MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE

DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

October 12, 2012

Mr. Robert M. Graber, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Graber:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	*Max, Frank C., Jr. v. Dennis Ward and Ralph Mohr, et al*
Document Received:	Order to Show Cause
Name of Claimants:	Frank C. Max, Daniel S. McParlane and John F. Fracos
Claimant's attorney:	Joseph G. Makowski 329 Elmwood Avenue Buffalo, New York 14222

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker
Michelle Parker
First Assistant County Attorney

MMP:dld
Enclosure

At a Special Term of the New York State Supreme Court held in and for the County of Erie, at the Courthouse in the City of Buffalo, New York on the 5th day of October, 2012.

PRESENT: HON. M. WILLIAM BOLLER, J.S.C., J.S.C.
Justice Presiding

STATE OF NEW YORK
SUPREME BUFFALO : COUNTY OF ERIE

FILED
ACTIONS & PROCEEDINGS
OCT 05 2012
ERIE COUNTY
CLERK'S OFFICE

In the Matter of the Application of
FRANK C. MAX, JR., a Candidate Aggrieved, and as Chairman of the Town of Cheektowaga Democratic Committee and as an enrolled Democratic voter in the Town of Cheektowaga 35th Election District,

and

DANIEL S. McPARLANE, Chairman of the Town of West Seneca Democratic Committee and as a Democratic Committeeman in the Town of West Seneca Election District 7 and as an enrolled Democratic voter in the West Seneca 7th Election District,

and

JOHN F. FRACOS, as the City of Buffalo Democratic Zone Chairman Zone 21, and as a City of Buffalo Democratic Committee Committeeman North 18 and as an enrolled voter Buffalo North District 18,

Petitioners,

vs.

DENNIS E. WARD, individually and in his official capacity as Erie County Board of Elections Commissioner and as Secretary of the Erie County Democratic Committee and as former Chairman of the Town of Amherst Democratic Committee,

ORDER TO SHOW CAUSE

Index No. 2012-003393

PAID NO FEE
10/05/2012 11:43:54
ERIE COUNTY CLERK
RCPT # 12155770
I 2012003393

This paper received at the
Erie County Board of Election's Office
From Peter Reese
On the 10 day of October 20 12
At 3:25 am/pm
Signature of BOE Employee

and

RALPH M. MOHR, individually and in his official capacity as Erie County Board of Elections Commissioner,

and

LEONARD LENIHAN, in his capacity as former Chairman of the Erie County Democratic Committee a/k/a Democratic County Committee of Erie County,

and

THE ERIE COUNTY DEMOCRATIC COMMITTEE a/k/a Democratic County Committee of Erie County,

and

JEREMY ZELLNER, in his official capacity as purported Chairman of the Erie County Democratic Committee a/k/a Democratic County Committee of Erie County,

and

DAVID A. RIVERA, BETTY JEAN GRANT, JAMES CONNOLLY, ROBERT E. BROWN, MOLLY McLAUGHLIN, GAYLE SYPOSS, DENNIS WARD, and IVORY L. PAYNE, JR., in their official capacities as Officers of the Erie County Democratic Committee a/k/a Democratic County Committee of Erie County,

Respondents.

Upon the annexed Petition of FRANK C. MAX, JR., DANIEL S. McPARLANE, and JOHN F. FRACOS, duly verified on the 5th day of October, 2012, and upon all pleadings and proceedings before herein, it is hereby

ORDERED that each of the Respondents Show Cause before this Court at Special Term,

Part 30 to be held at 50 Delaware Ave, in the City of Buffalo, on the 11 th day of October, 2012, at 9:30 o'clock in the A.m. of that day, or as soon thereafter as counsel can he heard, why an order should not be made and entered herein granting Petitioners relief pursuant to Article 78 of the Civil Practice Law and Rules, a declaratory judgment under of the Civil Practice Law and Rules Section 3001, Election Law Section 16-100 and 16-102, Public Officers Law Sections 104 and 107, and 42 USC Sections 1983 and 1988, as follows:

1. Determining the actions of Respondents Dennis E. Ward and Ralph M. Mohr in their official capacities as Election Commissioners of the Erie County Board of Election on or before June 11, 2012 in the alteration, change, combination, consolidation or creation of election districts in the Towns of Amherst , New York and in selected cities and towns of Erie County in order to manipulate the weighted vote of certain election districts utilized at the September 29, 2012 biennial reorganization meeting of the Erie County Democratic Committee for election of its Chairman and officers and the Democratic Board of Elections Commissioner was arbitrary and capricious and an abuse of discretion;

2. Determining that the announced results of the September 29, 2012 Erie County Democratic Committee reorganization meeting which purportedly elected Respondents Zellner, Ward and a slate of officers, and adopted amended party rules be declared invalid and null and void and of no force and effect;

3. Determining that Respondent Leonard Lenihan, as former Chairman of the Erie County Democratic Committee and Jeremy Zellner, as the purported elected Chairman of the Erie County Democratic Committee, and the Erie County Democratic Committee and Respondent officers of the Erie County Democratic Committee be compelled to conduct

a new election for the position of Chairman and officers of the Erie County Democratic Committee and Democratic Board of Elections Commissioner and amended party rules where committeeman weighted vote is based upon Democratic voter enrollment;

4. Determining that the new election of the Chairman and officers of the Erie County Democratic Committee and Democratic Board of Elections Commissioner shall be conducted solely in accordance with the rules of the Democratic County Committee of Erie County approved on September 25, 2010 and in effect on September 29, 2012 without amendment thereof based upon committeemen elected, excluding Democratic committeemen appointed and that the election shall be supervised by the court;

5. Determining that Respondents Mohr and Ward in their determination as to the alteration, change, combination, consolidation or creation of election districts violated the provisions of the Open Meeting Law of the State of New York thereby rendering their actions in redistricting election districts null and void and of no force and effect;

6. Determining that New York Election Law Section 2-104, when combined with the authority granted Respondents Ward and Mohr under of New York Election Law Section 4-100, is unconstitutional as applied in this case because the actions of Respondents Ward and Mohr violated Petitioners' clearly established rights to political free speech and association as guaranteed by Article I, Section 8 of the New York State Constitution and the First Amendment to the United States Constitution, and further violated their rights to equal protection of the laws as guaranteed by Article I, Section 11 of the New York State Constitution and the Fourteenth Amendment to the United States Constitution, and further violated Petitioners' right to vote and be represented by officials whose voting power reflects the number of their constituents under Article I, Section 1 of the New York State Constitution.

