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 5, 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:	*Master, Robert, as Chair of the Working Families Party of New York State v. Gregory L. Davis and NYS Board of Elections, Suffolk County Board of Elections, Nassau County Board of Elections, and Erie County Board of Elections*
Document Received:	Order to Show Cause
Name of Claimant:	Robert Master
Claimant's attorney:	Matthew & Matthew

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker
Michelle M. Parker
First Assistant County Attorney
Michelle.Parker@erie.gov

MMP:dld

cc: Michael A. Siragusa, Erie County Attorney

RT!

At a Part II of the Supreme Court of the State of New York, held in and for the County of Suffolk, at the Supreme Court Courthouse thereof, at ~~One Court Street, Riverhead,~~ 400 Carleton Ave Central Islip New York, on the 3 day of October, 2012

PRESENT:

HON. _____
JUSTICE

MOTION/CROSS/OSC
FEE ~~PAID~~ waived
Judith A. Pascale
Suffolk County Clerk
KS

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In the Matter of the Application of ROBERT MASTER, As Chair of the WORKING FAMILIES PARTY OF NEW YORK STATE

INDEX No. 12-30579

Petitioner-Party Chair,

ORDER TO SHOW CAUSE

- against -

GREGORY L. DAVIS

Respondent-Candidate

- and -

THE NEW YORK STATE BOARD OF ELECTIONS,
THE SUFFOLK COUNTY BOARD OF ELECTIONS,
THE NASSAU COUNTY BOARD OF ELECTIONS, and
THE ERIE COUNTY BOARD OF ELECTIONS,

Respondents,

For an Order Pursuant to Sections 16-100, 16-102 and 16-116 of the Election Law, Declaring Respondent-Candidate GREGORY L. DAVIS to be Disqualified to seek the Public Offices of Justice of the Supreme Court, 10th Judicial District of the State of New York and Member of the New York State Senate from the 60th Senatorial District in the General Election to be Held on November 6, 2012, and to Restrain the Said BOARDS OF ELECTIONS from Certifying said Candidacies or Printing and Placing the Name of GREGORY L. DAVIS Upon the Official Ballots of Such General Election.

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This paper received at the Erie County Board of Election's Office From Robert Master by mail (method of mailing) On the 4 day of October 2012 At 10:27 am/pm
Signature of BOE Employee

58-000-00003: Masterv

Upon the annexed petition of Robert Master, duly verified the 2nd day of October, 2012, and upon the Working Families Party Designating Petition Designating Respondent Gregory L. Davis as a candidate for the public office of Member of the New York State Senate from the 60th Senatorial District and the Certificate of Nomination made by the 10th Judicial District Convention of the Working Families Party nominating Gregory L. Davis for the public office of Justice of the Supreme Court of the State of New York, 10th Judicial District, and upon all the proceedings heretofore had herein, it is hereby;

ORDERED, that the Respondents named herein above, show cause before this Court at a Special Term for Election Proceedings, to be held at the Supreme Court Courthouse, One Court Street in the County of Suffolk, Town of Riverhead, State of New York, ~~Room~~ ___, on Friday the 5 day of October, 2012 at ~~9:30 a.m.~~ 2 p.m. of that day or as soon thereafter as counsel can be heard, why an order should not be made and entered herein:

1. Declaring respondent GREGORY L. DAVIS to be Disqualified to seek the Public Offices of Justice of the Supreme Court, 10th Judicial District of the State of New York and Member of the New York State Senate from the 60th Senatorial District in the General Election to be Held on November 6, 2012; and

2. Enjoining, restraining, and prohibiting the BOARD OF ELECTIONS IN THE STATE OF NEW YORK, the SUFFOLK COUNTY BOARD OF ELECTIONS and the NASSAU COUNTY BOARD OF ELECTIONS from certifying respondent the candidacy GREGORY L. DAVIS for the public office of Justice of the Supreme Court from the 10th Judicial District of the State of New York in the General Election to be held on the 6th day of November, 2012 or printing or placing the name of GREGORY L. DAVIS upon the official ballots of such General Election; and

3. Enjoining, restraining, and prohibiting the BOARD OF ELECTIONS IN THE STATE OF NEW YORK and the ERIE COUNTY BOARD OF ELECTIONS from certifying respondent the candidacy GREGORY L. DAVIS for the public office of Justice of the Supreme Court from the 10th Judicial District of the State of New York in the General Election to be held on the 6th day of November, 2012 or printing or placing the name of GREGORY L. DAVIS upon the official ballots of such General Election;

and why the Petitioner should not have such other and further relief as to this Court may seem just and proper in the premises; and it is further

