

At a Special Term of the Supreme Court held in and for the County of Erie, at the Courthouse in the City of Buffalo, New York on the 17<sup>th</sup> day of December, 2010.

HON. JOSEPH B. GLOWNIA J.S.C.  
PRESIDING JUSTICE

R+F

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

**Mark C. Poloncarz,**  
As County Comptroller of Erie County, New York  
Plaintiff,

vs.

**Christopher C. Collins,**  
As County Executive of Erie County New York,

ORDER TO SHOW CAUSE

**Erie County Legislature,**  
and

INDEX NO. 2010 / 012513

**County of Erie**  
Defendants

Upon the Affirmation of **Erie County Comptroller, Mark Poloncarz**, dated the 17<sup>th</sup> day of December 2010, and attached exhibits and the Verified Complaint sworn to the 17<sup>th</sup> day of December, 2010,

**AFTER DUE DELIBERATION** having been had, it is hereby,

**ORDERED, that Defendants;**

**SHOW CAUSE BEFORE THIS COURT**, at a Special Term, of Supreme Court, to be held in and for the County of Erie, State of New York, in the Courthouse in the City of Buffalo, Part 6, at (92 Franklin St., Buffalo, NY 14202 ~~725 / 50 Delaware Ave., Buffalo, NY 14202~~) on the 22nd day of December, 2010 at 10:30 o'clock in the a.m / ~~p.m.~~ of that day, or as soon thereafter as counsel can be heard,

PAID NO FEE  
12/17/2010 / 13:10:32  
ERIE COUNTY CLERK  
RCPT # 996450

**Why an ORDER should not be made and entered** herein, pursuant to CPLR Rule 2214, Section 3001 and Sections 6301, 6311, and Rule 6312, and the Erie County Charter, as amended in 2006, and effective January 1, 2007, **granting the following relief against the Defendants:**

- A. An Order declaring that as to any Erie County positions within a department overseen by an independently elected official, that the independently elected official has the sole power and control over said positions and the Defendant County Executive does not have the power, by fiscal means or any other means, to delete or abolish or un-fund positions within such departments since such power is vested solely with the Erie County Legislature and not the County Executive under the Erie County Charter as amended in 2006, and effective January 1, 2007; and
- B. An Order declaring that the County Executive's "recommendations," contained in his fiscal 2011 Tentative Budget regarding positions and/or funding of positions within departments overseen by independently elected officials, have and had no force and effect on positions or funding or appropriations for such positions and are and were "recommendations" only.
- C. An Order declaring that the budgets of the departments overseen by independently elected officials and each item therein were the "budgets" before the Erie County Legislature for review and action at its annual budget meeting and without affirmative Legislature action by majority vote to "cut" or "decrease" or "eliminate" funding of a position in the budget of departments overseen by independently elected officials, those budgets of the independently elected officials are and were "deemed to have been adopted without any further action by the county executive" pursuant to Erie County Charter Section 2608(b); and

- D. An Order declaring that the Erie County Legislature's purported action, at its annual budget meeting, to "restore" 15 disputed positions in the Comptroller's office, was unnecessary under the Erie County Charter because all of the Erie County Comptroller's positions, fully-funded, were before the Legislature and the Erie County Legislature took no action to reduce the number of positions and took no action to reduce funding for any positions in the Comptroller's Office; and
- E. An Order declaring that the December 13, 2010 County Executive's purported "veto" of alleged action by the Erie County Legislature regarding 15 positions in the Comptroller's Office is a "nullity" and without force or effect; and
- F. An Order enjoining the County Executive, the County of Erie, and any employee acting on behalf of the County Executive or the County, from taking any action to terminate any of the 15 employees whose positions the County Executive had recommended be "abolished" or "unfunded" and enjoining the County Executive and the County of Erie from taking any adverse action against said employees including, but not limited to, failing to timely pay the salaries and benefits of said employees during the pendency of this action; and
- G. An Order enjoining the effective date or any lay-off notices issued to any employee of the Erie County Comptroller's office, including, but not limited to, the employees who occupy any of the 15 disputed positions that the County Executive seeks to eliminate and enjoining the County of Erie from interrupting or delaying the payment of any wages, salary or benefits to any employees in the Comptroller's Office during the pendency of this action; and
- H. An Order maintaining continuing jurisdiction over the proceeding to ensure timely and proper compliance by all parties; and

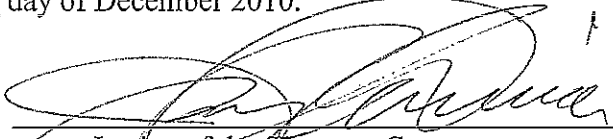
I. An Order Granting such other and further relief as the Court may deem just and proper;  
and, it is further,

**SERVICE OF PROCESS:**

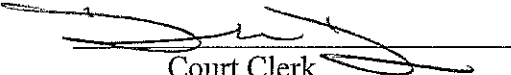
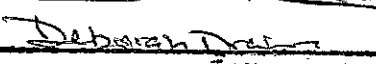
**ORDERED**, that service, of a conformed copy of this Order to Show Cause, Affirmation and Exhibits attached thereto in support of Plaintiff's motion, and the Summons and Verified Complaint, upon the Defendants shall be made on or before the 21<sup>st</sup> day of December, 2010; and it is

**ORDERED**, that service, of a conformed copy of this Order to Show Cause, Affirmation and Exhibits attached thereto in support of Plaintiff's motion, and the Summons and Verified Complaint, upon the Defendants Christopher C. Collins, as County Executive of Erie County New York, Erie County Legislature, and County of Erie shall be deemed sufficient by personal delivery to the acting Erie County Attorney or to an Assistant or Deputy County Attorney at the offices of the Erie County Attorney or by delivery in any other manner authorized by CPLR Section 308; and it is further,

**ORDERED** that the Defendants shall file their verified answer to the complaint, and affidavits, affirmations or other responding papers to the Court and to Plaintiff's counsel, no later than the 5:00 ~~a.m.~~ / p.m. the 17<sup>th</sup> day of December 2010.

  
\_\_\_\_\_  
Justice of the Supreme Court  
County of Erie

GRANTED: December 17, 2010

  
\_\_\_\_\_  
Court Clerk  
**GRANTED**  
12/17/10  
  
\_\_\_\_\_  
Deborah Dain  
COURT CLERK

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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**Mark C. Poloncarz,**  
As County Comptroller of Erie County, New York  
Plaintiff,

vs.

**Christopher C. Collins,**  
As County Executive of Erie County New York,

**AFFIRMATION  
In Support of Motion  
For  
Preliminary Injunction**

**Erie County Legislature,**  
and

INDEX NO. 2010 / 012.513

**County of Erie**  
Defendants

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STATE OF NEW YORK)

COUNTY OF ERIE ) ss:

Mark C. Poloncarz, an attorney duly admitted to the practice of law before the Courts of the State of New York, and the Plaintiff in the above action, under penalties of perjury, affirms, upon information and belief, as follows:

**Relief Requested**

1. I am the duly-elected Erie County Comptroller and am one of four independently elected officials (clerk, comptroller, district attorney and sheriff) who preside over, manage, and prepare annual fiscal budgets for a department within the government of Erie County.
2. I seek a preliminary injunction against the Defendants to preserve and continue the 2010 staffing levels of the Erie County Comptroller's Office as the 2011 staffing levels during the pendency of this action because my 2011 proposed fiscal budget, as contained in the Erie County Executive's Tentative Budget, continued those staffing levels for all of 2011 and the Erie County

Legislature took no action, by motion supported by a majority vote, to “cut” the positions and took no action to “decrease” or “eliminate” funding for the positions in the Comptroller’s office.

3. I further seek an order enjoining the effective date of any lay off notices that have been or may be issued to any employees of the Erie County Comptroller’s office who occupy positions which the County Executive intend to abolish or not fund as of January 1, 2011, including particularly, those positions described below and enjoining any other adverse action against those employees during the pendency of this action..

#### **The Disputed Position at Issue in this Action**

4. Fifteen positions [referred to hereafter as the “15 disputed positions”] and funding for those 15 disputed positions in the Erie County Comptrollers office were identified by the County Executive as positions regarding which he made a recommendation to the Erie County Legislature to abolish and not fund for the 2011 fiscal year but the Erie County Legislature took no action to abolish and took no action to decrease the funding for those 15 disputed positions.
5. As the independently elected official overseeing the Comptroller’s Office, I have the sole power to manage my department within the parameters of the 2010 adopted budget. I did not relinquish that power by failing to timely submit my 2011 fiscal budget.
6. As required by Section 2602 of the Erie County Charter, as amended and effective on January 1, 2007, I timely filed the Comptroller’s Office budget for fiscal year 2011 with the

budget director on or before August 15, 2010 and I continued 2010 staffing levels for 2011 which included the 15 disputed positions.

7. My Comptroller's Office proposed 2011 fiscal budget appears at pages 24 through 30 of the County Executive's tentative budget.
8. A true copy of the Comptroller's 2011 fiscal budget is attached hereto as Exhibit A.
9. The Comptroller's 2011 fiscal budget Summary of Personal Services reports the Comptroller's budget under the heading of "Positions" and the "Salary" and "No. [number] and monetary amount designated "Dept. Req." [department request] and is attached as part of Exhibit A at page numbered 28.
10. In the County Executive's Tentative 2011 Budget, the columns to the right of the "Dept. Req." and designated as "No." [number] "Exec. Rec" [Executive Recommendation] and "Remarks" were supplied by and filled in by the Defendant County Executive.
11. The County Executive recommends and purports to "delete" certain positions in the Office of the Comptroller by proposing to abolish each of the 15 disputed positions and fund them at zero dollars for each position:

<b>Position</b>	<b>2010 No.</b>	<b>2010 Salary</b>	<b>2011 No.</b>	<b>2011 "Dept. Req."</b>	<b>County Executive Rec. No.</b>	<b>County Executive Rec. [Dollars]</b>
Associate Deputy Comptroller	1	\$83,356	1	\$83,356	0	\$0

Position	2010 No.	2010 Salary	2011 No.	2011 "Dept. Req."	County Executive Rec. No.	County Executive Rec. [Dollars]
Secretary, Comptroller	1	\$32,604	1	\$32,604	0	\$0
Administrative Clerk	1	\$35,922	1	\$37,611	0	\$0
Senior Auditor	1	\$72,817	1	\$72,817	0	\$0
Staff Auditor	3	\$170,035	3	\$172,660	0	\$0
Accountant Auditor	2	\$81,665	2	\$87,239	0	\$0
Assistant Director of Revenue Recovery	1	\$56,252	1	\$56,252	0	\$0
Supervising Accountant	1	\$57,554	1	\$57,554	0	\$0
Junior Tax Accountant	1	\$41,964	1	\$44,165	0	\$0
Senior Cashier	2	\$87,760	2	\$87,760	0	\$0
Cashier	1	\$28,502	1	\$31,705	0	\$0

12. Each of the above fifteen (15) Comptroller positions is a position already in existence and within the parameters of the 2010 adopted county budget and was included in the my proposed 2011 budget submission.

13. Defendant County Executive Collins, under the Charter as amended in 2006, has no control over the above 15 disputed positions or the other Comptroller positions listed in Exhibit A.

14. Defendant County Executive Collins, under the Charter as amended in 2006, is not authorized to abolish the 15 disputed positions or to de-fund, to un-fund or to refuse to fund those positions.

#### Prior Proceeding

15. I previously commenced an Article 78 proceeding, which also sought declaratory relief, relating to the 15 disputed positions and relief on a completely separate issue relating to approximately 38 accountants in departments other than the Erie County Comptroller's Office [hereafter the "prior proceeding"].



16. The prior proceeding was entitled "*In the Matter of the Application of Mark C. Poloncarz, Individually and as Comptroller of Erie County New York v. Christopher C. Collins, As County Executive of Erie County New York, et al*" and filed under Erie County Index Number 2010/011796. A true copy of the transcript of the proceedings before the Honorable Gerald J. Whalen on November 17, 2010 is attached hereto as Exhibit B. A true copy of the DECISION and ORDER of the Honorable Justice Gerald J. Whalen is attached hereto as Exhibit C.

17. In the prior proceeding, the Court correctly identified the core declaratory issue to be that the tentative budget submitted by the County Executive to the Legislature included all of the 15 disputed positions with funding. Justice Whalen said:

The Comptroller seeks a declaratory judgment from this court directing that the tentative budget submitted by the County Executive to the Legislature be deemed to include the fifteen specific positions in the Comptroller's office. If it is determined the positions are considered a part of the tentative budget the Legislature will not be required to add them. Apparently, this may impact the County Executive's authority to strike those positions later in the budget process. It may also obviate the need for a two-thirds vote by the Legislature to restore the Comptroller positions should the County Executive be authorized to eliminate the positions later in the budget process." [Justice Whalen's DECISION and ORDER pp. 3-4, Exhibit C attached]

18. In addition, in the prior proceeding, the Erie County Executive conceded that the 15 disputed positions were in the tentative budget and further that the County Executive's zeroing out of the positions and zeroing out of the dollars for the 15 disputed positions in the Comptroller's Office were mere recommendations only and had no force an effect [unless, of course, the Legislature voted to adopt one or more of the County Executive's recommendations

supported by majority of the Legislators]. The Court summarized the County Executive's position as follows:

The County Executive claims that the tentative budget does include the fifteen positions in the Comptroller's office and it is simply a recommendation not to fund the positions. The Charter allows the County Executive to make recommendations to not fund these positions. There appears to be agreement between the County Executive and Comptroller that the tentative budget submitted to the Legislature includes the fifteen positions. The failure to include funding for those positions is simply a recommendation by the County Executive." [Justice Whalen's DECISION and ORDER p. 4, Exhibit C attached]

19. Justice Whalen's DECISION and ORDER was granted November 19, 2010 and filed in the Erie County Clerk's Office on November 24, 2010. Justice Whalen dismissed the proceeding as to the 15 disputed positions in the Comptroller's office upon the ground that the controversy was pre-mature before action by the Erie County Legislature. The Legislature had not met and voted on the tentative budget. Justice Whalen dismissed the remaining portion of the prior proceeding as to the transfer of a separate group of 38 accounting positions from other departments to the Comptroller's office upon the Court's interpretation of the Erie County Charter on the merits. A true copy of Justice Whalen's DECISION and ORDER in the prior proceeding is attached hereto as Exhibit C.

20. I have filed and served a Notice of Appeal of the DECISION and ORDER in the prior action only as to Justice Whalen's DECISION and ORDER relating to the 38 accounting positions and not as to the Court's decision that the dispute regarding the 15 disputed positions in the Comptroller's offices was not then ripe for judicial determination.

## Erie County Legislature's Budget Action

21. Pursuant to the Erie County Charter Section 2608, the Legislature, after public hearings, conducted its annual budget meeting and, by motion supported by a majority vote, adopted the Erie County budget with certain decreases and certain other increases on or about November 30, 2010.
22. The Erie County Legislature took no action to cut positions and took no action to decrease funding or to eliminate funding for the 15 disputed positions in the Erie County Comptroller's office or to otherwise reduce the staffing and funding levels below the 2010 levels and the level proposed by me as Erie County Comptroller when I submitted my proposed 2011 fiscal budget as reported in Exhibit A annexed hereto.
23. Since the Legislature took no action to cut positions or funding for the 15 disputed positions in the Comptroller's office regarding which Defendant County Executive Collins had made recommendations for cuts and zero funding, the tentative budget as to the Erie County Comptroller's Office, as proposed by me in the Comptroller's 2011 fiscal budget and reported in Exhibit A, is "*deemed to have been adopted without any further action by the county executive*" and all of my 2011 proposed staffing and funding levels are final and in effect.
24. Nevertheless, the Erie County Legislature, by motion supported by a majority vote in favor, did pass the Erie County Budget with the 15 disputed positions identified as action to "Restore" those positions.