7. Determining that the alleged actions of Respondents Ward and Mohr violated Petitioners' rights under 42 USC Sections 1983 and 1988 entitling Petitioners to an award of compensatory and punitive damages and an award of attorney's fees and costs of this action.

8. Granting such other and further relief as the court deems just and proper;

Sufficient cause appearing therefore, leave is hereby granted to Petitioners to submit upon the return day of this Order to Show Cause, and on the argument and hearing thereof, such additional affidavits, exhibits and other proof as may be necessary; and it is further

ORDERED that opposing papers, if any, be served upon Petitioners' attorneys and delivered to the court at least seventy-two (72) hours prior to the hearing of this matter; and it is further

ORDERED that good and sufficient service shall be had herein by the service of a copy of this Order to Show Cause together with the Petition and supporting papers upon:

1. Respondents Dennis E. Ward and Ralph M. Mohr by delivery of two (2) copies to the Office of the Erie County Board of Elections on 134 West Eagle Street, Buffalo, New York, on or before October 9, 2012.

2. Respondents Leonard Lenihan and Jeremy Zellner, by delivery to the Office of the Erie County Democratic Committee in the Ellicott Square Building, 295 Main Street, Suite 115, Buffalo, New York 14203 and by delivery via U.S. Express mail to their voting addresses, to be mailed no later than October 6, 2012.

3. Respondent Erie County Democratic Committee by delivery to its office in the Ellicott Square Building, 295 Main Street, Suite 115, Buffalo, New York 14203, on or before October 9, 2012.

4. Respondents David A. Rivera, Betty Jean Grant, James Connolly, Robert E. Brown, Molly McLaughlin, Gayle Syposs, Dennis Ward and Ivory L. Payne, Jr. by delivery to their voting addresses on or before October 9, 2012, and via U.S. Express mail to be mailed no later than October 6, 2012.

DATED: Buffalo, New York
October 5, 2012

/S/ HON. M. WILLIAM BOLLER, J.S.C.

JUSTICE OF THE SUPREME COURT

FOR HON. DIANE Y. DEVLIN, J.S.C.

GRANTED
OCT 05 2012
/S/ CHRISTINE RYDER
COURT CLERK

STATE OF NEW YORK
SUPREME BUFFALO : COUNTY OF ERIE

In the Matter of the Application of
FRANK C. MAX, JR., a Candidate Aggrieved, and as Chairman of the Town of Cheektowaga Democratic Committee and as an enrolled Democratic voter in the Town of Cheektowaga 35th Election District,

and

DANIEL S. McPARLANE, Chairman of the Town of West Seneca Democratic Committee and as a Democratic Committeeman in the Town of West Seneca Election District 7 and as an enrolled Democratic voter in the West Seneca 7th Election District,

and

JOHN F. FRACOS, as the City of Buffalo Democratic Zone Chairman Zone 21, and as a City of Buffalo Democratic Committee Committeeman North 18 and as an enrolled voter Buffalo North District 18,

Petitioners,

vs.

DENNIS E. WARD, individually and in his official capacity as Erie County Board of Elections Commissioner and as Secretary of the Erie County Democratic Committee and as former Chairman of the Town of Amherst Democratic Committee,

and

RALPH M. MOHR, individually and in his official capacity as Erie County Board of Elections Commissioner,

and

VERIFIED PETITION

Index No._____

LEONARD LENIHAN, in his capacity as former Chairman of the Erie County Democratic Committee a/k/a Democratic County Committee of Erie County,

and

THE ERIE COUNTY DEMOCRATIC COMMITTEE a/k/a Democratic County Committee of Erie County,

and

JEREMY ZELLNER, in his official capacity as purported Chairman of the Erie County Democratic Committee a/k/a Democratic County Committee of Erie County,

and

DAVID A. RIVERA, BETTY JEAN GRANT, JAMES CONNOLLY, ROBERT E. BROWN, MOLLY McLAUGHLIN, GAYLE SYPOSS, DENNIS WARD, and IVORY L. PAYNE, JR., in their official capacities as purported Officers of the Erie County Democratic Committee a/k/a Democratic County Committee of Erie County,

Respondents.

Petitioners Frank C. Max, Jr., Daniel S. McParlane, and John F. Fracos by and through their attorneys Joseph G. Makowski, Esq. and Peter A. Reese, Esq. allege as follows:

The Parties

1. Petitioner Frank C. Max, Jr. was and still is a resident of the Town of Cheektowaga, New York. At all times relevant hereto, Petitioner Frank C. Max, Jr. (hereinafter "Max") was and still is the duly elected Chairman of the Town of Cheektowaga Democratic Committee and an enrolled Democratic voter in the Town of Cheektowaga 35th Election District.

At all times relevant hereto, Max was a candidate for election as Chairman of the Erie County Democratic Committee.

2. Petitioner Daniel S. McParlane was and still is a resident of the Town of West Seneca, New York. At all times relevant hereto, Petitioner Daniel S. McParlane (hereinafter "McParlane") was and still is the duly elected Chairman of the Town of West Seneca Democratic Committee. At all times relevant hereto, McParlane was and still is an elected Democratic Committeeman in the Town of West Seneca Election District No. 7 and an enrolled Democratic voter in the Town of West Seneca 7th Election District.

3. Petitioner John F. Fracos was and still is a resident of the City of Buffalo, New York. At all times relevant hereto, Petitioner John F. Fracos (hereinafter "Fracos") was and still is the Zone Chairman for the City of Buffalo Democratic Zone 21, a City of Buffalo Democratic Party Committeeman in the North 18 Election District and an enrolled Democratic voter in the City of Buffalo, North 18 Election District.

4. Respondent Dennis E. Ward was and still is a resident of either the Town of Amherst or Tonawanda, New York. At all times relevant hereto, Respondent Dennis E. Ward (hereinafter "Ward") was and still is purportedly the duly elected Democratic Erie County Board of Elections Commissioner. At all times relevant hereto, Ward was and still is purportedly the duly elected Secretary of the Erie County Democratic Committee. At all times relevant hereto, Ward was the former Chairman of the Town of Amherst Democratic Committee. Respondent Ward is named individually and in his official capacities.