ORDERED, that the Respondent NEW YORK STATE BOARD OF ELECTIONS be and is hereby ordered and directed to produce upon the hearing of this Order to Show Cause and on all adjournments thereof, the aforesaid Certificate of Nomination, any written notification to Respondent GREGORY L. DAVIS of the filing of such Certificate of Nomination and any Certificate of Acceptance or Declination relating to such Certificate of Nomination for examination by this Court; and it is further

ORDERED, that the Respondent ERIE COUNTY BOARD OF ELECTIONS be and is hereby ordered and directed to produce upon the hearing of this Order to Show Cause and on all adjournments thereof, the aforesaid Designating Petition and any Certificate of Acceptance or Declination relating to such Designating Petition for examination by this Court.

SUFFICIENT CAUSE APPEARING THEREFOR, leave is hereby granted to the Petitioner(s) to submit, upon the return day of this Order to Show Cause and any adjournments thereof, and the argument thereof, such additional evidence, exhibits, and other proof as may be necessary.

SUFFICIENT CAUSE APPEARING THEREFOR, it is further

ORDERED, that service of a copy of this order, together with a copy of the papers upon which it is granted, on the Respondent NEW YORK STATE BOARD OF ELECTIONS be made by either (1) delivering a copy thereof to a recognized overnight delivery carrier and/or the United States Postal Service, waiving the requirement of a signature, addressed to the Respondent NEW YORK STATE BOARD OF ELECTIONS at 40 North Pearl Street, Albany, NY on or before the ~~4th~~ 3rd day of October, 2012 to be delivered to said NEW YORK STATE BOARD OF ELECTIONS on or before the ~~5th~~ 4th day of October, 2012; or (2) leaving a copy of

said order and papers at the general office of the said NEW YORK STATE BOARD OF ELECTIONS at 40 North Pearl Street, Albany, NY, or by delivering same to any one of the Commissioners of Elections of the said NEW YORK STATE BOARD OF ELECTIONS, on or before the 5th day of October, 2012;

That service of a copy of this order, together with a copy of the papers upon which it is granted, on the Respondent SUFFOLK COUNTY BOARD OF ELECTIONS be made by either (1) delivering a copy thereof to a recognized overnight delivery carrier and/or the United States Postal Service, waiving the requirement of a signature, addressed to the respondent, SUFFOLK COUNTY BOARD OF ELECTIONS at 700 Yaphank Avenue, Yaphank, New York on or before the ~~4th~~ 3rd day of October, 2012 to be delivered to said SUFFOLK COUNTY BOARD OF ELECTIONS on or before the ~~5th~~ 4th day of October, 2012; or (2) leaving a copy of said order and papers at the general office of the said SUFFOLK COUNTY BOARD OF ELECTIONS at 700 Yaphank Avenue, Yaphank, New York, or by delivering same to any one of the Commissioners of Elections of the said SUFFOLK COUNTY BOARD OF ELECTIONS, on or before the 5th day of October, 2012;

That service of a copy of this order, together with a copy of the papers upon which it is granted, on the Respondent NASSAU COUNTY BOARD OF ELECTIONS be made by either (1) delivering a copy thereof to a recognized overnight delivery carrier and/or the United States Postal Service, waiving the requirement of a signature, addressed to the Respondent NASSAU COUNTY BOARD OF ELECTIONS at 240 Old Country Road, Mineola, New York on or before the ~~4th~~ 3rd day of October, 2012 to be delivered to said NASSAU COUNTY BOARD OF ELECTIONS on or before the ~~5th~~ 4th day of October, 2012; or (2) leaving a copy of said order and papers at the general office of the said NASSAU COUNTY BOARD OF ELECTIONS at 240

Old Country Road, Mineola, New York, or by delivering same to any one of the Commissioners of Elections of the said NASSAU COUNTY BOARD OF ELECTIONS, on or before the 5th day of October, 2012;

That service of a copy of this order, together with a copy of the papers upon which it is granted, on the Respondent ERIE COUNTY BOARD OF ELECTIONS be made by either (1) delivering a copy thereof to a recognized overnight delivery carrier and/or the United States Postal Service, waiving the requirement of a signature, addressed to the Respondent ERIE COUNTY BOARD OF ELECTIONS at 134 West Eagle Street, Buffalo, New York on or before the 3rd day of October, 2012 to be delivered to the respondent ERIE COUNTY BOARD OF ELECTIONS on or before the 4th day of October 2012; or (2) leaving a copy of said order and papers at the general office of the said ERIE COUNTY BOARD OF ELECTIONS at 134 West Eagle Street, Buffalo, New York, or by delivering same to any one of the Commissioners of Elections of the said ERIE COUNTY BOARD OF ELECTIONS, on or before the 5th day of October, 2012;