25. Attached hereto as Exhibit D is a true copy of the record of the action taken by the Erie County Legislature and referenced as “COMM. 17E-1 (2010)” “AS AMENDED: NOVEMBER 30, 2010.”

26. The purported action by the Legislature regarding the 15 disputed positions are listed on Exhibit D at page 4 and is among approximately 154 actions taken by the Legislature but such action was wholly unnecessary since only the Legislature, not the County Executive, could cut or decrease funding for a position or positions in a department overseen by an independently elected official.

#### **County Executive Veto**

27. On December 13, 2010, the Defendant Erie County Executive Christopher Collins vetoed each and every one of the 154 actions taken by the Legislature.

28. As to the 15 disputed positions in the Comptroller’s office, the County Executive’s veto is a nullity and meaningless since the Legislature did not cut any of the 15 disputed positions and did not decrease the funding for the 15 disputed positions.

#### **Erie County Legislature’s Override Meeting**

29. On December 14, 2010, the Erie County Legislature convened pursuant to Erie County Charter Section 2608(C) and voted to override the County Executive’s vetoes. Although a majority voted in favor of overriding the County Executive’s vetoes, they did not do so by a two-thirds majority of all members and the override failed.

30. As to the 15 disputed positions in the Comptroller's office, the Erie County Legislature's attempted override of the County Executive's veto, is meaningless since the Legislature had not cut any of the 15 disputed positions and did not decrease the funding for the 15 disputed positions and, by that date of December 14, 2010, my Comptroller's budget which included those 15 disputed positions had already been "*deemed adopted without any further action by the county executive.*"

**Plaintiff's Claims have Merit and a Substantial Likelihood of Success**

31. Prior to the passage of the 2006 amendments to the Charter, which amendments were approved via local law by the Legislature, County Executive and the public by a referendum and became effective on January 1, 2007, Erie County was governed primarily by two branches of government: the executive and legislature.

32. As a result of the 2004-2005 "Red-Green" budget crisis and the failure of the prior county executive's office to provide accurate information to the public, the Charter was amended to significantly decrease the powers of the County Executive in relation to proposing tentative annual budgets and controlling adopted budgets and significantly increase the powers of the Legislature and Comptroller's Office.

33. The 2006 Charter amendments split the governing power of Erie County into three branches: the executive, legislature and comptroller's office.

34. The 2006 Charter amendments stripped the county executive's office of the power to manage the budgets of independently elected officials (clerk, comptroller, district attorney and sheriff) and granted exclusive control over "departments overseen by the independently elected officials" to those independently elected officials "who shall have the power to manage their departments within the parameters of the adopted budget." [Charter, Article 26, Section 2607(b)].

35. Under the 2006 Charter amendments at Section 2602, the independently elected officials keep control of the development of their next year's fiscal budget of their respective departments and can only lose that control by failing to timely submit their budget estimates, in which case, the Director of Budget and Management is charged, under Section 2602(f) to step in to prepare the budget estimate. For the 2011 fiscal year, my budget was timely submitted and a true copy of my budget, as part of the County Executive's tentative budget, is attached as Exhibit A.

36. Pursuant to the 2006 Charter amendments, at Section 2607(b), the County Executive does not have the authority to control the hiring and firing or the allocation of staffing of the independently elected officials, and as such, has no power or authority to dismantle the mandated audit and accounting functions of the Comptroller, a coordinate arm of the Erie County government.

37. Pursuant to the 2006 Charter amendments, the Legislature, not the County Executive had the power over various other important fiscal decisions necessary to operate County government:

- A. Under Charter Section 2607(a), the Legislature, not the County Executive, has the power to address deficits, if any, which may arise within a department overseen by an independently elected official during any fiscal year.
  - B. Under Charter Section 2607(b), the Legislature, not the County Executive, has the power to impose quotas, allotments or other cost control measures on the independently elected officials if the need arises due to a budget deficit.
  - C. Under Charter Section 2608, the Legislature, not the County Executive, has the power to adopt the county budget and to make deletions or additions thereto.
38. The scope of the comptroller's oversight duties include that "the comptroller *shall*" oversee the "*general and operating fund revenues*" of the county [Charter Article 19, Section 1902] [emphasis added].
39. The comptroller is required to "*Conduct financial and compliance audits of the records and accounts of all officers and employees charged with any duty relating to county funds or funds for which the county is responsible in conformity with generally accepted auditing standards as prescribed by the American institute of certified public accountants and the comptroller general of the United States, and submit such audit reports to the legislature.*" [Charter, Article 19, Section 1902(e)]. [emphasis added].
40. "The comptroller is required to "*Conduct management and performance audits of county administrative units and county funded programs in conformity with generally accepted auditing standards as prescribed by the American institute of certified public accountants and the comptroller general of the United States and submit such audit reports to the legislature*" [Charter, Article 19, Section 1902(g)] [emphasis added]; and; due to the important nature of

these audits, the budget director is then mandated to “*report to the county executive on the implementation of such audit recommendations... .*” [Charter, Article 3, Section 305].

41. There is no higher public purpose than the oversight and audit of public funds to prevent theft, misappropriation, improper diversion and waste of county taxpayer money.

### **Irreparable Harm**

42. The check and balance system incorporated in the Erie County Charter, as amended in 2006 effective January 1, 2007 with the Executive, Legislature and Comptroller as coordinate arms of the government, will immediately be undone and disrupted if the County Executive’s interpretation of the Charter is permitted to be implemented on January 1, 2011 with the termination of funding for the 15 disputed positions.

43. The public purse cannot be protected and the fundamental checks and balances within the Erie County government cannot be maintained if the Comptroller’s “audit” functions are abolished or other staffing is eliminated so that accounting functions and audit functions cannot be routinely conducted beginning January 1, 2011.

44. The County Executive intends to lay off all of the Comptroller’s employees who occupy the 15 disputed positions and lay off notices have been or will be issued to them before the Court has an opportunity to hear Plaintiff on this motion.



45. The only enterprise or activity which will be benefited by or facilitated by or encouraged by the Defendant County Executive's recommendation to abolish the audit function of the Erie County Comptroller will be criminal enterprise and other unlawful activity that will result in misappropriation or improper diversion of county taxpayer money by persons not yet known who would be able to commit such egregious actions without fear of audit and discovery.

46. The public harm caused by the risk of fraud, theft and abuse regarding a billion and a half dollar annual budget because those taxpayer dollars will not be subject to oversight by a staff of auditors under the control of an independently elected Comptroller is too grave to allow to occur even for one day.

#### **Time is of the Essence**

47. The time line for adoption of the 2011 fiscal budget for the County of Erie was completed on December 14, 2010 with the Legislature's failed attempt to override the County Executive's vetoes.

48. Upon information and belief, pursuant to the County Executive's directions and his stated position regarding the 15 disputed positions in the Comptroller's office, the employees who occupy the 15 disputed positions will have received lay off notices, effective January 1, 2011, unless this Court enjoins the effective date of such notices and/or determines that they are null and void.

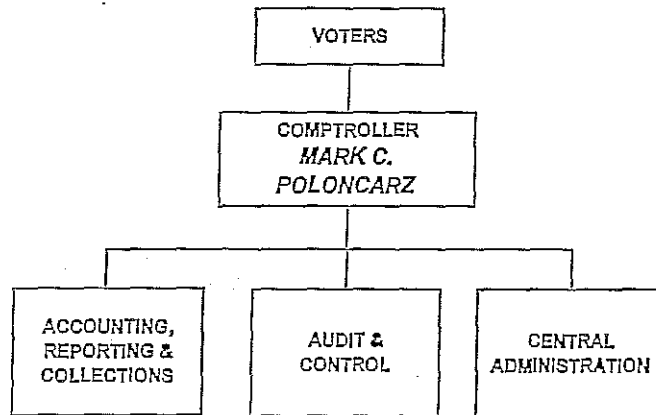
49. Except as to the proceeding heretofore conducted before the Honorable Justice Gerald J. Whalen, referred to above, no previous application has been made to this, or any other, Court for the relief sought herein.

**WHEREFORE**, Plaintiff requests that this Court grant Plaintiff's motion for a preliminary injunction and for relief contained in the attached Order to Show Cause and his complaint, together with such other and further relief to which the Court may deem just and proper.

Dated: December 17, 2010  
Buffalo, New York

  
Mark C. Poloncarz, Plaintiff

# COMPTROLLER



COMPTROLLER	2009 Actual	2010 Adopted	2010 Adjusted	2011 Proposed
Personal Services	2,971,380	3,395,784	3,395,784	2,497,177
Other	<u>623,296</u>	<u>426,880</u>	<u>426,882</u>	<u>356,246</u>
Total Appropriation	3,594,676	3,822,664	3,822,666	2,853,423
Revenue	<u>123,812</u>	<u>85,500</u>	<u>85,500</u>	<u>85,500</u>
County Share	3,470,864	3,737,164	3,737,166	2,767,923

## DESCRIPTION

The Erie County Comptroller is the independently elected official responsible under Article 19 of the Erie County Charter and Article 12 of the Administrative Code for performing the accounting, auditing, financial reporting and fiscal functions of the County. The Comptroller is the Chief Accounting and Reporting Officer, Chief Auditing Officer and Chief Fiscal Officer.

Accounting, Reporting and Collections: Under the direction of the Comptroller, the County's official accounting records are maintained and analyzed for propriety, consistency and compliance with legal requirements, policies, procedures and Generally Accepted Accounting Principles (GAAP) applicable to governmental entities. Reports are provided to the Legislature, County Executive and taxpayers regarding the fiscal condition of the County and the adequacy of and compliance with the County's system of internal accounting controls.

As the Chief Accounting and Reporting Officer, the Comptroller's responsibilities include maintaining the County's computerized general ledger, records of appropriations, encumbrances, expenditures and revenues, and preparing interim quarterly financial statements, annual financial statements and the Countywide Cost Allocation Plan. The Erie County Charter requires that the Comptroller prescribe accounting procedures to departments in accordance with GAAP.

Auditing: Financial audits performed by the Division of Audit and Control are designed to ensure that assets are safeguarded against unauthorized use or disposition; that transactions are executed in accordance with general or specific authorization of the charter, code, relevant statutes or legislative resolution; and that all transactions are properly recorded in accordance with GAAP. Management and performance audits are intended to measure the efficiency of operations within departments. Special audits are conducted at the request of the County Executive and the Legislature. The Division of Audit and Control also conducts special in-depth reviews on a range of issues and functions in County government.

Fiscal: As the Chief Fiscal Officer, the Comptroller oversees the fiscal affairs of the County. Primary functions include the receipt and investment of County funds, disbursement of funds, structure and sale of notes to meet the short-term cash needs of the County, and structure and sale of bonds for approved capital projects. The Comptroller also provides investment services to several County officials who are responsible for maintaining their own bank accounts. The Comptroller serves as the financial advisor and chief accountant to the Buffalo and Erie County Public Library, which is a separate legal corporation. The Comptroller is responsible for payment of all debt service and maintaining an agency fund and, as part of such responsibilities, serves as the banker for state, county, and city courts.

## MISSION STATEMENT

The Comptroller's Office serves as the independent fiscal watchdog, providing fiscal leadership, ensuring fiscal integrity, timely and accurate reporting, and maintaining the public trust and accountability through audits and reviews.

## ACCOUNTING, REPORTING AND COLLECTIONS

### Program and Service Objectives

- Develop and promulgate accounting policies, procedures and guidelines to all County departments in accordance with GAAP.
- Review, process and validate departmental accounting transactions for accruals, encumbrances, expenditures and revenues, and ensure transactions are in compliance with established policies and procedures and within authorized appropriations.
- Ensure reconciliation of the County's bank accounts.
- Develop and provide timely, accurate and informative accounting reports to the County Executive, Legislature and departments for managerial use and control.
- Prepare the County's quarterly interim and annual financial statements, the annual financial report to the New York State Comptroller, and other financial reports as required, and to assist the County's consultant in preparation of the countywide Cost Allocation Plan.
- Optimize the income from investments.

- The primary objectives of the investment program are as follows in order of importance: compliance with legal requirements; safeguarding of principal; ensuring sufficient liquidity; and obtaining a reasonable rate of return.
- Make timely and accurate disbursement of all funds consistent with the best interests of the County and vendor requirements.
- Ensure the availability of cash resources as needed for the day-to-day operation of County government and the completion of authorized capital projects.
- Develop effective plans, policies and procedures for the borrowing and investment of funds in compliance with New York State Law.
- Working with the County's financial advisor and bond counsel, prepare all official statements for bond and note sales.
- Evaluate various financing alternatives available to the County and structure financing plans to meet County needs.
- Identify and investigate questionable transactions uncovered in the pre-audit review of payment requests submitted by departments.
- Timely deposit all revenues received to improve the County's cash flow.
- Monitor the collection of County property taxes during the period in which collection and recording is a mandated responsibility of local municipal tax receivers.
- Properly process court orders requiring adjustments and corrections to outstanding property tax amounts.

### Top Priorities 2011

- Work with Erie County Fiscal Stability Authority, the Administration and the Legislature to continue to improve the County's financial condition and credit rating.
- Work with the Administration and other departments and offices to efficiently operate and reduce the cost of County government.
- Continue to reduce the number of checks reconciled as the County employs more direct deposits and debit cards for payments to vendors and support collection clients.
- Continue the e-payables initiative and develop new banking processes, interfaces and relationships.
- Further streamline the depositing of County receipts through automation.
- Further deploy the countywide electronic payments process for the acceptance of payments by credit or debit card and electronic funds transfers or automated clearinghouse transactions.
- Support the continued movement of offline financial, accounting and related processes and transactions to SAP.
- Working with departments, particularly the Department of Probation and Department of Real Property Tax Services, to maximize amounts receivable and due to the County.

### Key Performance Indicators

	Actual 2009	Estimated 2010	Estimated 2011
Number of investments completed annually	2,220	2,100	2,100
Number of debt service payments	64	64	64
ECFSA Set-Asides for Debt Service	0	7	12
Number of cash flow schedules/analyses	65	65	65
Court and bail orders managed	925	925	925
Number of vendor, Probation and Senior Services PSA checks issued, including e-payments	45,113	53,941	54,700
Trust checks issued	3,034	3,000	3,000
Transactions validated	263,376	275,000	275,000
Number of checks reconciled	361,734	364,000	364,000

Electronic Benefits Issuance System payments reconciled	851,537	850,000	850,000
Number of month-end and year-end reports produced and distributed	3,900	3,900	3,900
Number of court orders for property tax adjustments reviewed and processed	463	450	450
Schedules/reports prepared for the County's independent auditors	56/20	56/20	56/20

### Outcome Measures

	Actual 2009	Estimated 2010	Estimated 2011
Years in which GFOA's Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association of the United States and Canada is earned	20	21	22
Consecutive years with non-qualified opinion on the annual financial statements	23	24	25

## AUDIT AND CONTROL

### Objectives

- Conduct financial and compliance audits of records and accounts and management and performance audits of County departments, in accordance with the provisions of the Erie County Charter, Administrative Code and Generally Accepted Government Auditing Standards (GAGAS), and submit audit and other reports to the Legislature and County Executive.
- Conduct special in-depth reviews of a range of issues and functions in County government.
- Investigate and if necessary, act on all reports concerning possible waste, fraud or abuse in County government.