5. Respondent Ralph M. Mohr was and still is a resident of the State of New York, County of Erie. At all times relevant hereto, Respondent Ralph M. Mohr (hereinafter "Mohr")

was and still is the duly elected Republican Erie County Board of Elections Commissioner. Respondent Mohr is named individually and in official capacities.

6. Respondent Leonard Lenihan was and still is a resident of the Town of Tonawanda, New York. At all times relevant hereto, Respondent Leonard Lenihan (hereinafter "Lenihan") was the duly elected Chairman of the Erie County Democratic Committee.

7. Respondent Erie County Democratic Committee a/k/a Democratic County Committee of Erie County (hereinafter "ECDC") was and still is an unincorporated association of individuals formed for the principal purpose of nominating, electing and supporting Democratic candidates for city, town, county, village, state, and national office.

8. Respondent Jeremy Zellner was and still is a resident of the City of Tonawanda, New York. At all times relevant hereto, Respondent Jeremy Zellner (hereinafter "Zellner") was a candidate for election to the position of Chairman of the ECDC. On September 29, 2012 Respondent Zellner was purportedly elected Chairman of the ECDC based upon the weighted vote of Democratic Committeemen present, which weighted vote of election districts was established under New York Elections Law Section 2-104 based upon the actions of Respondents Mohr and Ward as Erie County Board of Elections Commissioners in altering, changing, combining, consolidating or creating election districts in Erie County.

9. Respondents David A. Rivera, Betty Jean Grant, James Connolly, Robert E. Brown, Molly McLaughlin, Gayle Syposs, Dennis E. Ward, and Ivory L. Payne, Jr. were candidates for election to the position of officers of the ECDC and were purportedly elected as officers of the ECDC at its reorganization meeting on September 29, 2012, and as such are necessary parties to this special proceeding.

Jurisdiction Standing and Venue

10. Petitioners have suffered harm in fact and are aggrieved by the actions of Respondents. Petitioners have standing in the capacities in which they have appeared in this special proceeding as reflected in the caption hereon.

11. This court has jurisdiction over this special proceeding pursuant to Election Law § 16-100 and 16-102, Open Meetings Law § 107, CPLR Article 78 and 42 U.S.C. §§ 1983 and 1988. The court has jurisdiction over the parties to this action. The venue of this action is properly laid in the County of Erie.

Nature of this Special Proceeding

12. Petitioners seek relief pursuant to Article 78 of the Civil Practice Law and Rules against Respondents pursuant to Section 7803 (3); a declaratory judgment under Civil Practice Law and Rules 3001; Election Law Section 16-100, 16-102; Public Officers Law Section 107 Open Meetings Law; and 42 U.S.C. 1983, 1988. Petitioners seek relief pursuant to CPLR Section 7803 (3) against Respondents Ward, Mohr, Lenihan, Zellner and the ECDC as to whether a determination was made in violation of lawful procedure, was affected by an error of law, was arbitrary or capricious or an abuse of discretion in connection with the actions of the aforementioned Respondents on or after June 11, 2012 through September 29, 2012 in the purported alteration, change, combination, consolidation or creation of election districts in selected towns or city wards in Erie County affecting the weighted vote of the September 29, 2012 reorganization meeting of the ECDC in which Respondent Zellner was a candidate for Chairman, Respondent Ward was a candidate for Secretary and Democratic Board of Elections Commissioner and Respondents Rivera, Grant, Connolly, Brown, McLaughlin, Syposs, and

Payne were candidates for officers of the ECDC. Petitioners seek a further determination whether Respondent Ward by actions taken in his official capacity as Erie County Democratic Board of Elections Commissioner with the acquiescence, knowledge and consent of Respondent Mohr and in collaboration with Respondents Lenihan, Zellner and the ECDC, was arbitrary and capricious and through an abuse of discretion altered, changed, combined, consolidated or created election districts, purportedly in compliance with Election Law § 2-104 and 4-100 for the principal purpose of entrenching himself as Board of Elections Commissioner and Party Secretary and to assist either Zellner or another viable candidate in becoming Chairman of the ECDC.

13. Petitioners maintain the alleged conduct of Respondents Mohr and Ward requires declaratory relief as to the validity of actions taken at the September 29, 2012 reorganization meeting related to the purported election of Respondents Zellner, Ward and the named Respondent officers of the ECDC. Petitioners further maintain the alleged conduct of Respondents Ward and Mohr entitles them to the grant of a new reorganization meeting for the election of Chairman, other officers, the Democratic Election Commissioner, and adoption of new rules in accordance with a weighted vote based on Democratic enrollment in each election district. Petitioners further maintain Respondents Mohr and Ward in their actions have violated the provisions of the Open Meetings Law and 42 U.S.C. 1983 and 1988.

14. Petitioners maintain the actions of Respondent Ward in altering, changing, combining, consolidating or creating new election districts under the guise of New York Election Law Sections 2-104 and 4-100 were arbitrary and capricious and an abuse of discretion.

15. Petitioners maintain the provisions of New York Election Law Section 2-104, when combined with the authority granted Respondents Ward and Mohr under of New York Election Law Section 4-100, is unconstitutional as applied in this case because the actions of Respondents Ward and Mohr violate Petitioners' clearly established rights to political free speech and association as guaranteed by Article I, Section 8 of the New York State Constitution and the First Amendment to the United States Constitution, and further violate their rights to equal protection of the laws as guaranteed by Article I, Section 11 of the New York State Constitution and the Fourteenth Amendment to the United States Constitution. Petitioners further maintain violation of their right to vote and be represented by officials whose voting power reflects the number of their constituents under Article I, Section 1 of the New York State Constitution.

The Background of this Special Proceeding

2010

16. In 2010 New York State held its gubernatorial election. The Democratic candidate for governor was the Hon. Andrew Cuomo, then Attorney General of the State of New York. The Republican candidate for governor was Carl Paladino, a Buffalo area businessman who resides in South Buffalo. In November 2010, Andrew Cuomo defeated Carl Paladino for governor. However, due to the fact he resided in the Buffalo area, Carl Paladino carried Erie County on the Republican and Conservative lines with a strong electoral showing in South Buffalo, West Seneca and Cheektowaga, as well as other traditional Democratic areas of Erie County. The effect of the Paladino vote was to abnormally depress the traditional Democratic vote for Cuomo as the gubernatorial candidate. This electoral phenomenon would later present Ward and Mohr with a unique political opportunity to manipulate election district changes or

creations to drastically impact the weighted vote of political party committeemen at the expense of Petitioners. On the Democratic line Andrew Cuomo received 102,833 votes or 36.4% of the then 282,550 registered Democrats in Erie County. A true copy of the 2010 Democratic Gubernatorial election results are annexed hereto as Exhibit "A" and made a part hereof. The vote total of Andrew Cuomo for governor on the Democratic Party line is relevant to the facts and circumstances which give rise to this Special Proceeding.