That service of a copy of this Order to Show Cause, together with a copy of the papers upon which it is granted, upon the Respondent GREGORY L. DAVIS, be made by either (1) delivering a copy thereof to a recognized overnight delivery carrier and/or the United States Postal Service, waiving the requirement of a signature, to 830 Lebrun Road, Amhurst, New York 14206, the address set forth in his Designating Petition filed with the Erie County Board of Elections on or before the 3rd day of October, 2012; or (2) by delivering the same to Respondent GREGORY L. DAVIS personally pursuant to CPLR 308 (1) on or before the 4th day of October, 2010; or (3) by affixing the same to the outer or inner door of the residence of Respondent GREGORY L. DAVIS at 830 Lebrun Road, Amhurst, New York 14206, the address set forth in

his Designating Petition filed with the ERIE COUNTY BOARD OF ELECTIONS, and by enclosing the same in a securely sealed and duly prepaid wrapper, addressed to Respondent GREGORY L. DAVIS at 830 Lebrun Road, Amhurst, New York 14206, the address set forth in his Designating Petition filed with the Erie County Board of Elections and by depositing same in a Post Office Branch regularly maintained by the United States Postal Service on or before the 4th day of October, 2012; or (4) by delivering the same to a person of suitable age and discretion at 830 Lebrun Road, Amhurst, New York 14206, the address of Respondent GREGORY L. DAVIS as set forth in his Designating Petition filed with the Erie County Board of Elections and by enclosing the same in a securely sealed and duly prepaid wrapper, addressed to Respondent GREGORY L. DAVIS at the address set forth in his Designating Petition filed with the Erie County Board of Elections and by depositing same in a Post Office Branch regularly maintained by the United States Postal Service on or before the 3th day of October, 2012; and that such service shall be deemed due, timely, good and sufficient service thereof, and such service shall constitute sufficient notice hereof.

ORDERED, all objections relating to the aforementioned Certificate of Nomination and Designating Petition not previously served and filed with the Board of Elections shall be served upon the opposing party and filed with the Clerk of the Part on or before the return date herein; failure to serve and file same shall be deemed a waiver and further proof shall be precluded.

ENTER

HON.
HON. JAMES P. QUINN
JUSTICE OF THE SUPREME COURT OF THE STATE OF NEW YORK

Dated: October 3, 2012

GRANTED
OCT 03 2012
JUDITH A. PASCALE
Clerk of Suffolk County

58-000-00003: Masterv

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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In the Matter of the Application of ROBERT MASTER, As Chair of the WORKING FAMILIES PARTY OF NEW YORK STATE

INDEX No. _____

Petitioner-Party Chair,

VERIFIED PETITION

- against -

GREGORY L. DAVIS

Respondent-Candidate

- and -

THE NEW YORK STATE BOARD OF ELECTIONS, THE SUFFOLK COUNTY BOARD OF ELECTIONS, THE NASSAU COUNTY BOARD OF ELECTIONS, and THE ERIE COUNTY BOARD OF ELECTIONS,

Respondents.

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TO THE SUPREME COURT OF THE STATE OF NEW YORK:

The Petitioner, by and through their attorney Alexander Rabb, respectfully shows to this Court and alleges:

1. That at all times hereinafter mentioned, Party Chair Petitioner Robert Master, was and still is chair of State Committee and State Executive Committee of the Working Families Party of New York State, which maintains its offices at 2 Nevins Street, 3rd Floor, Brooklyn, New York 11217 in the County of Kings, City and State of New York.

2. That at all of the times hereinafter mentioned, the Respondent NEW YORK STATE BOARD OF ELECTIONS was and is charged with the responsibility of the supervision of the conduct of official elections held in the State of New York, including the duties of receiving and filing Certificates of Nomination for the 10th Judicial District, State of New York,

and certifying the ballots for the public offices of Member of the New York State Senate and Justice of the Supreme Court in the State of New York.

3. That at all of the times hereinafter mentioned, the Respondent ERIE COUNTY BOARD OF ELECTIONS was and is charged with the responsibility of the supervision of the conduct of official elections held in the County of Erie, including the duties of receiving and filing designating, nominating and opportunity to ballot petitions for public office and party position in political subdivisions located entirely within the County of Erie, the review and determination of objections and specifications of objections to such petitions, and the preparation of official General Election ballots for use in the County of Erie.