### Top Priorities 2011

- Continue to increase the number, scope and range of audits and special in-depth reviews of County government.
- Continue to rapidly respond to and investigate all "whistleblower"-type complaints and allegations concerning possible waste, fraud or abuse in County government.
- Through the new whistleblower reporting mechanisms, encourage the reporting of potential waste, fraud or abuse and develop new response processes to address such reporting.
- Pursue the recruitment of new career auditor positions and personnel to buttress the Division of Audit and Control and ensure audit continuity.

### Key Performance Indicators

	Actual 2009	Estimated 2010	Estimated 2011
Number of financial and compliance audits and/or management reviews performed and reports issued	10	10	12
Number of special reviews undertaken in conjunction with Comptroller administration	5	7	7
Number of whistleblower complaints investigated	86	100	100

2011 Budget Estimate - Summary of Personal Services

Fund Center: 11200		Current Year 2010		Ensuing Year 2011				Remarks			
Comptroller's Office		Job Group	No:	Salary	No:	Dept-Req	No:		Exec-Rec	No:	Lag-Adopted
Cost Center	1120010	Administration - Comptroller									
Full-time	Positions										
1	COUNTY COMPTROLLER	50	1	\$80,615	1	\$80,615	1	\$80,615			
2	DEPUTY COMPTROLLER	18	1	\$89,856	1	\$84,856	1	\$84,856			
3	ASSOCIATE DEPUTY COMPTROLLER	18	1	\$83,356	1	\$83,356	0	\$0			Delete
4	SECRETARY, COMPTROLLER	08	1	\$32,604	1	\$32,604	0	\$0			Delete
Total:		4	4	\$266,531	4	\$291,471	2	\$175,511			
Cost Center	1120020	Accounting									
Full-time	Positions										
1	DIRECTOR OF ACCOUNTING SERVICES	18	1	\$93,627	1	\$93,627	1	\$93,627			
2	DIRECTOR OF GRANT ACCOUNTING SERVICES	18	1	\$93,627	1	\$93,627	1	\$93,627			
3	CHIEF OF ACCOUNTING SERVICES	15	1	\$84,558	1	\$84,558	1	\$84,558			
4	SENIOR ACCOUNTING ANALYST	13	3	\$218,451	3	\$218,451	3	\$218,451			
5	ACCOUNTING ANALYST	11	1	\$81,452	1	\$81,452	1	\$81,452			
6	SYSTEMS ACCOUNTANT	11	3	\$170,650	3	\$172,650	3	\$172,650			
7	SUPV DATA PR CT CL	10	1	\$55,952	1	\$55,952	1	\$55,952			
8	ADMINISTRATIVE CLERK	07	1	\$35,922	1	\$37,811	0	\$0			Delete
9	CHIEF ACCOUNT CLERK	07	1	\$41,128	1	\$41,128	1	\$41,128			
10	JUNIOR ACCOUNTANT	07	1	\$30,588	1	\$34,228	1	\$34,228			
11	PRINCIPAL CLERK	05	1	\$39,855	1	\$39,855	1	\$39,855			
12	DATA PROCESSING CONTROL CLERK	05	2	\$72,114	2	\$72,114	2	\$72,114			
13	ACCOUNT CLERK-TYPIST	04	3	\$87,480	3	\$90,118	3	\$90,118			
14	SENIOR CLERK-TYPIST	04	1	\$25,083	1	\$27,737	1	\$27,737			
Total:		21	21	\$1,109,848	21	\$1,123,116	20	\$1,085,505			
Cost Center	1120030	Audit and Control									
Full-time	Positions										
1	DEPUTY COMPTROLLER	17	1	\$91,465	1	\$91,465	1	\$91,465			
2	SENIOR ACCOUNTING ANALYST	13	1	\$72,817	1	\$72,817	1	\$72,817			
3	SENIOR AUDITOR	13	1	\$72,817	1	\$72,817	0	\$0			Delete
4	STAFF AUDITOR	11	3	\$170,035	3	\$172,660	0	\$0			Delete
5	ACCOUNTANT AUDITOR	09	2	\$81,665	2	\$87,239	0	\$0			Delete
Total:		8	8	\$498,999	8	\$498,999	2	\$164,263			
Cost Center	1120040	Revenue Recovery									
Full-time	Positions										
1	ASSISTANT DIRECTOR OF REVENUE RECOVERY	11	1	\$56,252	1	\$58,252	0	\$0			Delete
2	BILLING COLLECTIONS SPECIALIST	10	1	\$52,333	1	\$52,333	1	\$52,333			
3	SENIOR BILLING ACCOUNT CLERK	08	1	\$38,916	1	\$38,899	1	\$38,899			
Total:		3	3	\$145,501	3	\$147,481	2	\$91,229			
Cost Center	1120050	Collections									
Full-time	Positions										
1	SUPERVISING ACCOUNTANT	11	1	\$57,554	1	\$57,554	0	\$0			Delete
2	JUNIOR TAX ACCOUNTANT	09	1	\$41,964	1	\$44,165	0	\$0			Delete
3	SENIOR CASHIER	07	2	\$87,760	2	\$87,760	0	\$0			Delete
4	CASHIER	06	1	\$28,502	1	\$31,705	0	\$0			Delete
5	DATA PROCESSING CONTROL CLERK	05	1	\$33,517	1	\$33,517	1	\$33,517			
Total:		6	6	\$249,297	6	\$254,701	1	\$33,517			

2011 Budget Estimate - Summary of Personal Services

Fund Center: 11200

Comptroller's Office

Job Group	Current Year 2010			Ensuing Year 2011			Leg-Adopted	Remarks
	No:	Salary	No:	Dept-Req	No:	Exec-Rec		

Fund Center Summary Totals

Full-time:	42	\$2,279,977	42	\$2,313,768	27	\$1,550,045		
Fund Center Totals:	42	\$2,279,977	42	\$2,313,768	27	\$1,550,045		



COUNTY OF ERIE

Fund: 110  
 Department: Comptroller  
 Fund Center: 11200

Account Appropriations	2009 Actuals	2010 Legislative Adopted	2010 Adjusted Budget	2011 Department Request	2011 Executive Recommendation	2011 Legislative Adopted
500000 Full Time - Salaries	2,172,682	2,290,718	2,290,718	2,313,768	1,580,045	-
500330 Holiday Worked	2,397	1,800	1,800	1,800	1,800	-
500350 Other Employee Payments	2,300	2,500	2,500	2,500	2,500	-
501000 Overtime	975	500	500	-	-	-
502000 Fringe Benefits	793,026	1,100,266	1,100,266	1,032,568	942,832	-
505000 Office Supplies	8,468	12,000	12,000	5,000	5,000	-
506200 Maintenance & Repair	761	800	800	-	-	-
510100 Out Of Area Travel	-	1,000	1,000	-	-	-
510200 Training And Education	9,093	7,000	7,000	6,000	6,000	-
516020 Professional Svcs Contracts & Fees	412,767	415,850	415,850	360,900	360,900	-
516030 Maintenance Contracts	1,750	3,300	3,300	1,500	1,500	-
530000 Other Expenses	172	500	500	300	300	-
910400 ID Purchasing Services	-	5,037	5,037	-	4,737	-
910700 ID Fleet Services	-	154	155	-	1,221	-
911200 ID Comptroller's Office Services	(122,675)	(113,200)	(113,200)	(113,860)	(113,860)	-
912215 ID DEW Mail Svcs	-	3,500	3,500	-	3,395	-
980000 ID DISS Services	312,960	90,899	90,899	79,704	92,052	-
<b>Total Appropriations</b>	<b>3,594,576</b>	<b>3,822,664</b>	<b>3,822,666</b>	<b>3,585,140</b>	<b>2,453,423</b>	<b>-</b>

Account Revenues	2009 Actuals	2010 Legislative Adopted	2010 Adjusted Budget	2011 Department Request	2011 Executive Recommendation	2011 Legislative Adopted
415050 Treasurer Fees	76,550	50,000	50,000	50,000	50,000	-
422050 E-Payable Rebates	-	-	-	55,000	-	-
466000 Miscellaneous Receipts	45,566	35,000	35,000	35,000	35,000	-
466010 NSF Check Fees	696	500	500	500	500	-
<b>Total Revenues</b>	<b>123,812</b>	<b>85,500</b>	<b>85,500</b>	<b>140,500</b>	<b>85,500</b>	<b>-</b>

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STATE OF NEW YORK

SUPREME COURT : COUNTY OF ERIE : PART 22

MARK C. POLONCARZ,

Petitioner,

-against-

Index No. 2010/011796

CHRISTOPHER C. COLLINS, Individually and as County Executive of Erie County New York; THE ERIE COUNTY LEGISLATURE and DANIEL M. KOZUB, TIMOTHY M. KENNEDY, BARBARA MILLER-WILLIAMS, RAYMOND W. WALTER, DINO J. FUDOLI, MARIA R. WHYTE, BETTY JEAN GRANT, THOMAS J. MAZUR, CHRISTINA W. BOVE, KEVIN R. HARDWICK, LYNN M. MARINELLI, LYNNE M. DIXON, JOHN J. MILLS, THOMAS A. LOUGHRAN, and EDWARD A. RATH, III, Individually and as the duly elected Legislators constituting the ERIE COUNTY LEGISLATURE; GREGORY C. GACH, Erie County Director of Budget and Management; THE COUNTY OF ERIE,

Respondents.

25 Delaware Avenue  
Buffalo, New York  
November 17, 2010  
MOTIONS

B E F O R E:

HONORABLE GERALD J. WHALEN  
Supreme Court Justice

A P P E A R A N C E S:

JEROME D. SCHAD, ESQ.  
Appearing for the Plaintiff

RICHARD T. SULLIVAN, ESQ.  
and H. TODD BULLARD, ESQ.  
and SVETLAND K. IVY, ESQ.  
Appearing for County Executive, Erie County,  
Erie County Budget Director

JENNIFER PERSICO, ESQ.  
Appearing for Erie Co. Legislature,  
Democratic Majority of Erie Co. Legislature

RONALD P. BENNETT, ESQ.  
Six Republicans of Erie Co. Legislature

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2010 NOV 24 PM 2:53  
ERIE COUNTY  
CLERK'S OFFICE

Exhibit B

1 THE CLERK: Poloncarz versus Chris Collins et  
2 al. Your appearances, please, for the record.

3 MR. SCHAD: Jerome Schad representing Petitioner  
4 Poloncarz.

5 MR. BULLARD: Todd Bullard, representing  
6 Respondents County of Erie, Christopher Collins, and  
7 Gregory G. Gach.

8 THE CLERK: Richard Sullivan of Harris Beach,  
9 Your Honor. I'm here on behalf of the county executive,  
10 the county, and the budget director, along with  
11 Mr. Bullard.

12 MS. IVY: Svetlana Ivy. I'm here with Harris  
13 Beach as well.

14 THE COURT: Very good. Counsel.

15 MS. PERSICO: Jennifer Persico on behalf of the  
16 Erie County Legislature and the Democratic Majority of the  
17 Erie County Legislature.

18 MR. BENNETT: Ronald Bennett here on behalf of  
19 the six Republicans of the Erie County Legislature.

20 THE COURT: Welcome to all. We have an  
21 application, I believe, Mr. Schad, on behalf of your  
22 petitioner. My question initially I think is that we have  
23 some objections to the service issue and unless somebody  
24 disagrees I think we maybe ought to address that issue to  
25 see if we have everybody properly before the Court with

1 jurisdiction.

2 MR. SCHAD: Sure, Your Honor. I can address  
3 that if I may. I filed the affidavits of service. I  
4 think I supplied the copies to the Court on the filing.  
5 What we have are appearances by the County Executive, by  
6 the County, by the budget director, by the Legislature,  
7 and by the Majority members with no objection on any  
8 service issues. We have an objection by the Minority with  
9 regard to the minority, and while I'm the drafter of the  
10 language of the order to show cause, trying to be precise  
11 in a tight time frame, the description of service is that  
12 the service would occur on the fourth floor of the Erie  
13 County -- the hall, because I understood that's right  
14 where the offices were. I went there and found one  
15 person, it turns out to be the deputy clerk of the  
16 Legislature in the absence of the clerk. With a five  
17 o'clock deadline approaching, not seeing anyone else,  
18 asked if he was in fact authorized to accept service of  
19 all the legislators; he indicated that he was, and for the  
20 Legislature. I delivered to him 15 copies for the  
21 individuals, one for the Legislature, to duplicate on the  
22 legislative side what I'd already done with the county  
23 attorney and asked him did he have authority to accept  
24 service for the Legislature. He confirmed he did. Those  
25 affidavits are filed, I think the service is sufficient

1 under these circumstances.

2 THE COURT: Thank you, Mr. Schad. Counsel,  
3 anybody wants to be heard -- Mr. Bennett, specifically you  
4 on the service issue?

5 MR. BENNETT: Yes, Your Honor. Very simply;  
6 under 308 if you're going to serve not directly,  
7 personally, then you have to serve by mail. There's no  
8 affidavit that I know of, and none of our legislators  
9 received any of the pleadings by mail; so it's our  
10 objection that the process was not complete on the  
11 legislators.

12 THE COURT: Mr. Bennett, would you agree,  
13 though, that the Court has the authority to remedy the  
14 situation by directing service in a manner, in such a way  
15 that we can get service on your clients in this  
16 proceeding, and I guess what I'm inclined to do, if you  
17 think that your clients are somehow prejudiced by this,  
18 I'm inclined to give the petitioners an opportunity to  
19 serve in some fashion that allows you and your clients to  
20 have proper notice and reschedule this matter to be back  
21 before the Court. Is that something that you're asking me  
22 to do or are you in a position to waive your service at  
23 this time?

24 MR. BENNETT: Yes. The show cause -- the show  
25 cause references CPLR 308 which we all know is the process

1 for serving. That's what was done. What we object to is  
2 the individual in the pleadings. They are named as  
3 individuals. They are members of the Legislature and they  
4 appear as legislators. I don't have a problem with that.  
5 What I do have -- because they weren't served  
6 individually -- I object to them being named as  
7 individuals. They're just legislators doing their job.  
8 They have immunity of the Legislature in doing their job,  
9 and why they were named as individuals in a lawsuit which  
10 may result in damages and whatever is unacceptable.

11 THE COURT: So do I understand -- maybe I'm  
12 misunderstanding, so forgive me if I am -- are you saying  
13 that were the petitioner in a position to agree on the  
14 record to strike reference to them in the pleadings in  
15 their individual capacity and leave them in as their  
16 legislative capacity that you would waive your objection  
17 to any service issues?

18 MR. BENNETT: That is correct, Your Honor.

19 THE COURT: Okay. Mr. Schad, what do you think  
20 about that?

21 MR. SCHAD: On behalf of petitioner we would so  
22 agree to waive that as individually. It was not meant in  
23 any way to hold them accountable personally. It was  
24 solely because of their legislative role in this process.