2011

17. In 2011 Respondents Mohr and Ward in their capacity as Erie County Board of Election Commissioners were required to redistrict Erie County in response to the results of the 2010 census. In 2011 Respondents Mohr and Ward created a redistricting plan for the City of Buffalo Common Council and Erie County Legislature. In 2011 Buffalo Common Council Districts were drawn and Primary and General Elections were conducted.

18. In 2011 the Board of Elections redistricting plans for the Erie County Legislature were rejected by the Erie County Legislature. In 2011 the redistricting for the Erie County Legislature was ultimately resolved through a law suit in the U.S. District Court for the Western District of New York when redistricting lines were drawn by the Hon. William Skretny, U.S. District Court Judge.

19. The actions of Respondents Ward and Mohr in redistricting Common Council seats in the City of Buffalo and the Erie County Legislature are relevant to this Special Proceeding.

20. In the spring of 2011, at the urging of Governor Cuomo's representative Charlie King, then Executive Director of the New York State Democratic Party, Respondent Lenihan

agreed to resign as Chairman of the ECDC, expecting his successor to be Town of Tonawanda Democratic Chairman John J. Crangle, Jr. (hereinafter "Crangle") At that point Petitioner Max began to campaign actively for the ECDC Chairmanship and gained considerable ECDC committeeman support in the Towns of Cheektowaga, Hamburg, Lancaster, Orchard Park, Tonawanda and West Seneca, as well as the Lovejoy, North, South and University Council Districts in the City of Buffalo.

21. Ultimately Respondent Ward refused to support Crangle for the ECDC Chairmanship. Ward's failure to support Crangle, coupled with the latter's dissatisfaction with Ward's 2012 redistricting plan, ultimately led to Crangle's decision to support Max for ECDC Chairman.

22. When it became apparent that Crangle would not be likely to succeed him, and in an apparent move to block Max from becoming Chairman, Lenihan decided to stay on as Chairman until the end of his term in September 2012 even after the holding on August 25, 2011 of a Going Away party held in his honor and attended by former President William Clinton.

23. In the spring of 2011 the Executive Committee of the Erie County Democratic Committee nominated the Honorable Mark Poloncarz, then Erie County Comptroller, as the Democratic Party candidate for County Executive. In November 2011, Mark Poloncarz was elected Erie County Executive defeating Christopher Collins. The election of Mark Poloncarz is relevant to this Special Proceeding.

24. Respondent Ward is a long-time political operative in Erie County Democratic politics. On several occasions Respondent Ward ran unsuccessfully to become a member of the Erie County Legislature. Following the election of Lenihan as Democratic Chairman in September 2002, Respondent Ward, then Town Chairman of the Town of Amherst,

subsequently, in 2004, was elected Democratic Board of Elections Commissioner with a four year term. In 2008, Ward was re-elected Democratic Board of Elections Commissioner with a four year term. During certain times relevant hereto, Respondent Ward was also Chairman of the Town of Amherst Democratic Committee. At all times relevant hereto, Ward's role as Secretary to the Erie County Democratic Committee, Board of Elections Commissioner, and former Town Chairman in the Town of Amherst played an important role in 2012 in his determination to alter, change, com. :, consolidate, create and otherwise redistrict the boundaries of election districts in Erie County with the acquiescence, consent and knowledge of Respondent Mohr.

2012

25. In 2012 New York State U. S. Congressional lines were required to be redrawn by the New York State Legislature in light of population shifts in the state as reflected by the 2010 U.S. census. Upon information and belief, the New York Congressional lines were redrawn by the New York State Legislature with the assistance of a Federal Judge.

26. In 2012, the New York State Assembly and New York Senate lines were required to be redrawn by the New York State Legislature to reflect population shifts as reflected by the 2010 U.S. census. Upon information and belief, the New York State Assembly and New York State Senate lines redrawn by the New York State Legislature were completed in the spring of 2012.

27. Upon information and belief, sometime in 2012, Respondent Ward, with the acquiescence, knowledge and consent of Respondent Mohr, decided to change and create new election districts in Erie County.

28. As a result of selective and discriminatory redistricting, at the Democratic reorganizational meeting, committee members not favored by the party leaders or perceived to be supporters of Respondent Max, including Respondents Ward and Lenihan, tended to have a lower weighted vote compared to committee members favored by the party organization.

29. Thus, Petitioners were singled out for negative disparate treatment by Respondents Ward and Mohr, as government officials, acting under color of state law because of their political views, speech, affiliations and associations.

30. Though Respondent Commissioner Mohr is a Republican, upon information and belief, he knew or was reckless in not knowing about the unlawful redistricting and yet, acquiesced, approved of or failed to object to such unlawful activity occurring in his immediate presence.

31. This unlawful discrimination violates both the First Amendment and the equal protection clause of the U.S. and New York Constitutions.

32. This unlawful discrimination is facilitated by a statute that unlawfully creates two classes of committee members, those whose districts were altered and those whose districts were not altered.

33. There is no rational basis for creating two classes of committee members.

34. While political parties in their internal affairs may not be required to follow "one man, one vote" principles, here, the New York State legislature has, through state action of legislation, seen fit to deny equal protection of the laws to committee members in unaltered districts and has also infringed on their freedom of speech by diluting of their votes.

35. At all times relevant herein, the Respondents were acting under color of state law.

AS AND FOR FIRST, SEPARATE AND DISTINCT CAUSE OF ACTION FOR VIOLATION OF ARTICLE 78 OF THE CIVIL PRACTICE LAW AND RULES

36. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 35 of this Verified Petition as if and as though more fully set forth herein.

37. On or about July 17, 2012, ending months of political speculation, Respondent Lenihan publically announced that he would not seek another term as Chairman of the ECDC. Thereafter several candidates names emerged for the position of Chairman including Petitioner Max, Respondent Zellner, former City of Buffalo Mayor Anthony Masiello, Niagara Frontier Transportation Authority Board Member James Eagan, and Mark Panepinto, an attorney and Democratic Zone Chairman in the City of Buffalo.

