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

April 24, 2013

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:	*Sampson, James M. v. Dennis Ward, Ralph Mohr, Erie County Board of Elections and Ralph R. Hernandez*
Document Received:	Order to Show Cause
Name of Claimant:	James M. Sampson 548 Richmond Avenue Buffalo, New York 14222
Claimant's attorney:	Emilio Colaiacovo, Esq. Bouvier Partnership, LLP 350 Main Street, Suite 1400 Buffalo, New York 14202

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

MMP:dld
Enclosure

At an Special Term of the Supreme Court held in and for the County of Erie, State of New York on the 23rd day of April, 2013.

PRESENT: HON: HON. JOHN L. MICHALSKI, J.S.C.

FILED
ACTIONS & PROCEEDINGS
APR 23 2013
ERIE COUNTY CLERK'S OFFICE

STATE OF NEW YORK
SUPREME COURT : ERIE COUNTY

JAMES M. SAMPSON

Petitioner

ORDER TO SHOW CAUSE

Index No: I-2013-001246

This paper received at the Erie County Board of Election's Office
From Emilio Coliacovo
On the 23 day of APRIL 2013
At 12:19 am/pm
Beth Bochnechio / Ralph Mohr.
Signature of BOE Employee

vs

DENNIS WARD and RALPH MOHR,
As Commissioners of and Constituting the
ERIE COUNTY BOARD OF ELECTIONS; and

ERIE COUNTY BOARD OF ELECTIONS; and

RALPH R. HERNANDEZ

Respondents.

PAID
CHECK____ CASH____

APR 23 2013

ERIE COUNTY CLERK'S OFFICE

For an Order, pursuant to the Election Law, declaring invalid and striking out the petitions purporting to designate RALPH R. HERNANDEZ as a candidate for Member of the Board of Education, City of Buffalo, County of Erie, West Subdistrict and an Order restraining the Erie County Board of Elections from placing the name of RALPH R. HERNANDEZ upon official ballots to be used at the election to be held on May 7, 2013.

ERIE CO BOE APR 23 '13 PM12:15

Upon the annexed verified Petition of JAMES M. SAMPSON, verified on the 23rd date of April, 2013, it is ORDERED that:

✓ mmp 4/23/13

(1) The Respondents above named show cause before one of the Justices of this Court at a Special Term thereof to be held at Part 18, Erie County Hall, Buffalo, New York, on the 30 day of April, 2013, at 2pm o'clock in the ~~fore~~afternoon of that date, or soon thereafter as counsel may be heard, why an Order should not be made invalidating and declaring null and void the Designating Petitions filed on behalf of RALPH R. HERNANDEZ, purporting to designate him as a candidate for, respectively, a candidate for Member of the Board of Education, City of Buffalo, County of Erie, West Subdistrict, and an Order enjoining and restraining the ERIE COUNTY BOARD OF ELECTIONS from printing and placing, upon official ballots to be used at the election to be held on May 7, 2013, the name of the aforementioned candidate, and for such other and further relief as the Court deems just and proper; and

(2) The Board of Election of the County of Erie, New York, shall produce on a return date of this Order to Show Cause and on the argument thereof, the official permanent personal registration poll record signature copy for the City of Buffalo, New York; the alleged Nominating Petitions of Ralph R. Hernandez; all objections and specifications thereto; certificates of declination; substitutions; and all reports and papers pertaining thereto for the examination of the Court.

(3) Let Service of this Order and the papers upon which it was granted to be deemed due, timely and sufficient if made as follows:

(a) Upon the Board of Elections of the County of Erie, New York, on or before the 23rd day of April, 2013, by delivering to and leaving a true copy of this Order and the annexed papers with one of the Commissioners, Chief Clerk, Deputy Commissioner or appropriate individual, or such other person as may be designated by the Board of to receive service.

(b) Upon the Respondent, Ralph R. Hernandez, on or before the 23rd day of April, 2013, by delivering to and leaving with him personally a copy of this Order and of the annexed papers or by such substituted service as authorized by CLPR §308 at 127 Livingston Street, Buffalo, New York 14213.