4. That at all of the times hereinafter mentioned, the Respondent SUFFOLK COUNTY BOARD OF ELECTIONS was and is charged with the responsibility of the supervision of the conduct of official elections held in the County of Suffolk, including the preparation of official General Election ballots for use in the County of Suffolk.

5. That at all of the times hereinafter mentioned, the Respondent NASSAU COUNTY BOARD OF ELECTIONS was and is charged with the responsibility of the supervision of the conduct of official elections held in the County of Nassau, including the preparation of official General Election ballots for use in the County of Nassau.

6. That on or about July 12, 2012, there was filed with the ERIE COUNTY BOARD OF ELECTIONS a Designating Petition designating Respondent GREGORY L. DAVIS as a candidate of the Working Families Party for the public office of Member of the New York State Senate from the 60th Senatorial District.

7. That on or about July 16, 2012, there was filed on behalf of Respondent GREGORY L. DAVIS with the ERIE COUNTY BOARD OF ELECTIONS a Certificate of

Acceptance signed by Respondent GREGORY L. DAVIS and accepting said designation and consenting to be a candidate of the Working Families Party for said public office.

8. That on or about September 25, 2012, there was duly filed with the NEW YORK STATE BOARD OF ELECTIONS a Certificate of Nomination duly adopted by the Working Families Party Judicial Convention for the 10th Judicial District, nominating Respondent GREGORY L. DAVIS for the public office of Justice of the Supreme Court, 10th Judicial District, State of New York.

9. On information and belief, that on or about September 26, 2012, the NEW YORK STATE BOARD OF ELECTIONS notified Respondent GREGORY L. DAVIS by mail of his nomination for Justice of the Supreme Court and the requirements for declining such nomination.

10. That pursuant to §§ 6-120 and 6-146 of the Election Law, a nominee for the public office of Justice of the Supreme Court need not affirmatively accept such nomination in order to perfect such nomination.

11. That pursuant to § 6-146 of the Election Law, the last day upon which a nominee for the public office of Justice of the Supreme Court could decline such nomination was September 28, 2012.

12. On information and belief, that Respondent GREGORY L. DAVIS did not file a Certificate of Declination declining the Working Families Party nomination for the public office of Justice of the Supreme Court, 10th Judicial District.

13. That pursuant to § 6-146(5) of the Election Law, having been nominated for the public office of Member of the New York State Senate from the 60th Senatorial District and having subsequently been nominated the last day upon which Respondent GREGORY L.

DAVIS could decline the nomination for the public office of Member of the New York State Senate from the 60th Senatorial District was October 1, 2012.

14. On information and belief, that Respondent GREGORY L. DAVIS did not file a Certificate of Declination declining the Working Families Party nomination for the public office of Member of the New York State Senate from the 60th Senatorial District was September 28, 2012, and that Respondent GREGORY L. DAVIS is now a candidate for both of the aforesaid public offices.

15. That the public offices of Member of the New York State Senate and Justice of the Supreme Court are incompatible with each other, and that serving as both would create a conflict which would necessitate the resignation of one such position (see New York State Constitution Article III, Section 7). The New York State Constitution provides that:

> [i]f a member of the legislature be elected to congress, or appointed to any office, civil or military, under the government of the United States, the state of New York, or under any city government . . .his or her acceptance thereof shall vacate his or her seat in the legislature, providing, however, that a member of the legislature may be appointed commissioner of deeds or to any office in which he or she shall receive no compensation

NY Const Art III, § 7. The Court of Appeals has interpreted this prohibition "very broad[ly] and include any placing in civil office or public trust, pertaining to the exercise of the powers and authority of the civil government of the State" (People v Tremaine, 252 NY 27, 40 [1929]; Gigliotti v Berg, 40 AD2d 182, 182-184 [1972]). This provision keeps the branches of government separated and ensures that the potential for an ethical breach by the legislator is avoided.

16. That the New York State Rules of Judicial Conduct prohibit a candidate for elective judicial office from "engaging in any partisan political activity" or "participating in any

political campaign for any office" other than the candidate's own election to judicial office. §§ Rules of the Chief Administrative Judge, 100.5(A)(1)(c),(d). This provision keeps the branches of government separated and ensures the independence of the judiciary.