38. Respondents Zellner and Lenihan have enjoyed a longstanding personal and professional relationship. Initially Respondent Zellner served as a party volunteer to the ECDC and later as a senior aide to Respondent Lenihan. At all times relevant hereto, Respondent Zellner was a political appointee to an administrative position with the Erie County Democratic Legislature which appointment he secured and maintained with the assistance of Respondent Lenihan and the Democratic majority of the Erie County Legislature.

39. On information and belief, sometime following Respondent Lenihan's retirement announcement, Erie County Executive Mark Poloncarz made no secret of his support for Respondent Zellner for the position of Chairman of the ECDC. Later Poloncarz publically declared neutrality, but continued to support Zellner behind the scenes.

40. Upon information and belief, prior to and following his 2012 retirement announcement Respondent Lenihan determined that he would privately support Respondent Zellner for the position of Chairman of the ECDC.

41. Upon information and belief, sometime in 2012, Respondents Zellner, Lenihan and Ward reached an understanding and agreement that if Zellner were elected Chairman of the ECDC, Ward would remain Democratic Board of Elections Commissioner and Secretary of the ECDC.

42. As Democratic Elections Commissioner, Ward was privy to the results of the 2010 Democratic gubernatorial election, 2011 redistricting information for the City of Buffalo and County of Erie and 2012 redistricting information for New York State Assembly and Senate and U. S. Congressional lines. As Democratic Elections Commissioner, Ward was also knowledgeable about the provisions of Election Law § 2-104 which sets forth the statutory manner in which the weighted vote for election districts is computed based upon the 2010 gubernatorial vote in unchanged election districts, and Democratic enrollment for those election districts changed or created after the 2010 General Election.

43. As Democratic Elections Commissioner, Ward was aware of the provisions of Election Law § 4-100 which grant him certain defined statutory authority to alter, change, combine, consolidate, create, and otherwise redistrict election districts in the cities and towns in Erie County.

44. Upon information and belief, sometime in 2012, under the guise of the newly created district lines for the New York State Assembly, New York State Senate, 2011 Buffalo Common Council redistricting, and 2011 Erie County Legislature redistricting, Ward, in his

capacity as Democratic Elections Commissioner citing purported cost efficiencies and savings utilized Election Law § 4-100 to alter, change, combine, and otherwise modify the boundaries of election districts in Erie County. Upon information and belief, Ward took this action in consultation with Respondents Lenihan and Zellner, as well as County Executive Mark Poloncarz. Ward also took this action with the acquiescence, consent and knowledge of Respondent Mohr. The purported reasons cited by Ward for this selective redistricting of elections districts were pretextual. The redistricting plan undertaken by Ward was actually politically motivated to entrench himself as Democratic Board of Elections Commissioner and Secretary of the ECDC.

45. Sometime in 2012, Respondent Ward, with the acquiescence, consent and knowledge of Respondent Mohr began the task of altering, changing, combining, consolidating, creating, redistricting, and otherwise modifying the boundaries of election districts in Erie County. (Hereinafter "Redistricting Plan") The Redistricting Plan developed and implemented by Ward, with the acquiescence, consent and knowledge of Respondent Mohr, was not a comprehensive, uniform and systematic plan to redistrict Erie County election districts. Instead, the Redistricting Plan was a politically motivated selective redistricting of election districts designed to entrench Ward as Democratic Board of Elections Commissioner and Secretary of the ECDC. Upon information and belief, Ward undertook this action in consultation with Respondents Lenihan and Zellner.

46. Prior to the implementation of the Redistricting Plan, there were 994 election districts in Erie County with potentially two (2) Committeemen in each district. Following the implementation of Ward's Redistricting Plan, the number of election districts was reduced to 887 with potentially two (2) Committeemen in each district.

47. Respondent Ward enacted the Redistricting Plan to entrench himself and to assist either Respondent Zellner in becoming Chairman of the Democratic Committee or any other potential Chairman candidate with whom Ward chose to align himself at the ECDC reorganization meeting.

48. In enacting the Redistricting Plan for election districts in Erie County, Respondent Ward principally focused his activities on the Town of Amherst, where he had formerly served as Chair of the Town of Amherst Democratic Party and still retained strong support of fellow Amherst committeemen. Respondent Ward also made other redistricting changes in cities and towns in Erie County in order to create additional weighted vote to those election districts which he deemed beneficial to himself when he sought reelection as Democratic Board of Elections Commissioner and Secretary of the ECDC at the September 2012 biennial organization meeting.

49. In enacting the Redistricting Plan, Respondent Ward not only enhanced the weighted vote in election districts in areas which he perceived to be beneficial to himself, but also sought to minimize the weighted vote which would be accorded to committeemen in election districts in other areas of the county, including but not limited to the Towns of Cheektowaga, Hamburg, Lancaster, Orchard Park, Tonawanda and West Seneca, as well as the Lovejoy, North, South and University Council Districts in the City of Buffalo. All the aforenamed were perceived by Ward to be hostile to him and/or favorable to Petitioner Max or other prospective Democratic candidates for Chairman of the ECDC.

50. In short, Respondent Ward, with the acquiescence, knowledge and consent of Respondent Mohr, used Election Law § 2-104 and §4-100 to "game the system" to create a personal political advantage in the weighted Democratic vote at the expense of Petitioners' rights.

51. In a telephone conversation with Petitioner Max on or about mid-August, 2012, Respondent Ward admitted that the redistricting of election districts was based on political considerations. Ward stated that he was not going to redistrict in South Buffalo (where he was politically weak). Referring to his political opponents in South Buffalo, Ward said, "[expletive deleted] them!" With respect to North Buffalo, Ward stated that he would not redistrict there because North District Councilman Joseph Golombek was "not with the party."

52. The effect of the Ward Redistricting Plan as set forth in Exhibit "B" was to give greater weight to election districts in areas perceived by Ward as favorable to him and to minimize the weighted votes of committeemen in areas which he perceived to be hostile to his re-election and/or favorable to Petitioner Max.