DATED: April 23, 2013
BUFFALO, NEW YORK

HON. JOHN L. MICHALSKI, J.S.C.

Hon. J.S.C.

ENTER:

GRANTED
APR 23 2013
LAURA L. ROGERS
COURT CLERK

STATE OF NEW YORK
SUPREME COURT : ERIE COUNTY

JAMES M. SAMPSON

Petitioner

VERIFIED PETITION

Index No: _____

vs

DENNIS WARD and RALPH MOHR,
As Commissioners of and Constituting the
ERIE COUNTY BOARD OF ELECTIONS; and

ERIE COUNTY BOARD OF ELECTIONS; and

RALPH R. HERNANDEZ

Respondents.

For an Order, pursuant to the Election Law, declaring invalid and striking out the petitions purporting to designate RALPH R. HERNANDEZ as a candidate for Member of the Board of Education, City of Buffalo, County of Erie, West Subdistrict and an Order restraining the Erie County Board of Elections from placing the name of RALPH R. HERNANDEZ upon official ballots to be used at the election to be held on May 7, 2013.

The Petition of JAMES M. SAMPSON, respectfully shows:

1. At all times hereinafter mentioned, the Petitioner was and is a resident of the City of Buffalo, State of New York. The Petitioner is a candidate aggrieved for the office of Member of the City of Buffalo Board of

Education and resides within the West Subdistrict. The Petitioner was also the objector who duly filed objections against the Respondent, RALPH R. HERNANDEZ.

2. At all times hereinafter mentioned, the Respondent, RALPH R. HERNANDEZ, was and is a resident of the City of Buffalo, State of New York. Further, he is a candidate for the office of Member of the City of Buffalo Board of Education and purportedly resides within the West Subdistrict.

3. At all times hereinafter mentioned, RALPH MOHR and DENNIS WARD are the Commissioners of the Respondent, ERIE COUNTY BOARD OF ELECTIONS and, as such, were and are charged with the duty of receiving and filing petitions for the nomination of candidates for elections in all subdistricts and political units situated in the County of Erie, State of New York, including, but not limited to, the City of Buffalo School Board.

4. Petitioner is an enrolled and duly registered voter within the City of Buffalo. He resides within the West Subdistrict on 548 Richmond Avenue, Buffalo, New York. Further, the Petitioner is a candidate aggrieved for the office of City of Buffalo Board of Education, West Subdistrict. The Petitioner was also the objector who duly filed objections against the Respondent, RALPH R. HERNANDEZ.

5. Respondent, RALPH R. HERNANDEZ, is an enrolled and duly registered voter within the City of Buffalo. He resides within the West Subdistrict on 127 Livingston Street, Buffalo, New York. Further, Respondent is a candidate for the office of City of Buffalo Board of Education, West Subdistrict.
6. On or about April 19, 2013, the Respondent, RALPH R. HERNANDEZ filed designating petitions for the aforementioned office with the Erie County Board of Elections.
7. Within the time and in the manner provided by law, petitioner filed written objections with the Respondent, Erie County Board of Elections, and filed and served the written specifications of the objections to the Respondent, RALPH R. HERNANDEZ. Copies of said Specific Objections are annexed hereto and made a part hereof as "EXHIBIT A".
8. Petitioner has standing to bring this proceeding, pursuant to Section 16-102 of the Election Law of the State of New York.
9. Respondent, Erie County Board of Elections, has not yet ruled upon the objections and specifications filed and served on the Petitioner. Further, a hearing has not yet been scheduled, but is expected to be shortly. As of today, the last day to bring this proceeding, the Respondent, Erie County Board of Election, has not yet made its determination on the merits of the objections and specifications. Moreover, some of the questions raised by the objections and specifications, in addition to matters exclusively within

the jurisdiction of this Court, should be heard and determined by this Court.