25 THE COURT: Ms. Persico, you rise.

1 MS. PERSICO: I do, Your Honor, only to join in  
2 Mr. Bennett's argument with regard to the individual  
3 Democratic members of the Legislature. Obviously if  
4 petitioner is willing to agree they're not there in an  
5 individual capacity we would waive any objection.

6 THE COURT: Mr. Schad?

7 MR. SCHAD: Your Honor, I take the same  
8 position. I'm happy to waive that.

9 THE COURT: Very good. Do we now have an agreed  
10 amendment to the caption and the petition and the papers  
11 resulting in the legislators not being named individually  
12 in this, counsel?

13 MR. BULLARD: Well, Your Honor, if Mr. Schad  
14 would entertain, Chris Collins is also named individually  
15 as well. If he can be named only in his capacity as the  
16 county executive discharging his duties as required under  
17 the Charter and Code we would consent to any amendment as  
18 well.

19 THE COURT: Mr. Schad?

20 MR. SCHAD: That is acceptable. This is an  
21 issue of governmental function we're dealing with.

22 THE COURT: We have an agreement on the record  
23 that the papers before me have now been amended. Counsel?

24 MR. SULLIVAN: Yes, Your Honor.

25 MR. BENNETT: Yes, Your Honor.

1 MR. BULLARD: Yes, Your Honor.

2 THE COURT: Very good. We also have an  
3 agrément that any service objections raised in the papers  
4 submitted to the Court are hereby waived?

5 MR. BENNETT: Yes, Your Honor.

6 MR. SULLIVAN: Yes, Your Honor.

7 MR. BULLARD: Yes, Your Honor.

8 THE COURT: Any other procedural objection  
9 before the Court that the Court has not addressed that I  
10 should address before we get into the substance of the  
11 argument? None being heard; Mr. Schad, you want to be  
12 heard on the application?

13 MR. SCHAD: Yes, if I may. First, I have served  
14 on opposing counsel, supplied you this morning, an  
15 answering affirmation relating to the motions that  
16 addresses both the ripe-ness issue that is raised in their  
17 motion papers and the issue regarding the accountants.  
18 I'll address those as I go through the argument. I've  
19 also supplied the Court with a copy of the Charter, and  
20 opposing counsel, just for convenience. It's not the kind  
21 of document most people have on their shelf necessarily.  
22 I thought it would be of assistance to the Court and  
23 counsel.

24 THE COURT: You have provided the Court with a  
25 copy of the Charter?



1 MR. SCHAD: Yes. I handed that up this morning.

2 THE COURT: That has been handed to someone?

3 MR. SCHAD: It's got a large paper clip on it, a  
4 thick item.

5 THE COURT: It was stuck in my papers. I  
6 haven't seen it yet. I have it in front of me. Thank  
7 you.

8 MR. SCHAD: And a hard copy of my brief is  
9 there. I had sent a fax copy.

10 THE COURT: I do have that. Very good.

11 MR. SCHAD: Where we are in this particular  
12 proceeding, a couple of preliminaries I think have to be  
13 addressed. This actually is a case of first impression,  
14 and it is so because there is no judicial determination of  
15 the amendments to the Erie County Charter that became  
16 effective in 2007. All of us -- respondents and the  
17 petitioner -- are in a position of trying to find some  
18 judicial interpretation of law that would give some  
19 substance to try to understand how to interpret and read  
20 those sections. There's also, though, no dispute that the  
21 2006 amendments that became effective in 2007 -- nobody  
22 has raised this as an issue in their papers -- that it  
23 impacted three things; it stripped power from the county  
24 executive -- particularly regarding the budget -- turned  
25 over power in the budget process to the

1 independently-elected officials. They control the  
2 proposed budgets going into the Legislature and they only  
3 lose control if they default under 2602 I think -- or  
4 2606-2 of the Charter. Let me get the specific section  
5 for you. It's 2602-f. So that unless they've defaulted  
6 in that, they have control of that process going in  
7 through this tentative budget process. There's also no  
8 dispute that in the withdrawal of power from the county  
9 executive the power of the Legislature was increased; and  
10 in that regard there is no one here raising a dispute or  
11 challenging the proposition that the Legislature, not the  
12 county executive, makes the budget cut decisions, makes  
13 the budget additions decisions, and it's our position  
14 that's exactly where we should be; that is, the  
15 Legislature will decide, not the county executive, with  
16 regard to the proposed budget of an independently-elected  
17 official -- in this case the county comptroller. There's  
18 also no dispute that what happened in the 2006 amendments  
19 is that there was a fundamental structural change imported  
20 into the County Charter where you have an executive, a  
21 legislative, and a comptrollive branch where the  
22 comptrollive branch was directed and given huge control  
23 over the oversight, auditing, and accounting function of  
24 the County of Erie. That was, for those who were here  
25 during the red-and-green budget days, was clearly to reign

1 in uncontrolled executive power and to make the budget  
2 process clear so the people knew where the money was, so  
3 that we wouldn't be surprised with a monstrous financial  
4 crisis on our hands. None of those things are challenged  
5 in the papers of -- any of the motion papers you have in  
6 front of you, and that's fundamental, and that is in fact  
7 why I'm asking the Court to look at the Gallagher v. Regan  
8 case. That is the only case I could find that dealt with  
9 the structural concept of government polity; that when the  
10 government is organized as we have here -- a county  
11 Charter, which is the alternative form of county  
12 government in the state, if the county so elects, when you  
13 do that -- in the Gallagher case what happened was very  
14 much similar to what happened here; one part of the  
15 government decided that the other branch wasn't going to  
16 get its way and they were going to use the budget to  
17 maneuver, to eliminate something that the structured  
18 government called for. In the Gallagher case it called  
19 for five charter-created positions that the Legislature  
20 tried to eliminate simply by defunding it. The parallel  
21 to what the county executive is trying to do here is  
22 dramatic and clear; that is precisely the structural  
23 argument; and there the Court of Appeals had to deal with  
24 this in a chartered situation -- Erie County Charter at  
25 the time when the county executive had enormous power --

1 and the Court said there's issues of government polity  
2 that required equivalent action to undo what was there.  
3 So what's an, equivalent to? In that case they were  
4 saying if you want to remove five positions that are  
5 charter-based you have to have the equivalent of a local  
6 law to undo it. What we're saying here is in 2007 the  
7 structure of Erie government changed and you cannot undo  
8 the structure which now has the county comptroller with a  
9 huge amount of mandatory oversight power. You can't  
10 dismantle that through a budgetary maneuver. It's  
11 equivalent to trying to get rid of the five  
12 charter-created positions. Now, fundamental to that  
13 process -- take a look at the individual sections of the  
14 Charter we now have. The 2607, subdivision B, is the one  
15 that's stripped away the power over management and control  
16 of the budgets in independently-elected officials within  
17 the parameters of an adopted budget. We start there with  
18 these five positions in the budget, and those positions  
19 are within the parameters of the 2010 budget. We then  
20 take the step of taking a look at the cumulative effect of  
21 what at least is being asserted in the county's position  
22 and the county executive's position, and that is that  
23 somehow we're trying to enter the discretionary realm of  
24 the county executive and the discretionary realm of the  
25 Legislature. That's not the case, and I think the papers

1 are clear on that point. What we're saying is we have to  
2 identify what action is occurring. The argument that this  
3 case isn't ripe -- and their papers say nothing happened  
4 because the Legislature hasn't acted. Well, if that's  
5 true -- and on one levels it is accurate, the budget that  
6 is before the Legislature has not changed; the  
7 independently-elected officials whose budgets were  
8 submitted timely and are part of the tentative budget  
9 under the 2006 amendments had to be clearly stated,  
10 identified; you can see them line-by-line. They are.  
11 That's Exhibit 8 of the petition. And that budget is  
12 what's before the Legislature. Even the columns in the  
13 county executive's own documents say that what he has done  
14 is make a recommendation, and past practice doesn't make  
15 this right, but that is nothing more than recommendations.  
16 Our position is they're right on, that that is not action.  
17 He has not cut a single position from the comptroller's  
18 department or any other department. That is simply the  
19 recommendation going forward, but we need a declaratory  
20 relief for clarity so that when the Legislature meets, as  
21 early as Friday, their job is to make the decision -- not  
22 the county executive -- and look at those budget lines,  
23 these 15 and any others in the budgets that are before  
24 them from the independently-elected officials; and they  
25 said, well, here the county executive has recommended

1 delete this particular item. The Legislature makes that  
2 call by a Majority -- a motion on a Majority vote to say,  
3 yes, we are going to cut that position. That's what the  
4 declaratory relief does. It doesn't say what that action  
5 will be, but it says who's going to make that, and it  
6 clarifies, under these amendments, that the county  
7 executive's recommendations are commentary and nothing  
8 more and the Legislature will make this call. Obviously,  
9 I could be very unhappy if the Legislature agrees with the  
10 county executive on every one of these, and I may have to  
11 look for some other argument regarding the structure of  
12 government, but the reality is that's where we are. We're  
13 no further. We're not behind that. That is exactly where  
14 we are, and when you take a look at the process of where  
15 we are in terms of how we got here and what argument is  
16 being raised, the entire gist of the affidavits of  
17 opposing counsel and the budget director and Mr. Collins  
18 on this -- they refer you, I think, in about six different  
19 or seven different places. They say, oh, but you got to  
20 look at the Administrative Code Section 18 or 12, and you  
21 see how much power I have. We put in our -- it's in our  
22 answering affirmation but it is also true that the Erie  
23 County Charter Revision Commission of 2006 had recommended  
24 that along with these changes to the Charter you need to  
25 update the Code. Like so many other things that ball got

1 dropped and so those out-dated, inconsistent Code  
2 provisions are sitting out there. They can't, under any  
3 principle of legislative intent, trump the Charter changes  
4 that are subsequent, and that is precisely what the county  
5 executive wants you to do. That's why they're citing the  
6 Slominski case over and over and over again, because it  
7 dealt with the Charter when the county executive had such  
8 expansive powers. They're not citing a case that talks  
9 about the language that's before this Court. The fact  
10 they cited an Albany case and some others dealing with  
11 other provisions -- and I would submit that not a single  
12 one of those cases deals, A, with the Charter language on  
13 the Erie County Charter other than Slominski, which that  
14 was pre-2006 amendment, and they are not probative or  
15 persuasive that any of these powers that the county  
16 executive claims he has actually exists. The position  
17 that we're asking for, in terms of declaratory relief,  
18 will bring sanity, but also serious consistency to the  
19 transparency of government that I think those amendments  
20 were intended to do. Because the transparency provisions  
21 were there, every department's finances are very clear.  
22 You know whose got what money, whose got what budget lines  
23 and you know where to follow it. The purpose of that,  
24 which will undo the kind of thing that was going on under  
25 the Giambra administration where the people didn't know

1 exactly where the money was coming from, where it was and  
2 where it was going. What we have here is the overlay to  
3 make this clear. What we don't have is the explicit  
4 provisions that deals with the issues here; what is the  
5 clarity and what document is before the county Legislature  
6 when it rules? And I'd submit that it is the individual  
7 budgets of those independently-elected officials with the  
8 recommendations -- but they are just the  
9 recommendations -- of the county executive, and the  
10 Legislature will vote up or down, keep them or not keep  
11 them, or if they want, say, Mr. Comptroller, you need six  
12 more auditors. The reality is the function of auditing in  
13 government cannot be performed if you don't have auditors.  
14 It's as simple as that. Let me go to the second item,  
15 which is actually not a product of the budgetary issue;  
16 that is, the issue of the 38 accountants that showed up in  
17 the county executive's budget. This shows up because when  
18 you take a look at the issue that has arisen, and you look  
19 at the argument of who is responsible -- what was Article  
20 12, it's now Article 19 -- when Article 19 was adopted  
21 with a brand new provision that the comptroller shall be  
22 responsible for the provision of all accounting services  
23 to all county departments, offices, and units as part of a  
24 centralized accounting system; when you look at that and  
25 you look at the context as it appears in the affirmation



1 served this morning, it's clear that that was a product of  
2 the need for communication by the comptroller with  
3 accountants who had the information of where the money is  
4 and where it's going. The problem in the Giambra  
5 administration was it could not be found, and so the  
6 decision was made -- and if you look at the language here,  
7 we have a -- only one attempt to make an issue of fact  
8 here, and that is the attempt in the Gach affidavit to say  
9 oh, this doesn't mean what it says, it really meant -- it  
10 was referring to computer. There's nothing in this  
11 section, Article 19, that says we're talking about  
12 computers. And if you look at that and read it: Be  
13 responsible for the provision of all accounting  
14 services -- not all accounting computers, all accounting  
15 services to all county departments, offices, and units;  
16 that is as clear as you can get that these accountants  
17 have to have a communication line and be responsible to  
18 the comptroller. It is, in fact, central to making the  
19 county comptroller's function of oversight as effective as  
20 it should be, and the fact that it's dragged on and hasn't  
21 occurred is not an excuse. The reality is that's supposed  
22 to have occurred already and we're simply saying, this is  
23 the time, let's make it happen. It doesn't change the  
24 budget up, it doesn't change it down. It simply tells us  
25 where those people are responsible and to whom they are

1 responsible for purposes of protecting the taxpayers in  
2 this county. Thank you very much.

3 THE COURT: Thank you, Mr. Schad. Who wants to  
4 go next?

5 MR. SULLIVAN: Your Honor, I'm rising briefly  
6 for a limited purpose, to introduce you to Mr. Bullard,  
7 who's going to do the primary argument on behalf of the  
8 county executive. Mr. Bullard is with our Rochester  
9 office and concentrates his practice on municipal law; but  
10 before I do that I do want to tell the Court that I was  
11 struck by something that Mr. Schad said at the outset.

12 THE COURT: Just so we can -- you're both  
13 representing the same parties, correct?

14 MR. SULLIVAN: Right.

15 THE COURT: And so do you want to pick who's  
16 going to make the arguments?

17 MR. SULLIVAN: Mr. Bullard is going to make the  
18 arguments, Your Honor.

19 THE COURT: If you start, Mr. Sullivan, you're  
20 going to finish.

21 MR. SULLIVAN: I'm not going to start.

22 THE COURT: Okay. Very good.

23 MR. SULLIVAN: I'm like a fire-horse; when the  
24 bell rings I want to come out of the firehouse.  
25 Mr. Bullard is going to handle the argument. He is a

1 partner in the Harris Beach firm in Rochester,  
2 concentrating his practice in municipal law, and he has a  
3 great deal of experience with the Erie County Legislature  
4 himself. So with that I'll turn it over to Mr. Bullard.

5 MR. BULLARD: Thank you, Mr. Sullivan. Your  
6 Honor, first and foremost, Mr. Schad is telling the Court,  
7 ignore the Administrative Code, ignore case law which has  
8 interpreted the county executive's power and make this a  
9 case of first impression not -- without putting anything  
10 in context. I think first and foremost the controversy is  
11 clearly not ripe for judicial review. He conceded that.  
12 He conceded that the county executive has the authority  
13 and the power to propose a tentative budget to the  
14 Legislature, and it's the Legislature that must act and  
15 that, in fact, the abolishment of positions is going to  
16 occur upon legislative enactment. That's concession one.  
17 That's key. In addition --

18 THE COURT: Would you agree, counsel, as  
19 Mr. Schad has argued that the county executive's budget,  
20 as submitted, makes only recommendations relative to the  
21 elimination of the positions that brings us in court?  
22 Those are just recommendations.