53. On September 29, 2012, pursuant to written notice dated September 24, 2012, the ECDC conducted its biennial reorganization meeting for the purpose of election of a Chairman and slate of officers together with the Democratic Election Commissioner. Ward stood for re-election as Erie County Democratic Committee Secretary. He also stood for re-election as the Democratic Election Commissioner. A true copy of the meeting notice and Respondents' slate piece are annexed hereto as Exhibit "C".

54. The September 29, 2012, ECDC reorganization meeting was conducted in accordance with party rules adopted at the ECDC reorganization meeting of September 25, 2010. A true copy of the ECDC rules adopted on September 25, 2010 are annexed hereto as Exhibit "D".

55. Notwithstanding the provisions of Article I, Section 11, governing the order of business, the official meeting notice of the ECDC dated September 24, 2012, placed the order of business as follows:

1. Calling of the Roll
2. Election of Officers: Chair, 5 (Five) Vice-Chairs (two at least of whom shall be women); Secretary; Treasurer; and Sergeant at Arms.
   Election of Board of Elections Commissioner
3. Adoption of Rules (current rules are posted at ecdems.com/party rules-also see enclosed proposed amendments)
4. Reports of Committees
5. Presentation of Resolutions, Motions, and Notices and Action thereon
6. Adjournment

56. Upon information and belief, the order of business of the meeting set forth in the aforementioned meeting notice was designed by Respondent Ward as Party Secretary and Lenihan as Chairman of the ECDC to create a voting advantage for Respondent Ward in connection with the party's recommendation for the Commissioner of Elections of Erie County.

57. On September 29, 2012 approximately 1,000 Democratic Committeemen of the ECDC attended the Party's reorganization meeting at the Hearthstone Manor in Cheektowaga, New York.

58. On September 29, 2012 the Democratic candidates for the position of Chairman were Petitioner Max and Respondent Zellner. Both Petitioner Max and Respondent Zellner offered proposed slates of officers.

59. On September 29, 2012, a secret ballot was held for the position of Chairman of the ECDC. The counting of the ballots was overseen by New York State Democratic Party Vice Chairman the Honorable Stephanie Minor, Mayor of the City of Syracuse, New York.

60. Upon information and belief, as a result of the electoral tally, Respondent Max

received a majority of the votes cast for Chairman on the basis of Democratic committeemen in attendance at the reorganization meeting. However, on the basis of the weighted votes created by Respondent Ward as a result of his redistricting plan which was utilized by the ECDC. Respondent Zellner purportedly received 152,098 weighted votes to Petitioner Max's 113,528 weighted votes, and was announced the winner of the Chairman's election.

61. After the announced Chairman election result, Respondent Ward was purportedly reelected Secretary to the ECDC and was purportedly recommended for a continued four (4) year term as Commissioner of the Board of Elections of Erie County. Respondents Rivera, Grant, Connolly, Brown, McLaughlin, Syposs, and Payne were also purportedly elected officers of the ECDC.

62. The purported elections of Respondents Zellner as Chairman and Ward as party Secretary and Democratic Elections Commissioner and Respondents Rivera, Grant, Connolly, Brown, McLaughlin, Syposs, and Payne as officers were the result of the arbitrary and capricious action and abuse of discretion resulting from Respondent Ward's redistricting plan to benefit himself, Zellner and their slate of Democratic officers. The Redistricting Plan developed and implemented by Ward with the acquiescence, consent and knowledge of Mohr was arbitrary and capricious and an abuse of discretion.

63. The redistricting plan developed by Respondent Ward with the acquiescence, knowledge and consent of Respondent Mohr was designed and implemented principally to entrench Respondent Ward in retaining his position as Board of Elections Commissioner and Secretary to the Erie County Democratic Committee at the party September 29, 2012 reorganization meeting by unfairly "gaming the system" for himself to the detriment of

Petitioners.

64. The Redistricting Plan developed by Respondent Ward with the acquiescence, knowledge and consent of Respondent Mohr enhanced the weighted vote of the Town of Amherst and other cities or towns perceived by Respondent Ward to be favorable to himself and minimize the weighted vote perceived by Ward to be hostile to himself and/or favorable to Petitioner Max's candidacy.

65. The purported election of Respondent Zellner as Chairman of the ECDC and Respondent Ward as Secretary to the ECDC and Commissioner of the Board of Elections is tainted by the arbitrary and capricious actions and abuse of discretion of Respondents Ward and Mohr in enacting the 2012 redistricting plan.

66. As a result of the foregoing, Petitioners request that the Court determine that the actions of Respondents Mohr and Ward in enacting the 2012 redistricting plan were arbitrary and capricious and an abuse of discretion. Petitioners further request that the Court declare null and void the election of Respondent Zellner as Chairman of the ECDC together with the re-election of Respondent Ward as Board of Elections Commissioner and Secretary to the ECDC. Petitioners further request that the Court declare null and void the election of the slate of Respondents Rivera, Grant, Connolly, Brown, McLaughlin, Syposs, and Payne as officers of the ECDC. Petitioners further request that the Court declare null and void the rule amendments adopted at the September 29, 2012 reorganization meeting. Petititioners further request that the Court order a new election for Chairman, officers and Democratic Board of Elections Commissioner be required with the vote to be based upon party enrollment in each election district.

AS AND FOR SECOND, SEPARATE AND DISTINCT CAUSE OF ACTION FOR VIOLATION OF THE OPEN MEETINGS LAW

67. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 though 66 of this Verified Petition as if and as though more fully set forth herein.

68. The Erie County Board of Elections is a "public body" within the meaning of the terms of Section 102 (2) of the New York State Open Meetings Law and an "agency" within the meaning of the terms of Section 86 (3) of the New York State Freedom of Information Law.

69. Respondent Commissioners Ward and Mohr are notorious for their failure to comply with the media and public notice requirements of Section 104 of the New York State Open Meetings Law (OML). See Exhibit "E" (*Artvoice* article dated June 2012 concerning the Commissioners' failure to timely disclose information concerning election district changes.)

70. Upon information and belief, sometime prior to June 6, 2012, Respondents Ward and Mohr held meetings in which determinations were made to redistrict, alter, change and otherwise modify the boundaries of election districts in Erie County.

71. Upon information and belief, Respondents Ward and Mohr failed to provide the media and public notices of such meetings as required by Section 104 of the OML.

72. Respondent Ward and Mohr failed to provide any notice of such meetings to Petitioners, who, as Erie County Democratic Committee officers, members of the Democratic County Committee and members of the Executive Committee of the Erie County Democratic Committee, obviously had significant stakes and interests in the outcomes and effects of such redistricting efforts.