10. Upon information and belief, the aforementioned Designating Petitions of the Respondent, RALPH R. HERNANDEZ, do not conform to the provisions of the Election Law of the State of New York, nor to other applicable rules or laws promulgated thereunder and the aforementioned petition is otherwise invalid in that:

    a. Many of the signatures are forgeries;

    b. Many of the names were not signed by registered voters;

    c. Many of the signers of said petition were not qualified voters of the political unit in which they claim to reside;

    d. The statement of a subscribing witness is not substantially in the form provided in the Election Law;

    e. Some of those names signed on the petition do not appear to have registered in the election district wherein they claim to reside;

    f. Many of the signers did not personally appear before the subscribing witness, did not subscribe the name in the presence of such witness; and did not declare to such witness that they had signed the same and that the statements contained therein were true;

    g. The signers were not acknowledged by the witness;

    h. The signatures were unidentifiable;

i. The signatures were hand printed;

j. The signatures were of voters who were not registered at the address set forth in the petition;

k. That the Petition is generally permeated with forged signatures and forged initials of the signers of the petition;

l. The Petition contains less than 500 valid signatures.

11. With respect to the allegations of fraud, the entire petitions are fraught with fraud. In particular, fraudulent signatures are found on the following lines and pages of the Petitioners Designating Petition:

Page 7	lines 6 and 8
Page 9	lines 8, 15, 19, and 22
Page 14	lines 12
Page 19	lines 2, 16, 17, and 18
Page 23	lines 25
Page 24	lines 19, 20
Page 39	lines 7
Page 42	lines 1-3, 5-10, 12-17, 19-24
Page 45	lines 1-4, 6, 8, 9
Page 46	lines 1-9, 12, 15, 17, 18, 25
Page 47	lines 1-9
Page 48	lines 23
Page 49	lines 1, 8,

Page 50 lines 6

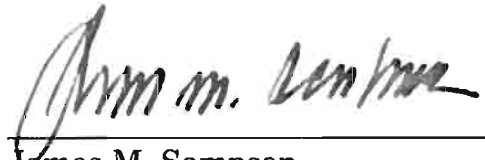
12. The aforementioned fraud consists of signatures that do not match, even objectively, to the signature card on file with the Erie County Board of Elections that is associated with each voter's registration.
13. As a result of the invalid signatures, the Designating Petitions filed on behalf of the Respondent, RALPH R. HERNANDEZ, fails to qualify in that there are less than 500 valid signatures.
14. As a result, the Designating Petitions of RALPH R. HERNANDEZ should be rejected, and the Petitions themselves declared null and void, and otherwise invalidated. Further, the Respondent, Erie County Board of Elections, should be restrained and enjoined from printing and placing the name of RALPH R. HERNANDEZ, on the ballot for the May 7, 2013 City of Buffalo School Board Elections for the West Subdistrict.
15. Petitioner requests leave, and reserves the right to submit upon the argument and hearing of this application, additional evidence by way of affidavits, oral testimony, and documentary evidence to substantiate the objections and fraud heretofore and herein set forth.
16. Petitioner requests that the Respondent, Erie County Board of Elections, produce upon the argument and hearing in this application all the books, records, registration cards, objections, papers provided for by the within Order to Show Cause.

17. Petitioner has no adequate remedy other than that applied for herein.

18. No prior application has been made for the relief herein sought.

WHEREFORE, Petitioner respectfully request that this Court grant the relief sought forth in the annexed Order to Show Cause, together with such other and further relief as the Court deems just and proper.

DATED: April 23, 2013
Buffalo, New York



James M. Sampson

VERIFICATION

STATE OF NEW YORK }
} s.s.
COUNTY OF ERIE }

JAMES M. SAMPSON, being duly sworn, deposes and says that the deponent is the Petitioner in the within action; that deponent has read the foregoing and knows the contents thereof; that the same is true to deponents own knowledge, except as to matters stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

James M. Sampson

Sworn to before me this 23rd
day of April, 2013.

Notary Public

EMILIO COLAIACOVO
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 4-22-14