23 MR. BULLARD: That's precisely correct, Your  
24 Honor, and that's consistent with 2607-b, which Mr. Schad  
25 has not referred the Court to; but it says that the county

1 executive may request that the Legislature impose quotas,  
2 allotments, or other cost-control measures on the  
3 independently-elected officials. If the need arises the  
4 Legislature shall, by resolution, impose quotas,  
5 allotments, or other cost-control measures with a simple  
6 Majority vote. So the county executive did that which the  
7 amended Charter authorized it to do and what the Code --  
8 which has not been repealed, which is still valid -- has  
9 authorized him to do; and the Order to Show Cause  
10 challenged that very act, that very discharge of duties;  
11 you put in a tentative budget that you recommended that  
12 these positions could be abolished. Your Honor, this case  
13 simply is not ripe for any type of judicial resolution.  
14 We had to cite cases based on the Court's analysis of a  
15 county executive's role as chief budget officer, but what  
16 Mr. Schad has failed to bring to the Court's attention is  
17 under Article 3 of the Code. It specifically contemplates  
18 that the county executive is the chief budget officer,  
19 which means, according to the cases that analyze a county  
20 executive's role as a chief budget officer, is broad  
21 authority -- broad authority. Again, that's what's being  
22 attacked by Mr. Schad and the comptroller in the papers.  
23 So there's a disconnect here between knowledge of the Code  
24 and Charter responsibilities and the budget process. I  
25 think that the fact it was conceded is that the process

1 has not even begun in earnest yet; that the county  
2 executive's role and that of the budget director is to  
3 prepare a tentative budget after receiving all the data  
4 from all the unit heads -- including those from  
5 Mr. Poloncarz here -- and submit the same in a tentative  
6 budget with recommendations and a budget message to the  
7 Legislature. That's what's occurred here. Nothing else  
8 has happened. So anything else that's being suggested  
9 here is merely conjecture and speculation and it's not  
10 substantive. Now, the Gallagher case -- which presents a  
11 very interesting argument if the Gallagher case was  
12 appropriate to these facts here -- now, the Gallagher  
13 case, Your Honor, specifically talked about the  
14 abolishment of charter-created positions. If the Court  
15 were to look at the Code again, this is the Code that has  
16 not been repealed, that specifically talks about the  
17 comptroller. It identifies four specific positions -- not  
18 four, only two. It specifically says the comptroller  
19 shall have the power to appoint, one, a deputy for  
20 accounting, investment and cash management -- one  
21 deputy -- and an auditing deputy, that's two, and shall,  
22 within the appropriations provided therefor -- the  
23 appropriations are provided by an act of the Legislature;  
24 that's two positions that are charter-created or  
25 code-created because there are no charter-created

1 positions cited by Mr. Schad. I'm trying to provide some  
2 assistance to even give some acknowledgement to the  
3 Gallagher case. Let's take a look at that. The only  
4 positions created by Code are those two positions.  
5 Nowhere in the comptrollers papers has he talked about the  
6 elimination of those two positions, which means, Your  
7 Honor, that the Gallagher case is inapposite. In the  
8 Gallagher case there is an abolishment of the deputy  
9 county executive, the deputy commissioner of public works,  
10 the deputy commissioner of purchasing, the deputy  
11 commissioner of recreation, and the county forester.  
12 Those were charter-created positions that the Legislature,  
13 not the county executive, abolished. That was what was  
14 challenged. In this case, Your Honor, we don't even have  
15 that. We have no legislative enactment, no adopted  
16 budget, and all we have is recommendations, which makes  
17 this case full of conjecture; but what is troubling,  
18 because there were a number of us who were around -- I  
19 served in Ms. Persico's position representing the  
20 Democratic Majority back in 2005, and I remember what it  
21 was like then. It was scary times. Scary times. And I  
22 would disagree that the Charter amendments stripped the  
23 county executive of anything because the Code and the  
24 Charter -- specifically the Charter at Article 3 -- still  
25 has the county executive as the chief budget officer,

1 still requires him to submit a tentative budget. So to  
2 say, without any support in legal authority, legislative  
3 history, without actually having been a player there -- he  
4 wasn't even a player there; Mr. Gach was a player there,  
5 he can talk about what the Charter's intent was with  
6 respect to the abolishment or the transfer of 38  
7 positions. I think what's troubling, when you look at the  
8 papers in toto, and these were public documents that speak  
9 to the relationships between elected officials here,  
10 Paragraph 39 I think summarizes the motivation and intent  
11 of this case, and it's why this Court should not take this  
12 case seriously with respect to any legal analysis or  
13 factual analysis. It says here: The only enterprise or  
14 activity which would be benefited by or facilitated by or  
15 encouraged by the Respondent County Executive's  
16 recommendation, his recommendation, to abolish the audit  
17 function of the Erie County Comptroller, will be criminal  
18 enterprise and other unlawful activity that will result in  
19 misappropriation or improper diversion of county taxpayer  
20 money by persons not yet known who would be able to commit  
21 such egregious actions without fear of audit and  
22 discovery. First of all, there's nothing in the papers  
23 that even remotely suggest that the county executive's  
24 lawful discharge of his duties while preparing in  
25 connection with a budget proposal -- tentative budget -- a

1 recommendation as to cost controls would deserve this type  
2 of gratuitous comment in a public document -- a public  
3 document that may be read by rating agencies and others  
4 who are looking at Erie County as an entity, and to  
5 dovetail that type of language into a case that is very  
6 thin legally and factually, it should be disposed  
7 summarily, Your Honor. And, finally, with respect to the  
8 38 positions; the Gallagher case simply does not support  
9 the transfer of the 38 positions into the county  
10 executive. There has been no document -- affidavit or  
11 otherwise -- that would dispute what Mr. Gach -- who was  
12 one of the drafters of the Code -- put into his affidavit  
13 saying that we're talking about the centralized accounting  
14 system; and as set forth in our brief more fully, what  
15 Mr. Schad and the comptroller is suggesting here, Your  
16 Honor, is a realignment of 38 positions, salary  
17 appropriations, fringe benefits, and have the Court do so.  
18 Clearly that's a governmental function and, clearly, Your  
19 Honor, the Legislature is comprised of Democrats and  
20 Republicans. I myself was a legislator in Monroe County  
21 for 14 years; headed the Democratic Caucus. I know how  
22 the process works. You negotiate. It may very well be  
23 with the Democratic Majority he might not have any  
24 reduction, he might have a modest reduction, or he may  
25 have a total reduction; but let the legislative process



1 play itself out, Your Honor. Please do not weigh into  
2 this quagmire of a politically-motivated lawsuit because  
3 it is not warranted at this juncture. Based on the case  
4 law that we've submitted, in a timely manner, with our  
5 responding papers, the Court should decline to do so.  
6 Thank you.

7 THE COURT: Thank you, counsel.

8 MS. PERSICO: Morning, Your Honor.

9 THE COURT: Good morning, Ms. Persico.

10 MS. PERSICO: As you know I'm here to represent  
11 the Democratic Majority of the Erie County Legislature, as  
12 well as the legislators as a whole, and I rise simply to  
13 make the argument that mandamus to compel, which is one of  
14 the remedies requested by the petitioner in his petition,  
15 can't lie against the Legislature at this time -- or  
16 really at any time when it comes to a discretionary act  
17 such as either adding or deleting positions, or any other  
18 appropriations from the tentative budget as proposed by  
19 the county executive. We're not here to get into a  
20 substantive argument as to whether or not the county  
21 executive and the comptroller have a disagreement about  
22 what is before the Legislature; and, of course, the  
23 Legislature will abide by any ruling of this Court;  
24 however, I think it's fairly clear that mandamus to compel  
25 can only lie where there is a failure to enjoin a

1 non-discretionary duty that is mandated by law. Clear  
2 from the Charter provisions cited in my papers and also in  
3 those of Minority counsel, Ron Bennett, that the Charter  
4 clearly provides that the Legislature may add things to  
5 the tentative budget or may strike things from the  
6 tentative budget and it even permits the Legislature to  
7 take no action at all with regard to the county  
8 executive's proposed tentative budget. So we think it's  
9 fairly clear that the Court does not have the authority to  
10 mandate that the Legislature add, delete, or take any  
11 other action with regard to the tentative budget, but  
12 that's a discretionary area in which the Legislature has  
13 sole province. Moreover, we're not even at the point to  
14 do that yet; as is aptly pointed out in petitioner's  
15 papers and the remaining papers. December 7th of this  
16 year is the date by which the Legislature must take action  
17 on that proposed tentative budget. That date is not yet  
18 upon us. The Legislature is in the process of undertaking  
19 budget hearings and making determinations with regard to  
20 any actions that they may take on that.

21 THE COURT: Pearl Harbor Day is picked on  
22 purpose?

23 MS. PERSICO: I think usually --

24 THE COURT: Thank you.

25 MS. PERSICO: -- like all those things happen on

1 a Monday. I just wanted to point out for the Court we  
2 believe as to the Legislature -- and at least its Majority  
3 members, and I think Mr. Bennett would agree its Minority  
4 members -- no mandamus to compel can lie in this instance.

5 THE COURT: Thank you. Mr. Bennett.

6 MR. BENNETT: Thank you, Judge. You heard the  
7 arguments about mandamus and that. I'm not going to  
8 repeat that. On behalf of the Legislature, representing  
9 six legislators, I want to bring to the attention two  
10 arguments in regard to what is before the Court; first of  
11 all, they're talking about 38 positions and departments  
12 who are accounting for that department. If we follow the  
13 argument of counsel to its logical conclusion then he  
14 would be having those accountants in his department. How  
15 would he audit that department? The accounting in that  
16 department is what they're auditing. So to say you're  
17 going to take the accountant out of that department and  
18 put it in his department, that's a conflict. That doesn't  
19 make any sense. Secondly, we've heard this argument what  
20 the Legislature can do. There is a misplaced emphasis on  
21 the procedure of the Legislature. 2608 deals with the  
22 adoption of a budget. We've laid forth to the Court the  
23 procedures from the time the tentative budget is put in  
24 until it's adopted. Ms. Persico talked about that. The  
25 reliance of the petitioner on 2607-b, fails to identify

1 what it says. It says budget controls not budget  
2 adoption. It talks about, under A, during the fiscal  
3 year, taking into account that the budget has been  
4 adopted. Under B it says; within the parameters of the  
5 adopted budget. This has nothing to do with the process  
6 before the Legislature in the adoptions of budgets. It's  
7 only during the year. And what this says simply is this,  
8 the adopted budget gives departments a certain amount of  
9 money to spend and they have to spend it according to the  
10 lines. You have marketing, you have paper to buy, all  
11 that has to be within the budget. If you do it you amend  
12 the budget and that's different. So these departments,  
13 other than the elected officials, have to, according to A,  
14 adhere to that line. They can't change that arbitrarily.  
15 B says, elected officials, we're going to give you  
16 something different, we're going to give you the option to  
17 take the adopted budget and change it; if you want to put  
18 somebody in an audit, go ahead; if you want to put  
19 somebody in accounting, go ahead; that's your option. The  
20 county executive, when that happens, then can say to the  
21 Legislature by resolution, you can impose quotas or  
22 allotments. The Legislature at that point says, we don't  
23 believe that you should transfer from one position to  
24 another. That's budget controls. So to listen to the  
25 argument of the comptroller, saying that these budget

1 controls apply now before the adopted budget is totally  
2 without basis. 2608 clearly lays out the procedure for  
3 our Legislature to adopt a budget. Once adopted during  
4 the year, as it says during a fiscal year, that's where  
5 these budget controls come in. So the argument that the  
6 Legislature during the budget process would establish  
7 quotas and allotments pursuant to that section is  
8 fallacious, without basis. Let the Legislature do its  
9 job. We start with a tentative budget, we're going to go  
10 through Thursday, Friday; next Tuesday is another meeting  
11 where the Legislature may adopt the budget with additions  
12 and subtractions. The Legislature is an independent body.  
13 The comptroller is an independent elected official. We  
14 don't want to cross that. We don't want to have them  
15 telling us what to do when the procedure in the Code, in  
16 the Charter, is very simple. Let us do our job. If you  
17 don't like what we do, there's an action that you can  
18 bring, fine, but please don't go back to budget controls  
19 for a fiscal year and use that as an argument today that  
20 the Legislature is bound, and the county executive is  
21 bound by that section. It certainly is not; and,  
22 therefore, based upon their argument they failed to  
23 establish that the Legislature cannot act and add or  
24 subtract to the budget.

25 THE COURT: Thank you. Mr. Schad.

1 MR. SCHAD: I'll try to be brief. It gets to  
2 both the ripe-ness of the argument and the core of the  
3 case. The agreement that the county executive's  
4 statements or recommendations are just recommendations are  
5 important, because that means they're not effective, it's  
6 not action, and that means -- and this is the issue that  
7 all three respondents' counsel ducked -- they say, don't  
8 tell us what to do. We're not saying that. We're saying  
9 if you vote in one of these sessions in the next few days  
10 to adopt the budget -- that includes the comptrollers  
11 budget -- and you say yes, or you just default, isn't then  
12 the comptroller's budget as he has proposed with all the  
13 positions, not less 15 of them, aren't all of them in the  
14 new 2011 budget? That's the declaratory reading. That's  
15 why it's ripe. Nobody has addressed that issue. That is  
16 the key to this case. The Legislature needs to understand  
17 that when they are voting that they -- if they want to  
18 reduce and accept the recommendations of the county  
19 executive, they make the discretionary call, they've got  
20 to make a vote and the vote's got to pass.

21 MR. BULLARD: Based on that concession Mr. Schad  
22 should voluntarily dismiss the case for the county  
23 executive, the budget director, and the county because it  
24 doesn't seem to be any dispute that we have the ability  
25 to, A, make a recommendation and, B, transmit a tentative

1 budget to the Legislature. The only other comment, Your  
2 Honor, is that, in fact, what Mr. Schad wants this Court  
3 to do is issue an advisory opinion as to some future act  
4 that may be entered into or done by the county  
5 Legislature. We would say as a matter of law, even after  
6 hopefully we would be dismissed, we don't think that the  
7 Court is in a position to weigh into that and issue an  
8 advisory opinion now as to what the Legislature should or  
9 should not vote on.

10 THE COURT: Thank you, counsel.

11 MR. BENNETT: Closing remark. The budget as  
12 proposed by the county executive is a tentative budget.  
13 It's not a recommendation because it's not final, but  
14 there's no reason in the budget process -- if you look at  
15 the 2608, that's the whole system. That's the system in  
16 towns, that's the system we've had. I've been here for 30  
17 years. It's a tentative budget. If nothing happens to  
18 that tentative budget through the process, that becomes  
19 the adopted budget. If the Legislature defaults,  
20 that's process.