73. Upon information and belief, Respondents Ward and Mohr failed to publicly

release information on the voter database documenting the results of their redistricting efforts until the afternoon of June 11, 2012, fully six days after the first day to circulate designating petitions for election to the party office of Member of the County Committee (6/5/12).

74. Upon information and belief, Respondents Ward and Mohr had previously provided such information available to ECDC headquarters on or about June 6, 2012. See Exhibit "E"

75. As a result of the blatant violation of the Open Meetings Law, the Court is requested to declare that the meetings were illegally held and that any and all determinations, rulings, actions taken at such meetings are null and void and without any legal effect whatsoever.

AS AND FOR THIRD, SEPARATE AND DISTINCT CAUSE OF ACTION CONSTITUTIONAL CLAIM FOR VIOLATION OF THE EQUAL PROTECTION CLAUSES OF THE NEW YORK CONSTITUTION AND U.S. CONSTITUTION

76. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 75 of this Verified Petition as if and as though more fully set forth herein.

77. The actions of Respondents Mohr and Ward in creating the 2012 Democratic redistricting plan were purportedly done in accordance with New York Election Law §§ 2-104 and 4-100, the relevant provisions of which provide:

> § 2-104. County committee; creation
>
> 1. The county committee of each party shall be constituted by the election in each election district within such county of at least two members and of such additional members, not in excess of two, as the rules of the county committee of the party within the county or the statement filed pursuant hereto may provide for such district, proportional to the party vote in the district for governor at the last preceding gubernatorial election, or in case the boundaries of such district have been changed or a new district has been created since the

last preceding gubernatorial election, proportional to the party vote cast for member of assembly or in the event there was no election for member of assembly, then proportional to the number of enrolled voters of such party in such district on the list of enrolled voters last published by the board of elections, excluding voters in inactive status. ***In a county in which no additional members are provided for by the rules of the county committee or the statement filed pursuant hereto the voting power of each member shall be in proportion to such party vote or, if the election district which such member represents was created or changed since the last election for member of assembly, proportional to such party enrollment.*** (Emphasis Added) In a county in which additional members are so provided for, on the basis of the party vote or enrollment in election districts within such county, each member shall have one vote. Each member of a county committee shall be an enrolled voter of the party residing in the county and the assembly district from which or in the assembly district containing the election district in which such member is elected except that a member of a county committee who, as a result of an alteration of assembly district lines, no longer resides within such assembly district may continue to serve for the balance of the term to which he was elected.

§ 4-100. Election districts; creation and alteration

1. The State of New York shall be divided into election districts which shall be the basic political subdivision for purposes of registration and voting as provided in this chapter.

2. The creation, consolidation, division or alteration of election districts shall be done by the board of elections.

78. Petitioners maintain that the cited provisions of New York Election Law § 2-104 as applied to this case are unconstitutional under Article 1, Section 5 of the New York State Constitution and the 14th Amendment to the U.S. Constitution because it fails to provide equal protection of law as to the manner and calculation of the way the vote of Democratic Committeemen for an existing election district and those in a new election district. As a result of the foregoing, Petitioners request an order from this court declaring New York Election Law § 2-

104 unconstitutional as applied to the results of the 2012 Erie County Democratic Committee reorganization Committee meeting because it fails to provide equal protection of law.

AS AND FOR FOURTH, SEPARATE AND DISTINCT CAUSE OF ACTION UNDER 42 U.S.C. § 1983-VIOLATION OF RIGHT TO POLITICAL SPEECH AND ASSOCIATION AND EQUAL PROTECTION OF THE LAWS—FIRST AND FOURTEENTH AMENDMENTS, U.S. CONSTITUTION—AGAINST RESPONDENTS WARD AND MOHR.

79. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 78 of this Verified Petition as if and as though more fully set forth herein.

80. Respondents Ward and Mohr, acting jointly and severally, conspired to and did redistrict election districts so as to strengthen the voting power of committee members loyal to respondents Ward and Lenihan and their allies and to weaken the voting power of committee members independent of party headquarters including the Petitioners. *Pickering v. Board of Education*, 391 U.S. 563 (1968).

81. Respondents Ward and Mohr actions violated the Petitioners' clearly established rights to political free speech and association as guaranteed by the First and Fourteenth Amendments to the United States Constitution as well as their right to equal protection of the laws as guaranteed by the Fourteenth Amendment.

82. The Respondents Ward and Mohr knew, or reasonably should have known, that their conduct violated the Petitioner's clearly established constitutional right to political free speech.

83. The Respondents Ward and Mohr acted with intent to violate, or with deliberate or reckless indifference to, the Petitioners' clearly established First and Fourteenth Amendment rights.

84. At all times relevant herein, the Respondents were acting under color of state law.

85. As a direct result of the Respondents' conduct, the Petitioners have suffered actual damages, attorneys' fees, and costs.

AS AND FOR FIFTH, SEPARATE AND DISTINCT CAUSE OF ACTION UNDER 42 U.S.C. § 1983-VIOLATION OF RIGHT TO EQUAL PROTECTION OF THE LAWS—FOURTEENTH AMENDMENTS, U.S. CONSTITUTION AND NY CONSTITUTION.

86. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 85 of this Verified Petition as if and as though more fully set forth herein.

87. Election Law Section 2-104 violates the rights of voters and committeemen in non-redistricted election districts by giving them a significantly lower weighted vote than voters and committee members in election districts that were redistricted.

88. There is no rational reason for this discrimination.

89. The statute could have easily provided that for years during which redistricting takes place, *all* votes must be weighed according to enrollment.

90. Thus, the undisputed need for periodic redistricting does not justify creating two classes of voters and committee members.

91. The Court should declare the statute unconstitutional as applied to the present matter, vacate the election of officers and the nomination of an elections commissioner that took place on September 29, 2012, order the holding of a new election to be conducted with committeemen weighted voting based on Democratic election district enrollment and enjoining the Respondents from applying the statute during such meeting.

AS AND FOR SIXTH, SEPARATE AND DISTINCT CAUSE OF ACTION UNDER 42 U.S.C. § 1983-VIOLATION OF RIGHT TO EQUAL PROTECTION AND FREEDOM OF SPEECH—FIRST AND FOURTEENTH AMENDMENTS, U.S. CONSTITUTION

92. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 91 of this Verified Petition as if and as though more fully set forth herein.