17. That "[i]t is well settled that one may not simultaneously run for two public offices where one would be precluded from holding both offices at the same time," and that such a prohibition "allows electors to know that when the choice is made and legally declared the object for which the election was held has been accomplished, and that there is no legal obstruction in the way to prevent their will." Laurence v. Spelman, 264 A.D.2d 455, 456, 694 N.Y.S.2d 143, 144 (2d Dept. 1999)(internal quotations and citations omitted); *see also* Hensley v. Efman, 297 A.D.2d 354, 746 N.Y.S.2d 407 (2d Dept. 2002).

18. That Party Chair Petitioner Robert Master is a party committee chair pursuant to Section 16-102 of the Election Law and also possess standing to institute this proceeding.

19. That Respondents NEW YORK STATE BOARD OF ELECTIONS have or will soon certify the ballots for the General Election to be held November 6, 2012.

20. That Respondents SUFFOLK COUNTY BOARD OF ELECTIONS and NASSAU COUNTY BOARD OF ELECTIONS will print ballots based on that certification that include candidates for the public office of Justice of the Supreme Court, 10th Judicial District.

21. That Respondents ERIE COUNTY BOARD OF ELECTIONS will print ballots based on that certification that include candidates for the public office of Member of the New York State Senate from the 60th Senatorial District.

22. That Petitioner request leave and reserve the right to submit upon the argument and hearing of this application, evidence by way of affidavits, testimony, and documentary proof to substantiate and support this application.

23. That Petitioner request Respondent NEW YORK STATE BOARD OF ELECTIONS to produce upon the argument and hearing of this application the aforesaid Certificate of Nomination and any certificates accepting or declining the nomination made thereby, if any, and any written notice to the candidate regarding that nomination.

24. That Petitioner request Respondent Erie County Board of Elections to produce upon the argument and hearing of this application the aforesaid Designating Petition and any certificates accepting or declining the designation made thereby, if any.

25. Other than this proceeding, your Petitioner(s) have no adequate, sufficient, or effective remedy at law.

26. In order to effect immediate personal service of the annexed Order to Show Cause and this Petition on the Respondent BOARDS OF ELECTIONS, the Commissioners of whom are required at various times to be on official business at places other than their official business offices, it is respectfully requested that this Court direct that such service may be made upon any Commissioner of Elections, or at the General Offices (headquarters) of the said BOARDS OF ELECTIONS.

27. The Petitioner(s) request leave to effect service of a copy of the Order to Show Cause, together with a copy of the papers on which it is granted, upon Respondent GREGORY L. DAVIS other than by personal service because:

(a) This proceeding must be instituted on or before October 5th, 2012;

(b) Petitioner(s) may, despite diligent effort, be unable to effect personal service upon such Respondent(s) on or before such date;

(c) Petitioner(s) are advised by their attorney that in election matters governed by Article 16 of the Election Law, orders granting alternative methods of service are routinely granted by this Court in accordance with statute and prior decisional case law.

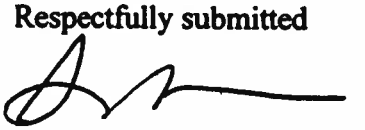
28. In order that issues with respect to the allegations of this Petition be joined expeditiously, it is respectfully requested that the Court fix the time within which the respective Answers of the Respondent(s) shall be served upon your Petitioner' attorney.

29. No previous application by Petitioner has been made for the relief sought herein or for the Order to Show Cause hereunto the annexed, or for any similar relief.

WHEREFORE, your Petitioner respectfully prays for the relief requested in the annexed Order to Show Cause and for a final Order granting the relief prayed for in the said Order to Show Cause, and for such other and further relief as to this Court may seem just and proper in the premises.

DATED: New York, New York
October 2, 2012

Respectfully submitted



Levy Ratner, P.C.

By Alexander Rabb

Attorneys for Petitioner
80 8th Avenue, 8th Floor
New York, New York 10011
(212) 627-8100
(212) 627-8182 (fax)

VERIFICATION

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

ALEXANDER RABB, an attorney duly admitted to the Courts of the State of New York, affirms the following as true under penalty of perjury:

That he is an associate of the law firm of LEVY RATNER, PC, the attorneys for the petitioner in the within proceeding; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge, except as to matters stated to be alleged upon information and belief, and as to those matters, he believes it to be true.

Deponent further says that the grounds for his belief as to all matters therein stated upon information and belief are statements made to him by the petitioner or their representatives and/or papers and documents received by deponent from the petitioner or their representatives and which are now in his possession.

Deponent further says that the reason why this verification is made by deponent and not by the petitioner is that the petitioner are do not reside within the County of New York, where deponent has his office.

ALEXANDER RABB

Dated October 2, 2012
New York, NY

58-000-00003: Masterv