21 THE COURT: Well, therein lies the distinction,  
22 I think, is it not? What I think Mr. Schad is saying is  
23 that the tentative budget, which if you look at what was  
24 submitted, what was Exhibit 8 of the papers, includes a  
25 list of all of the positions that are in dispute here with

1 the salary, et cetera, the titles and salaries. In a  
2 couple of columns next to that there's recommendations,  
3 and the recommendations are zeros, meaning I've fulfilled  
4 these. I think, if I understand this correctly, Mr. Schad  
5 is saying that the budget then -- the tentative budget  
6 includes those positions as it is submitted and  
7 transmitted to the Legislature with recommendations that  
8 they not be filled, all right? I think I understood  
9 counsel for the county executive to say that, yes, that's  
10 right, they're just recommendations that they not be  
11 filed, which seems to me we have some type of agreement  
12 that the tentative budget includes those positions with  
13 recommendations that they not be filled. You rise now and  
14 say, no, they don't. They don't include those positions  
15 because the recommendation is that they not be filled and,  
16 therefore, they're not, in essence, a part of the  
17 tentative budget. That, I think, has some meaning in  
18 terms of how the Legislature responds to that tentative  
19 budget and what their authority is, whether those  
20 positions are actually in the budget or not in the budget.  
21 Do I understand that correctly?

22 MR. BENNETT: You understand to the point that  
23 the recommendations include no allocation of allotment of  
24 money to those positions. Remember, what I argued about  
25 was once that tentative budget is adopted, if it goes by



1 default the positions are there with no funding, that's  
2 correct. Now the elected county comptroller under 2607,  
3 after the budget is adopted during the fiscal year if he  
4 chooses to change that mix that's where he has the money,  
5 but the adopted budget -- it's the adopted budget as far  
6 as what allocation of funds is put in that budget.

7 THE COURT: The positions would be there. Your  
8 position is the positions are there?

9 MR. BENNETT: But they're not funded.

10 THE COURT: But they're simply unfunded  
11 positions. All right.

12 MR. SCHAD: That's not what the plain language  
13 of the budget does. It says zero positions. That's not  
14 what that document says. The issue here is the lines are  
15 there, the money is there, the numbers are there. That's  
16 the budget. If there's a default the position, the number  
17 of people, and the money is in the budget adopted by  
18 default, or by affirmative -- yes, it has to have the  
19 affirmative vote to accept the recommendation of the  
20 county executive. Thank you.

21 MR. BULLARD: Your Honor, I think you understood  
22 our position very clearly.

23 THE COURT: Anything further, Ms. Persico?

24 MS. PERSICO: No, Your Honor.

25 THE COURT: Counsel, thank you very much for

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your arguments. They're helpful to the Court. The Court's going to reserve. You'll get a written decision.

\* \* \*

I hereby certify the foregoing is a true and accurate transcript of the proceedings.

DATE: 11-22-10

*Sandra K Scruggs*  
SANDRA K. SCRUGGS, C.S.R.  
Senior Court Reporter

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

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In the Matter of the Application of  
MARK C. POLONCARZ, Individually and as  
Comptroller of Erie County, New York

Petitioner,

DECISION and ORDER

vs

Index No. 2007-12419

CHRISTOPHER C. COLLINS, as  
County Executive of Erie County, New York,  
THE ERIE COUNTY LEGISLATURE, DANIEL M.  
KOZUB, TIMOTHY M. KENNEDY, BARBARA  
MILLER-WILLIAMS, RAYMOND W. WALTER,  
DINO J. FUDOLI, MARIA R. WHYTE, BETTY JEAN  
GRANT, THOMAS J. MAZUR, CHISTINA W. BOVE,  
KEVIN R. HARDWICK, LYNN M. MARINELLI, LYNNE  
M. DIXON, JOHN J. MILLS, THOMAS A. LOUGHRAN,  
EDWARD J. RATH, III, as the duly  
elected Legislators constituting the Erie County Legislature,  
GREGORY G. GACH, Erie County Director of Budget and  
Management, and THE COUNTY OF ERIE.

Respondents.

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BEFORE: HON. GERALD J. WHALEN  
Justice of the Supreme Court

APPEARANCES: JEROME D. SCHAD, ESQ.  
Attorneys for Petitioner

HARRIS BEACH PLLC  
Attorneys for Respondents *Christopher Collins, County  
of Erie and Gregory G. Gach*  
By H. Todd Bullard, Esq.

BENNETT, DiFILIPPO & KURTZHALTS, LLP  
Attorneys for Respondents *John J. Mills, Raymond W. Walter, Dino J. Fudoli, Kevin R. Hardwick, Lynne M. Dixon and Edward A. Rath, III,*  
By Ronald P. Bennett, Esq.

MOSEY PERSICO, LLP  
Attorneys for Respondents *Daniel M. Kozub, Timothy M. Kennedy, Chairwoman Barbara Miller-Williams, Majority Leader Maria R. Whyte, Betty Jean Grant, Thomas J. Mazur, Christina W. Bove, Lynn M. Marinelli and Thomas A. Loughran*  
By Jennifer C. Persico, Esq.

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Prior to addressing the merits of this proceeding, respondents, Democratic and Republican legislators, challenged this court's jurisdiction to hear this matter. It was claimed that the legislators were named individually in the petition and, as such, they were not properly served with process thereby leaving this court without jurisdiction over all named parties. The parties, on the record and prior to argument, stipulated to withdraw the jurisdictional objections and to amend the petition to name the legislators and the County Executive in their official capacity only.

The petitioner, Mark Poloncarz, brings this proceeding under CPLR Article 78 and CPLR 3001 in his capacity as the duly elected Comptroller of the County of Erie. Mr. Poloncarz seeks to forestall the proposed elimination of fifteen specified staff positions<sup>1</sup> in the Comptroller's Office. One of the respondents is Christopher C.

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<sup>1</sup> Associate Deputy Comptroller, Secretary-Comptroller, Administrative Clerk, Senior Auditor, 3 Staff Auditors, 2 Accountant Auditors, Assistant Director of Revenue Recovery, Supervising Accountant, Junior Tax Accountant, 2 Senior Cashiers and Cashier.

Collins, the duly elected County Executive for the County of Erie. Mr. Collins submitted a tentative budget for consideration by the Erie County Legislature, who are also named respondents, as his office is required to do pursuant to Section 2603 of the County Charter. The tentative budget proposal submitted by the County Executive specifically included the aforementioned staff positions and the current salary figures for those positions. The tentative budget also included a recommendation by the County Executive that the specified staff positions not be funded. It is argued that the tentative budget failed to allocate funds for the staff positions.

The budget process is currently underway. The Legislature is in possession of the County Executive's tentative budget and is proceeding with its duty as required by the Charter. A final budget has not been adopted. The staff positions in the Comptroller's office have not been eliminated and can not be eliminated without further action by the Legislature and the County Executive. Section 2608 of the Charter provides that the Legislature can add or subtract items, thereby modifying the County Executive's tentative budget.

The Comptroller seeks a declaratory judgment from this court directing that the tentative budget submitted by the County Executive to the Legislature be deemed to include the fifteen specific positions in the Comptroller's office. If it is determined the positions are considered a part of the tentative budget the Legislature will not be

required to add them. Apparently, this may impact the County Executive's authority to strike those positions later in the budget process. It may also obviate the need for a two-thirds vote by the Legislature to restore the Comptroller positions should the County Executive be authorized to eliminate the positions later in the budget process.

Petitioner claims the County Executive exceeded his authority by submitting the tentative budget without the fifteen specified staff positions. The County Executive claims that the tentative budget does include the fifteen positions in the Comptroller's office and it is simply a recommendation not to fund the positions. The Charter allows the County Executive to make recommendations to not fund these positions. There appears to be agreement between the County Executive and Comptroller that the tentative budget submitted to the Legislature includes the fifteen positions. The failure to include funding for those positions is simply a recommendation by the County Executive.

It is this court's decision that the governmental process of budget negotiations and adopting a budget must be allowed to play out without interference from this court at this time. The court considers the status of these budget issues to be non-justiciable at this time and the relief requested by petitioner is sought prematurely. Should a party feel aggrieved after the budget process has been completed, that party may avail itself of the court system. The court finds that petitioner's request for relief

regarding the positions in the Comptroller's office is not yet ripe for judicial determination.

Petitioner also sought to have approximately 38 "accounting" positions transferred to the Comptroller's office from other county departments pursuant to section 1902(t) of the County Charter. The court does not interpret this section to require that anyone who performs an accounting function must work under the direct supervision of the Comptroller. This section allows the Comptroller to provide accounting services to the county but it does not preclude other departments from having their own accountants in order to communicate effectively with the Comptroller's office.

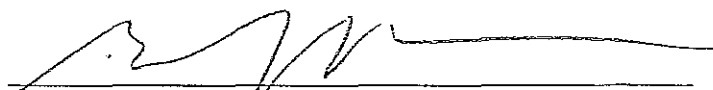
Based upon the foregoing, it is this court's decision that the petition be dismissed in its entirety.

The court considered the following papers in rendering this decision: petitioner's order to show cause dated November 12, 2010; verified petition of Mark C. Poloncarz verified November 9, 2010 with exhibit attached thereto; respondents County Executive, County and Gach's notice of cross-motion dated November 15, 2010; affidavit of H. Todd Bullard, Esq. sworn to November 15, 2010; affidavit of Chris Collins sworn to November 15, 2010 with exhibit attached thereto; affidavit of Gregory G. Gach sworn to November 15, 2010; respondent Republican Majority's notice of cross-motion dated November 15, 2010; affidavit in support of cross-motion

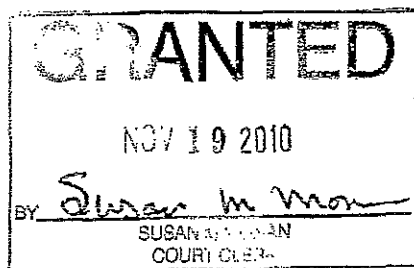
of Ronald P. Bennett, Esq. sworn to November 15, 2010; affirmation of Jennifer C. Persico, Esq. dated November 16, 2010; and affirmation in opposition to motions to dismiss petitioner's verified petition of Mark C. Poloncarz dated November 17, 2010.

SO ORDERED.

Dated: November 19, 2010

  
HON. GERALD J. WHALEN

ENTER:





# STATE OF NEW YORK

LEGISLATURE OF ERIE COUNTY  
CLERK'S OFFICE

BUFFALO, N.Y., NOVEMBER 30, 2010

TO WHOM IT MAY CONCERN:

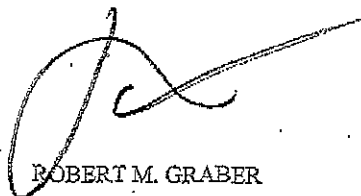
**I HEREBY CERTIFY**, *That at the 23rd Session of the Legislature of Erie County, held in the Legislative Chambers, in the City of Buffalo on the Thirtieth day of November, 2010 A.D. a Resolution was adopted, of which the following is a true copy:*

RESOLVED, the Erie County Legislature does hereby approve the Erie County Executive's Tentative 2011 Budget with the amendments attached hereto.

COMPTROLLER'S  
RECEIVED  
10 DEC -6 PM 12:32

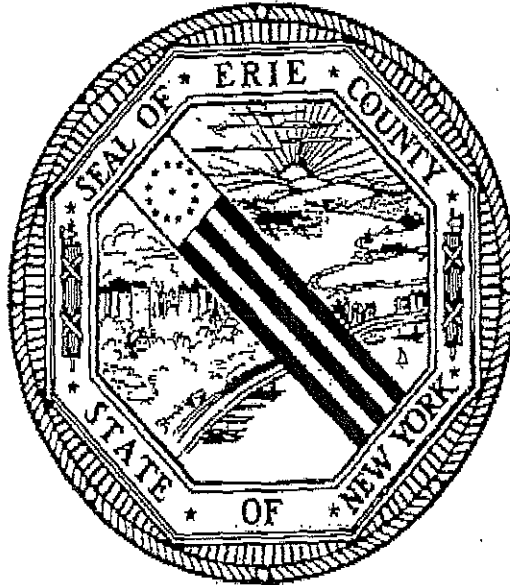
REFERENCE: COMM. 17E-1 (2010)  
AS AMENDED: NOVEMBER 30, 2010

ATTEST



ROBERT M. GRABER  
*Clerk of the Legislature of Erie County*

Exhibit D



**ERIE COUNTY LEGISLATURE**

**2011 ERIE COUNTY BUDGET**

***DEMOCRATIC CAUCUS***

***BUDGET AMENDMENT "1" AS AMENDED***

**Book A**

**Amendment to Comm. 17E-1 (2010)**

WHEREAS, the tentative 2011 Erie County Budget was laid on the table by the Erie County Executive on October 1, 2010, and

WHEREAS, this Honorable Body is responsible for acting on the tentative 2011 Budget, and

WHEREAS, following meetings of the Legislature's Finance and Management/Budget Committee with department heads and independent elected officials, and following a public hearing and informational public meetings, this Honorable Body has received significant public and governmental concern and opposition to many of the County Executive's proposed reductions in services and programs in 2011, and

WHEREAS, the public and community has expressed opposition to the County Executive's proposed significant reductions in spending for the Buffalo and Erie County Public Library, cultural/arts organizations supported by the County government, the Erie County Comptroller's Office and

WHEREAS, the Erie County Fiscal Stability Authority has also expressed significant concerns about the County Executive's tentative 2011 Budget, including specifically the County Executive's disproportionate cuts to the Erie County Comptroller's Office, and the Erie County Fiscal Stability Authority has called for restorations of spending and positions in the Comptroller's Office, and

WHEREAS, the Democratic Caucus has evaluated the tentative 2011 Budget and is now proposing a budget amendment package that allows for the restoration of key services and programs in 2011 desired by the community while not affecting the 2011 County or Library real property tax levies nor increasing taxes,

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature does hereby approve the Erie County Executive's tentative 2011 Erie County Budget with the amendment attached hereto.