93. Even if the Election Law 2-104 is deemed constitutional as applied to internal party affairs, it would nevertheless be unconstitutional as applied to the selection of a Democratic commissioner of elections, a public office.

94. The Court should declare the statute unconstitutional as applied to voting for Democratic elections commissioner in Erie County and should order the Respondents to use weighted voting by party enrollment for such selection, appointment or nomination.

95. At all times relevant herein, the Respondents were and will be acting under color of state law.

AS AND FOR SEVENTH, SEPARATE AND DISTINCT CAUSE OF ACTION
VIOLATION OF THE EQUAL PROTECTION, CLAUSE AND FREEDOM OF SPEECH CLAUSES OF THE NEW YORK STATE CONSTITUTION - AGAINST RESPONDENTS WARD AND MOHR.

96. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 95 of this Verified Petition as if and as though more fully set forth herein.

97. Respondents Ward and Mohr, acting jointly and severally, conspired to and did redistrict election districts so as to strengthen the voting power of committee members loyal to Respondents Ward and Lenihan and their allies and to weaken the voting power of committee members independent of party headquarters including the Petitioners.

98. Respondents Ward and Mohr's actions violated the Petitioners' clearly established rights to political free speech and association as guaranteed by Article I, Section 8 of the New York State Constitution; their right to equal protection of the laws as guaranteed by Article I, Section 11 of the New York State Constitution; and the right to vote and be represented by officials whose voting power reflects the number of their constituents. See NY Constitution, Article I, Section 1.

99. Respondents Ward and Mohr knew, or reasonably should have known, that their conduct violated the Petitioners' clearly established constitutional rights.

100. Respondents Ward and Mohr acted with intent to violate, or with deliberate or reckless indifference to, the Petitioner's clearly established constitutional rights.

101. At all times relevant herein, Respondents Ward and Mohr were acting under color of state law.

102. As a direct result of the Respondents Ward and Mohr's conduct, the Petitioners have suffered actual damages and costs.

WHEREFORE, Petitioners request a judgment granting them the following relief:

1. A determination that the actions of Respondents Dennis E. Ward and Ralph M. Mohr in their official capacities as Election Commissioners of the Erie County Board of Election on or before June 11, 2012 in the alteration, change, combination, consolidation or creation of Democratic election districts in the Towns of Amherst, New York and in the cities and towns of Erie County in order to manipulate the weighted vote of certain Democratic elections districts utilized at the September 29, 2012 biennial reorganization meeting of the Erie County Democratic Committee for election of its Chairman and officers and the Democratic Board of Elections Commissioner was arbitrary and capricious and an abuse of discretion;

2. A determination that the announced results of the September 29, 2012 Erie County Democratic Committee reorganization meeting which purportedly elected Respondents Zellner, Ward and a slate of officers be declared invalid and null and void and of no effect;

3. A determination that Respondent Leonard Lenihan, as former Chairman of the Erie County Democratic Committee and Jeremy Zellner, as the purported elected Chairman of the Erie County Democratic Committee, and the Erie County Democratic

Committee and Respondent officers of the Erie County Democratic Committee be compelled to conduct a new election for the position of Chairman and officers of the Erie County Democratic Committee and Democratic Board of Elections Commissioner and adoption of party rules based upon committeemen weighted voting according to election district Democratic voter enrollment;

4. A determination that a new election of the Chairman and officers of the Erie County Democratic Committee and Democratic Board of Elections Commissioner shall be conducted solely in accordance with the rules of the Democratic County Committee of Erie County approved on September 25, 2010 and in effect on September 29, 2012 without amendment thereof based upon committeemen elected, excluding Democratic committeemen appointed and that the election shall be supervised by the court;

5. A determination that Respondents Mohr and Ward in their actions as to the alteration, change, combination, consolidation or creation of Democratic Election Districts violated the provisions of the Open Meetings Law of the State of New York thereby rendering their actions in redistricting Democratic election districts null and void;

6. A determination that New York Election Law Section 2-104, when combined with the authority granted Respondents Ward and Mohr under of New York Election Law Section 4-100, is unconstitutional as applied in this case because the actions of Respondents Ward and Mohr violated Petitioners' clearly established rights to political free speech and association as guaranteed by Article I, Section 8 of the New York State Constitution and the First Amendment to the United States Constitution, and further violated their rights to equal protection of the laws as guaranteed by Article I, Section 11 of the New York State Constitution and the Fourteenth Amendment to the United States Constitution, and further violated Petitioners' right to vote and

be represented by officials whose voting power reflects the number of their constituents under Article I, Section 1 of the New York State Constitution.

7. A determination that the alleged actions of Respondents Ward and Mohr violated Petitioners' rights under 42 USC Sections 1983 and 1988 and Petitioners are entitled to an award of compensatory and punitive damages to be determined at the time of trial, together with attorney's fees and the costs and disbursements of this action.

8. Granting such other and further relief as the court deems just and proper;

DATED: Buffalo, New York
October 5, 2012

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VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE) SS.:
CITY OF BUFFALO)

FRANK C. MAX, JR, being duly sworn, deposes and states that he is a Petitioner herein, and that he has read the petition herein and know the contents thereof; that the same is true to his own knowledge; expect for those matters alleged on information and belief, and as to those matters he believes them to be true.

FRANK C. MAX, JR.

Sworn to before me this
5th day of October, 2012

PETER A. REESE
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Sept. 30, 2014

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE) SS.:
CITY OF BUFFALO)

DANIEL S. MCPARLANE, being duly sworn, deposes and states that he is a Petitioner herein, and that he has read the petition herein and know the contents thereof; that the same is true to his own knowledge; expect for those matters alleged on information and belief, and as to those matters he believes them to be true.

DANIEL S. MCPARLANE

Sworn to before me this
5 th day of October, 2012

PETER A. REBOZ
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Sept. 30, 2014

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE) SS.:
CITY OF BUFFALO)

JOHN F. FRACOS, being duly sworn, deposes and states that he is a Petitioner herein, and that he has read the petition herein and know the contents thereof; that the same is true to his own knowledge; expect for those matters alleged on information and belief, and as to those matters he believes them to be true.

JOHN F. FRACOS

Sworn to before me this
5 th day of October, 2012

PETER A. REISE
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Sept. 30, 2014