

Applicable Federal Law: HAVA

32. Congress enacted HAVA in part to establish certain administration requirements relating to federal elections. As relevant here, Section 302 of HAVA requires states to adhere to certain requirements related to provisional voting.

33. In particular, if an individual declares that she is a registered voter in the jurisdiction and eligible to vote in an election for federal office, but the individual does not appear on the official list of eligible voters for that polling place, or an election official asserts the individual is not eligible to vote, a polling official must inform the individual that she may cast a provisional ballot and must permit the individual to cast a provisional ballot after the individual affirms in writing that she is eligible and registered to vote in the jurisdiction. 52 U.S.C. § 21082(a)(1)–(2).

34. The polling official “shall” then transmit the provisional ballot and affirmation to an appropriate election official for “prompt verification,” and if that official determines that the individual is eligible under state law to vote, the provisional ballot “shall” be counted in that election in accordance with state law. *Id.* § 21082(a)(3)–(4).

COUNT I:

SECTION 8 OF THE NATIONAL VOTER REGISTRATION ACT, 52 U.S.C. § 20507

Failure to Process Timely Submitted Voter Registration Applications

35. The Oneida BOE's failure to process or otherwise review all timely-filed voter registration applications, and the subsequent failure to add the names of all eligible applicants to the list of eligible voters for the November 3, 2020 federal general election, violates Section 8(a)(1) of the NVRA, 52 U.S.C. § 20507(a)(1).

36. The Oneida BOE's failure to ensure that all persons submitting voter registration applications in Oneida County received timely notice of the disposition of their applications violates Section 8(a)(2) of the NVRA, 52 U.S.C. § 20507(a)(2).

37. The United States is entitled to declaratory, injunctive, and other appropriate relief to remedy those violations and ensure the Oneida BOE's future compliance with the NVRA.

COUNT II:

**FAILURE TO VERIFY AND COUNT
PROVISIONAL BALLOTS PURSUANT TO HAVA**

38. The Oneida BOE's failure to a) promptly verify approximately 1,797 provisional ballots cast in the November 3, 2020, federal general election, and b) count those votes determined to be cast by duly registered voters, violated Section 302(a) of HAVA.

39. The United States is entitled to declaratory, injunctive, and other appropriate relief to remedy those violations and ensure the Oneida BOE's future compliance with HAVA.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that the Court enter an ORDER:

- (1) Declaring that Defendant has violated Section 8 of the NVRA;

(2) Declaring that Defendant has violated Section 302 of HAVA;

(3) Permanently enjoining Defendant, its agents and successors in office, and all persons acting in concert with it, from failing to a) process voter registration applications timely submitted prior to the close of registration, b) include all eligible and qualified registrants in appropriate voter registration databases prior to any primary, general, or special election for federal office, and c) notify all voter registration applicants as to the disposition of their voter registration applications in advance of the applicable primary, general, or special election for federal office;

(4) Permanently enjoining Defendant to verify promptly all provisional ballots submitted in connection with any primary, general, or special election for federal office and to count all such ballots submitted by qualified and eligible voters.

(5) Directing Defendant, in consultation with counsel for the United States, within 90 days of the entry of the Court's order, to submit a final remedial plan, to ensure future compliance with Section 8(a) of the NVRA and Section 303(a) of HAVA; and

(6) Providing any such additional relief as the interests of justice may require, together with the costs and disbursement in maintaining this action.

Dated: July 12, 2021.

ANTOINETTE T. BACON
Acting United States Attorney
Northern District of New York

s/ John D. Hoggan, Jr.
Bar Roll No. 511254
Assistant United States Attorney
445 Broadway, Room 218
Albany, NY 12207
Telephone: (518) 431-0247
Fax: (518) 431-0249
E-mail: john.hoggan@usdoj.gov

Respectfully submitted,

KRISTEN M. CLARKE
Assistant Attorney General
Civil Rights Division

PAMELA S. KARLAN
Principal Deputy Assistant Attorney General
Civil Rights Division

s/ Bradley E. Heard
T. CHRISTIAN HERREN, JR.
RICHARD DELLHEIM
BRADLEY E. HEARD
RACHEL R. EVANS
Attorneys, Voting Section
Civil Rights Division
U.S. Department of Justice
Four Constitution Square
150 M Street NE, 8th Floor
Washington, DC 20530
Telephone: (202) 305-4196
Facsimile: (202) 307-3961
E-mail: bradley.heard@usdoj.gov

Counsel for Plaintiff United States of America

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

Grid of 196-950 suit codes including categories like Insurance, Personal Injury, Real Estate, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District
6 Multidistrict Litigation - Transfer
7 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):
JUDGE
DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT Waived APPLYING IFP JUDGE MAD MAG. JUDGE ATB