Book A Page #	Type of Action	Fund Center	Account #	Department	Description/Name	Job Group	Number of Positions County Exec Rec	Proposed 2011 Budget	Number of Positions Allocated Legislature	2011 Legislature Allocated	Amount Changed (Decrease) or (Increase)	Total Change (Decrease) or (Increase)
15	Adjust	10110	1011010	County Executive	Deputy County Executive	58	1	\$114,109	1	\$107,397	(\$6,712)	(\$6,713)
17	Adjust	10110	500000	County Executive	Full Time - Salaries			\$549,983		\$543,271	(\$6,712)	(\$6,712)
28	Restore	11200	1120010	Comptroller	Associate Deputy Comptroller	16	0	\$0	1	\$83,356	\$83,356	\$83,356
28	Restore	11200	1120010	Comptroller	Secretary, Comptroller	8	0	\$0	1	\$32,604	\$32,604	\$32,604
28	Restore	11200	1120020	Comptroller	Administrative Clerk	7	0	\$0	1	\$37,611	\$37,611	\$37,611
28	Restore	11200	1120030	Comptroller	Senior Auditor	13	0	\$0	1	\$72,817	\$72,817	\$72,817
28	Restore	11200	1120030	Comptroller	Staff Auditor	11	0	\$0	3	\$172,660	\$172,660	\$172,660
28	Restore	11200	1120030	Comptroller	Accountant Auditor	9	0	\$0	2	\$87,239	\$87,239	\$87,239
28	Restore	11200	1120040	Comptroller	Assistant Director of Revenue Recovery	11	0	\$0	1	\$56,252	\$56,252	\$56,252
28	Restore	11200	1120050	Comptroller	Supervising Accountant	11	0	\$0	1	\$57,554	\$57,554	\$57,554
28	Restore	11200	1120050	Comptroller	Junior Tax Accountant	9	0	\$0	1	\$44,165	\$44,165	\$44,165
28	Restore	11200	1120050	Comptroller	Senior Cashier	7	0	\$0	2	\$87,760	\$87,760	\$87,760
28	Restore	11200	1120050	Comptroller	Cashier	6	0	\$0	1	\$31,705	\$31,705	\$31,705
30	Adjust	11200	500000	Comptroller	Full Time - Salaries			\$1,550,045		\$2,313,768	\$763,723	\$763,723
30	Adjust	11200	500000	Comptroller	Fringe Benefits			\$942,832		\$1,032,568	\$89,736	\$89,736
30	Adjust	11200	516020	Comptroller	Professional Svcs Contracts & Fees			\$360,900		\$410,900	\$50,000	\$50,000
38	Adjust	11110	1111010	Real Property Tax	Chief Data Tax Clerk	12	1	\$59,268	1	\$47,741	(\$11,527)	(\$11,527)
39	Adjust	11110	500000	Real Property Tax	Full Time - Salaries			\$442,157		\$430,630	(\$11,527)	(\$11,527)
50	Delete	16010	1601010	County Attorney	County Attorney	60	1	\$149,831	0	\$0	(\$149,831)	(\$149,831)
50	New	16010	1601010	County Attorney	County Attorney	21	0	\$0	1	\$99,226	\$99,226	\$99,226
50	Adjust	16010	1601010	County Attorney	First Assistant County Attorney	19	1	\$111,101	1	\$95,356	(\$15,745)	(\$15,746)
50	Adjust	16010	1601010	County Attorney	Second Assistant County Attorney	18	1	\$89,731	1	\$77,723	(\$12,008)	(\$12,009)
52	Adjust	16010	500000	County Attorney	Full Time - Salaries			\$1,210,634		\$1,192,276	(\$18,358)	(\$18,358)
52	Adjust	16010	516020	County Attorney	Professional Svcs Contracts & Fees			\$395,000		\$245,000	(\$150,000)	(\$150,000)
56	Adjust	16020	555050	Risk Retention	Insurance Premiums			\$3,000,000		\$1,000,000	(\$2,000,000)	(\$2,000,000)
56	Adjust	16030	502050	Worker's Compensation	Worker's Compensation			\$19,006,100		\$12,008,100	(\$1,000,000)	(\$1,000,000)
56	Adjust	16030	502050	Worker's Compensation	Worker's Comp Other Pd Reimbursement			(\$12,008,100)		(\$11,008,100)	\$1,000,000	\$1,000,000
69	Adjust	16110	502000	Personnel	Fringe Benefits			\$701,161		\$675,150	(\$26,011)	(\$26,011)
85	Adjust	16110	502000	Personnel	Professional Svcs Contracts & Fees			\$17,083		\$7,083	(\$10,000)	(\$10,000)

97	Adjust	105	502000	Information and Support Services	Fringe Benefits			\$1,531,886		\$1,431,886	(\$100,000)	(\$100,000)
97	Adjust	105	545000	Information and Support Services	Rental Charges			\$1,235,000		\$1,065,000	(\$170,000)	(\$170,000)
105	Adjust	14010	520000	Countywide Budget Accounts	Municipal Association Fees			\$30,000		\$0	(\$30,000)	(\$30,000)
106	New	140	570000	Countywide Interfund Accounts	Interfund Transfers Subsidy			\$0		\$4,000,000	\$4,000,000	
134	Delete	120	1202020	Social Services	Assistant Commissioner-Administration	16	1	\$66,980	0	\$0	(\$66,980)	(\$66,980)
153	Adjust	120	500000	Social Services	Full Time - Salaries			\$61,240,914		\$61,173,934	(\$66,980)	(\$66,980)
163	Adjust	12520	516020	Youth Detention	Professional Svcs Contracts & Fees			\$2,960,000		\$2,360,000	(\$600,000)	(\$600,000)
169	New	12530	119214	Youth Bureau	Access of WNY Inc. African American Cultural Center			\$0		\$10,000	\$10,000	\$10,000
169	New	12530	518004	Youth Bureau	African American Cultural Center (Detention on-site)			\$0		\$10,000	\$10,000	\$10,000
169	New	12530	518004	Youth Bureau	Arts in Education			\$0		\$4,200	\$4,200	\$4,200
169	New	12530	109013	Youth Bureau	Be-A-Friend Program, Inc.			\$0		\$6,465	\$6,465	\$6,465
169	New	12530	108600	Youth Bureau	Blosson Garden School			\$0		\$10,000	\$10,000	\$10,000
169	New	12530	101084	Youth Bureau	Bob Lanier Center			\$0		\$6,000	\$6,000	\$6,000
169	New	12530	108616	Youth Bureau	Boys & Girls Clubs of Buffalo			\$0		\$10,000	\$10,000	\$10,000
169	New	12530	109731	Youth Bureau	Boys & Girls Clubs of East Aurora			\$0		\$7,500	\$7,500	\$7,500
169	New	12530	111129	Youth Bureau	Boys & Girls Clubs of Holland			\$0		\$7,500	\$7,500	\$7,500
169	New	12530	101149	Youth Bureau	Boys & Girls Clubs of the Northtowns of WNY			\$0		\$5,000	\$5,000	\$5,000
169	New	12530	109648	Youth Bureau	Boys & Girls Clubs of Orchard Park			\$0		\$7,500	\$7,500	\$7,500
169	New	12530	101152	Youth Bureau	Buffalo Community Center Cooperative			\$0		\$6,000	\$6,000	\$6,000
169	New	12530	120999	Youth Bureau	Buffalo Society of Natural Sciences			\$0		\$7,000	\$7,000	\$7,000
169	New	12530	1097678	Youth Bureau	Buffalo Urban League			\$0		\$10,000	\$10,000	\$10,000
169	New	12530	101296	Youth Bureau	Community Action Organization			\$0		\$6,000	\$6,000	\$6,000
169	New	12530	109808	Youth Bureau	Computers For Children			\$0		\$10,000	\$10,000	\$10,000
169	New	12530	112300	Youth Bureau	Computers For Children (Detention on-site)			\$0		\$10,000	\$10,000	\$10,000
169	New	12530	112300	Youth Bureau	Concerned Ecumenical Ministry			\$0		\$3,600	\$3,600	\$3,600
169	New	12530	108671	Youth Bureau				\$0		\$10,000	\$10,000	\$10,000

169	New	12530	101960	Youth Bureau	Cradle Beach Camp Inc	\$0	\$6,000	\$6,000	\$6,000
169	New	12530	109754	Youth Bureau	Crucial Human Services	\$0	\$7,400	\$7,400	\$7,400
169	New	12530	114359	Youth Bureau	Elim Community Corp	\$0	\$10,000	\$10,000	\$10,000
169	New	12530	102707	Youth Bureau	Erle Regional Housing Dev Corp (Belle)	\$0	\$10,000	\$10,000	\$10,000
169	New	12530	119259	Youth Bureau	First Hand Learning	\$0	\$10,000	\$10,000	\$10,000
169	New	12530	119259	Youth Bureau	First Hand Learning (Detention on-site)	\$0	\$2,200	\$2,200	\$2,200
169	New	12530	129763	Youth Bureau	HEART Foundation	\$0	\$6,000	\$6,000	\$6,000
169	New	12530	121386	Youth Bureau	Jericho Road Ministries	\$0	\$7,500	\$7,500	\$7,500
169	New	12530	104386	Youth Bureau	Lackawanna Yemen Soccer Club	\$0	\$10,000	\$10,000	\$10,000
169	New	12530	108781	Youth Bureau	Literacy Volunteers	\$0	\$2,010	\$2,010	\$2,010
169	New	12530	108781	Youth Bureau	Literacy Volunteers (Detention on-site)	\$0	\$2,010	\$2,010	\$2,010
169	New	12530	130214	Youth Bureau	Making Fishers of Men & Woman	\$0	\$7,500	\$7,500	\$7,500
169	New	12530	108646	Youth Bureau	Lt Col Matt Urban Community Center	\$0	\$7,500	\$7,500	\$7,500
169	New	12530	112302	Youth Bureau	Metro Community Development Corp	\$0	\$10,000	\$10,000	\$10,000
169	New	12530		Youth Bureau	MicroBlz Buffalo	\$0	\$3,084	\$3,084	\$3,084
169	New	12530	115673	Youth Bureau	North Buffalo Community Development	\$0	\$7,340	\$7,340	\$7,340
169	New	12530	109626	Youth Bureau	Northwest Buffalo Community center	\$0	\$10,000	\$10,000	\$10,000
169	New	12530	105778	Youth Bureau	Old First Ward Community Assn	\$0	\$9,091	\$9,091	\$9,091
169	New	12530	129842	Youth Bureau	On the Job Ministries	\$0	\$3,000	\$3,000	\$3,000
169	New	12530	105892	Youth Bureau	Parkside Community Assn of Buffalo	\$0	\$5,000	\$5,000	\$5,000
169	New	12530	106127	Youth Bureau	Police Athletic League of Buffalo Inc	\$0	\$6,000	\$6,000	\$6,000
169	New	12530	109758	Youth Bureau	Schiller Park Community Services	\$0	\$10,000	\$10,000	\$10,000
169	New	12530	109744	Youth Bureau	Seneca Babcock Comm Association	\$0	\$10,000	\$10,000	\$10,000
169	New	12530	131015	Youth Bureau	Seneca Street Community Development Corp	\$0	\$5,000	\$5,000	\$5,000
169	New	12530	110692	Youth Bureau	Town of Tonawanda Youth Bureau	\$0	\$10,000	\$10,000	\$10,000
169	New	12530	109805	Youth Bureau	United Way of Buffalo & Erie Co.	\$0	\$6,000	\$6,000	\$6,000
169	New	12530	107875	Youth Bureau	University Heights Comm Dev Assn	\$0	\$7,500	\$7,500	\$7,500
169	New	12530	109685	Youth Bureau	Urban Christian Ministries	\$0	\$10,000	\$10,000	\$10,000
169	New	12530	109770	Youth Bureau	Valley Community Assn	\$0	\$10,000	\$10,000	\$10,000

169	New	12530	117136	Youth Bureau	West Side Community Services - Massachusetts Avenue Project			\$0		\$10,000	\$10,000	\$10,000
169	New	12530	115086	Youth Bureau	Willie Hutch Jones Sports & Education			\$0		\$10,000	\$10,000	\$10,000
169	New	12530	108320	Youth Bureau	WNY United Against Drug & Alcohol Abuse			\$0		\$7,100	\$7,100	\$7,100
169	New	12530	108450	Youth Bureau	YMCA Ellicott Masten Buffalo-Niagara			\$0		\$10,000	\$10,000	\$10,000
169	New	12530	108395	Youth Bureau	Youth Leadership of Erie Co.			\$0		\$6,000	\$6,000	\$6,000
207	Delete	12420	1242010	Forensic Mental Health Services	Coordinator Adult Single Pt of Acc & Account	13	1	\$52,548	0	\$0	(\$52,548)	(\$52,548)
207	Restore	12420	1242010	Forensic Mental Health Services	Coordinator of Adult Recovery	12	0	\$0	1	\$47,740	\$47,740	\$47,740
208	Adjust	12420	500000	Forensic Mental Health Services	Full Time - Salaries			\$1,115,085		\$1,110,277	(\$4,808)	(\$4,808)
208	Adjust	12420	516020	Forensic Mental Health Services	Professional Svcs Contracts & Fees			\$144,540		\$114,540	(\$30,000)	(\$30,000)
215	Restore	12700	1271224	Health Division	Pregnancy Prevention Specialist	9	0	\$0	1	\$51,888	\$51,888	\$51,888
215	Restore	12700	1271224	Health Division	Pregnancy Prevention Specialist (RPT) Special Assistant	9	0	\$0	1	\$24,294	\$24,294	\$24,294
216	Delete	12700	1271510	Health Division	Commissioner of Health	10	1	\$42,713	0	\$0	(\$42,713)	(\$42,713)
216	Restore	12700	1271514	Health Division	Registered Nurse	8	0	\$0	1	\$41,818	\$41,818	\$41,818
219	Adjust	12700	500000	Health Division	Full Time - Salaries			\$3,810,322		\$3,861,315	\$50,993	\$50,993
219	Adjust	12700	500020	Health Division	Regular PT - Wages			\$323,359		\$347,653	\$24,294	\$24,294
219	Adjust	12700	501000	Health Division	Overtime			\$400,000		\$200,000	(\$200,000)	(\$200,000)
219	Adjust	12700	502000	Health Division	Fringe Benefits			\$2,588,709		\$2,603,709	\$15,000	\$15,000
224	Restore	12720	1272010	Emergency Medical Services	Deputy Commissioner Emerg Med Srv	14	0	\$0	1	\$65,451	\$65,451	\$65,451
225	Adjust	12720	500000	Emergency Medical Services	Full Time - Salaries			\$101,307		\$166,758	\$65,451	\$65,451
225	Adjust	12720	502000	Emergency Medical Services	Fringe Benefits			\$102,751		\$134,951	\$32,200	\$32,200
236	Restore	12730	1273037	Public Health Lab	Pest Control Worker	4	0	\$0	2	\$59,132	\$59,132	\$59,132
237	Adjust	12730	500000	Public Health Lab	Full Time - Salaries			\$3,146,151		\$3,205,283	\$59,132	\$59,132
237	Adjust	12730	502000	Public Health Lab	Fringe Benefits			\$2,010,575		\$1,890,575	(\$120,000)	(\$120,000)
237	Adjust	12730	516020	Public Health Lab	Professional Svcs Contracts & Fees			\$231,875		\$206,875	(\$25,000)	(\$25,000)
243	Restore	12740	1274010	Medical Examiner	Pathological Laboratory Worker	5	0	\$0	2	\$66,614	\$66,614	\$66,614
245	Adjust	12740	500000	Medical Examiner	Full Time - Salaries			\$1,729,755		\$1,796,369	\$66,614	\$66,614
245	Adjust	12740	502000	Medical Examiner	Fringe Benefits			\$1,042,226		\$922,226	(\$120,000)	(\$120,000)

245	Adjust	12740	516020	Medical Examiner	Professional Svcs Contracts & Fees			\$298,250		\$218,250	(\$50,000)	(\$50,000)
252	Adjust	12750	502000	Persons with Special Needs	Fringe Benefits			\$662,085		\$612,085	(\$50,000)	(\$50,000)
252	Adjust	12750	516020	Persons with Special Needs	Professional Svcs Contracts & Fees			\$90,000		\$60,000	(\$30,000)	(\$30,000)
283	Adjust	11510	502000	Sheriff Division	Fringe Benefits			\$5,127,496		\$4,927,496	(\$200,000)	(\$200,000)
290	Adjust	116	500320	Jail Management	Uniform Allowance			\$521,500		\$496,500	(\$25,000)	(\$25,000)
290	Adjust	116	502000	Jail Management	Fringe Benefits			\$21,631,684		\$19,631,684	(\$2,000,000)	(\$2,000,000)
290	Adjust	116	516020	Jail Management	Professional Svcs Contracts & Fees			\$688,450		\$213,450	(\$475,000)	(\$475,000)
307	Delete	16500	1650050	Central Police Services - E-911 Fund	Dispatcher (Sheriff)	7	14	\$507,537	0	\$0	(\$507,537)	(\$507,537)
307	Delete	16500	1650050	Central Police Services - E-911 Fund	Dispatcher (Sheriff) 55A	7	2	\$75,881	0	\$0	(\$75,881)	(\$75,881)
308	Adjust	16500	500000	Central Police Services - E-911 Fund	Full Time - Salaries			\$2,072,536		\$1,489,118	(\$583,418)	(\$583,418)
308	Adjust	16500	500300	Central Police Services - E-911 Fund	Shift Differential			\$44,500		\$30,000	(\$14,500)	(\$14,500)
308	Delete	16500	500320	Central Police Services - E-911 Fund	Uniform Allowance			\$12,750		\$0	(\$12,750)	(\$12,750)
308	Adjust	16500	500330	Central Police Services - E-911 Fund	Holiday Worked			\$38,650		\$22,000	(\$16,650)	(\$16,650)
308	Delete	16500	500340	Central Police Services - E-911 Fund	Line-up Pay			\$21,500		\$0	(\$21,500)	(\$21,500)
308	Adjust	16500	501000	Central Police Services - E-911 Fund	Overtime			\$270,865		\$185,865	(\$85,000)	(\$85,000)
308	Adjust	16500	502000	Central Police Services - E-911 Fund	Fringe Benefits			\$1,541,313		\$868,679	(\$672,634)	(\$672,634)
308	Adjust	16500	505200	Central Police Services - E-911 Fund	Clothing Supplies			\$7,250		\$3,000	(\$4,250)	(\$4,250)
308	Adjust	16500	506200	Central Police Services - E-911 Fund	Maintenance and Repair			\$21,000		\$17,500	(\$3,500)	(\$3,500)
308	Adjust	16500	510200	Central Police Services - E-911 Fund	Training and Education			\$3,750		\$3,500	(\$250)	(\$250)



308	Adjust	16500	910600	Central Police Services - E-911 Fund	ID Purchasing Services			\$3,280		\$3,030	(\$250)	(\$250)
308	Adjust	16500	990000	Central Police Services - E-911 Fund	ID DISS Services			\$203,200		\$113,108	(\$90,092)	(\$90,092)
308	Revenue	16500	486000	Central Police Services - E-911 Fund	Interfund Revenue Subsidy			\$1,433,174		\$171,205	(\$1,261,969)	(\$1,261,969)
311	New	11510	1151040	Sheriff Division - E- 911 Fund	Dispatcher (Sheriff)	7	0	\$0	14	\$507,537	\$507,537	\$507,537
311	New	11510	1151040	Sheriff Division - E- 911 Fund	Dispatcher (Sheriff) SSA	7	0	\$0	2	\$75,881	\$75,881	\$75,881
312	New	11510	500000	Sheriff Division - E- 911 Fund	Full Time - Salaries			\$0		\$583,418	\$583,418	\$583,418
312	New	11510	500300	Sheriff Division - E- 911 Fund	Shift Differential			\$0		\$14,500	\$14,500	\$14,500
312	New	11510	500320	Sheriff Division - E- 911 Fund	Uniform Allowance			\$0		\$12,750	\$12,750	\$12,750
312	New	11510	500330	Sheriff Division - E- 911 Fund	Holiday Worked			\$0		\$16,650	\$16,650	\$16,650
312	New	11510	500340	Sheriff Division - E- 911 Fund	Line-trip Pay			\$0		\$21,500	\$21,500	\$21,500
312	New	11510	501000	Sheriff Division - E- 911 Fund	Overtime			\$0		\$85,500	\$85,500	\$85,500
312	New	11510	502000	Sheriff Division - E- 911 Fund	Fringe Benefits			\$0		\$330,634	\$330,634	\$330,634
312	New	11510	505200	Sheriff Division - E- 911 Fund	Clothing Supplies			\$0		\$4,250	\$4,250	\$4,250
312	New	11510	506200	Sheriff Division - E- 911 Fund	Maintenance and Repair			\$0		\$3,000	\$3,000	\$3,000
312	New	11510	510200	Sheriff Division - E- 911 Fund	Training and Education			\$0		\$250	\$250	\$250
312	New	11510	910600	Sheriff Division - E- 911 Fund	ID Purchasing Services			\$0		\$250	\$250	\$250
312	New	11510	980000	Sheriff Division - E- 911 Fund	ID DISS Services			\$0		\$90,092	\$90,092	\$90,092
312	New	11510	486000	Sheriff Division - E- 911 Fund	Interfund Revenue subsidy			\$0		\$1,162,794	\$1,162,794	\$1,162,794
322	Restore	12610	1261020	Probation	Probation Officer	11	0	\$0	2	\$101,670	\$101,670	\$101,670
324	Adjust	12610	500000	Probation	Full Time - Salaries			\$5,655,402		\$5,757,162	\$101,670	\$101,670
324	Adjust	12610	502000	Probation	Fringe Benefits			\$3,479,318		\$3,330,153	(\$149,165)	(\$149,165)
341	Adjust	16200	502000	Environment & Planning	Fringe Benefits			\$570,580		\$520,580	(\$50,000)	(\$50,000)

P.10

343	New	1332010	New	Community/Neighborhood Development	Vive la Casa			\$0		\$90,000	\$90,000	\$90,000
376	New	420	504990	Buffalo and Erie County Public Library	Reductions - Personal Services Account			(\$4,940,000)		(\$940,000)	\$4,000,000	
377	Revenue	420	486000	Buffalo and Erie County Public Library	Interfund Revenue Subsidy			\$0		\$4,000,000	\$4,000,000	\$4,000,000
402	Restore	16410	1641010	Parks	Park Superintendent	11	0	\$0	1	\$54,945	\$54,945	\$54,945
406	Adjust	16410	500000	Parks	Full Time - Salaries			\$1,538,468		\$1,593,413	\$54,945	\$54,945
405	Adjust	16410	502008	Parks	Fringe Benefits			\$1,551,525		\$1,579,025	\$27,500	\$27,500
436	Delete	12220	1222010	Buildings and Grounds	Director of Real Estate	22	1	\$129,453	0	\$0	(\$129,453)	(\$129,453)
437	Restore	12220	1222030	Buildings and Grounds	Building Guard	4	0	\$0	3	\$85,722	\$85,722	\$85,722
439	Adjust	12220	500000	Buildings and Grounds	Full Time - Salaries			\$4,956,402		\$4,912,671	(\$43,731)	(\$43,731)
439	Adjust	12220	502000	Buildings and Grounds	Fringe Benefits			\$3,289,044		\$3,268,044	(\$21,000)	(\$21,000)
439	Adjust	12220	516020	Buildings and Grounds	Professional Svcs Contracts & Fees			\$264,759		\$164,759	(\$100,000)	(\$100,000)

Exhibit D

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

FILED  
ACTIONS & PROCEEDINGS

DEC 17 2010

ERIE COUNTY  
CLERK'S OFFICE

**Mark C. Poloncarz,**  
439 West Delavan Avenue  
Buffalo, New York  
As County Comptroller of Erie County, New York

Plaintiff,

vs.

**Christopher C. Collins,**  
9660 Cobblestone Lane  
Clarence, New York  
As County Executive of Erie County New York,

## SUMMONS

**Erie County Legislature,**  
92 Franklin Street – Fourth Floor  
Buffalo, New York  
and

INDEX NO. 2010 / 012513

**County of Erie**  
Rath Building  
95 Franklin Street  
Buffalo, New York

Defendants

### To The Above-Named Defendant(s):

**YOU ARE HEREBY SUMMONED** and required to serve upon Plaintiff's attorney an answer to the Complaint in this action within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, Judgment shall be taken against you by default for the relief demanded in the Complaint.

Plaintiff designates Erie County as the place of trial. The basis of venue is the residence of the Defendants County of Erie pursuant to CPLR §504. The Plaintiff's residence is 439 West Delavan Avenue, Buffalo, New York within the County of Erie, State of New York.

Dated: December 17, 2010

By: 

Jerome D. Schad, Esq.  
Attorney for Plaintiff  
Office and P.O. Address:  
199 Meadowview Lane  
Williamsville, NY 14221

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

FILED  
ACTIONS & PROCEEDINGS

DEC 17 2010

Mark C. Poloncarz,  
As County Comptroller of Erie County, New York

Plaintiff,

vs.

ERIE COUNTY  
CLERK'S OFFICE

Christopher C. Collins,  
As County Executive of Erie County New York,

COMPLAINT

Erie County Legislature,  
and

INDEX NO. 2010 / 012513

County of Erie

Defendants

Plaintiff, Mark C. Poloncarz, as County Comptroller of Erie County, New York, for his verified complaint against the defendants, alleges:

#### PARTIES

1. Plaintiff, Mark C. Poloncarz, is the duly elected Erie County Comptroller, an attorney at law licensed to practice in the state of New York and resides at 439 West Delavan Avenue, Buffalo, New York within the County of Erie, State of New York.
2. Pursuant to the Erie County Charter, being Erie County Local Law No. 1-1959 together with all amendments to January 1, 2007 [hereinafter the "Charter"], Plaintiff is the chief fiscal, accounting, reporting and auditing officer of the county and is charged with the mandate to "oversee the fiscal affairs of the county . . ." [Charter Article 19, Section 1902] [emphasis added].

3. Defendant Christopher C. Collins is the duly elected Erie County Executive and [hereinafter “Collins” or “County Executive”] and resides at 9660 Cobblestone Lane, Clarence, New York within the County of Erie, State of New York
4. Defendant Collins is the Chief Executive Officer and Chief Budget Officer of the county and charged with the duty to transmit the proposed budgets of each department and/or administrative unit of the county, along with his recommendations, to the Legislature in an annual tentative budget for each upcoming fiscal year.
5. Defendant Erie County Legislature is the duly constituted legislative and governing body of the county of Erie, New York, which, pursuant to the Charter, is charged with the duty to review, strike from, and/or add to and/or decrease items from the proposed tentative budget for each upcoming fiscal year and is the sole body authorized to adopt the county budget.
6. Defendant County of Erie is a municipal corporation exercising such powers and discharging such duties as conferred on it by the Charter, as amended in 2006, and named herein solely as a potential necessary party so that the decision and order of the court can be given full force and effect.

### **JURISDICTION**

7. This action is commenced under the Civil Practice Law and Rules, particularly Section 3001, seeking declaratory and related relief regarding certain actions of the County Executive seeking to abolish or end funding for fifteen positions in the office of the Erie County Comptroller [hereafter referred to as the “15 disputed positions”] which will, in effect, abolish the audit functions of the Erie County Comptroller under the Charter, as amended in 2006, and effective January 1, 2011.
8. This action seeks declaratory relief determining that the 2006 amendments to the Erie County Charter split the governing power of Erie County into three branches, the executive, legislature

and comptroller's office and stripped the county executive of the power to manage the budgets of independently elected officials (clerk, comptroller, district attorney and sheriff) and granted exclusive control over "*departments overseen by the independently elected officials*" to those independently elected officials "*who shall have the power to manage their department within the parameters of the adopted budget.*" [Charter, Article 26, Section 2607(b)(emphasis added)].

9. This action also seeks a declaration that:

(a) the County Executive has no authority to abolish or substantially abolish the mandated functions of the Erie County Comptroller and, in particular, the audit function of the Erie County Comptroller;

(b) in each department overseen by independently elected officials (clerk, comptroller, district attorney and sheriff), the independently elected official has sole and exclusive power over his or her budget and prospective budget to be submitted to the Legislature annually, as part of the County Executive's tentative budget for each upcoming year, and

(c) the proposed budgets of each department overseen by independently elected officials (designated as "budget requests" in the County Executive's tentative budget) are budgets that are before the Legislature for public hearings and adoption annually, and

(d) any budget item within the proposed budget of a department overseen by independently elected officials, as to which the County Executive has recommended a deletion or reduction in either positions or funding shall, nevertheless, be adopted as proposed by the independently elected official, pursuant to Charter Section 2608, unless the Legislature, by affirmative action and a majority vote, cuts or decreases such budget items; and

(e) the Erie County Legislature did not cut or decrease funding or positions from the Erie County Comptroller's proposed budget [see Exhibit A attached] when it conducted its annual

budget meeting and, therefore, by reason of Erie County Charter Section 2608, Plaintiff Comptroller's budget, containing the 15 disputed positions and fully funded is "*deemed to have been adopted without any further action by the county executive;*" and (f) since the County Executive's recommendations regarding items in the budgets of departments of independently elected officials constitute only "recommendations" and not action, and because the Erie County Legislature did not cut or decrease funding or positions from the Erie County Comptroller's proposed budget, the Erie County Legislature was not required to "add" them back or "restore" them and the County Executive's purported veto of the Legislature's purported action to restore is a nullity and meaningless and of no force and effect.

**The 2006 Erie County Charter Amendments  
Significantly Altered the Governing Structure of Erie County  
by Decreasing the Powers of the County Executive and  
Strengthening the Powers of the Legislature and  
Other Independently Elected Officials**

10. The governing structure of Erie County is provided for in the Charter.
11. Prior to the passage of the 2006 amendments to the Charter, which amendments were approved via local law by the Legislature, County Executive and the public by a referendum and became effective on January 1, 2007, Erie County was governed primarily by two branches of government: the executive and legislature.
12. As a result of the 2004-2005 "Red-Green" budget crisis and the failure of the prior county executive's office to provide accurate information to the public, the Charter was amended to significantly decrease the powers of the County Executive in relation to proposing tentative

annual budgets and controlling adopted budgets and significantly increase the powers of the Legislature and Comptroller's Office.

13. The 2006 Charter amendments split the governing power of Erie County into three branches: the executive, legislature and comptroller's office.
14. The 2006 Charter amendments stripped the county executive's office of the power to manage the budgets of independently elected officials (clerk, comptroller, district attorney and sheriff) and granted exclusive control over "departments overseen by the independently elected officials" to those independently elected officials "who shall have the power to manage their departments within the parameters of the adopted budget." [Charter, Article 26, Section 2607(b)].
15. Pursuant to the 2006 Charter amendments, at Section 2607(b), the County Executive does not have the authority to control the hiring and firing or the allocation of staffing of the independently elected officials, and as such, has no power or authority to dismantle the mandated audit and accounting functions of the Comptroller.
16. Pursuant to the 2006 Charter amendments, the Legislature, not the County Executive, has the power to address deficits, if any, which may arise within a department overseen by an independently elected official during any fiscal year.
17. Pursuant to the 2006 Charter amendments, the Legislature, not the County Executive, has the power to impose quotas, allotments or other cost control measures on the independently elected officials if the need arises due to a budget deficit.
18. Pursuant to the 2006 Charter amendments, the Legislature, not the County Executive, has the power to adopt the county budget and to make deletions or additions thereto.



### The Comptroller's Mandated Oversight and "Audit" functions

19. The scope of the comptroller's oversight duties include that "the comptroller *shall*" oversee the "*general and operating fund revenues*" of the county [Charter Article 19, Section 1902] [emphasis added].
20. The comptroller is required to "Conduct financial and compliance audits of the records and accounts of all officers and employees charged with any duty relating to county funds or funds for which the county is responsible in conformity with generally accepted auditing standards as prescribed by the American institute of certified public accountants and the comptroller general of the United States, and submit such audit reports to the legislature." [Charter, Article 19, Section 1902(e)]. [emphasis added].
21. "The comptroller is required to "*Conduct management and performance audits of county administrative units and county funded programs* in conformity with generally accepted auditing standards as prescribed by the American institute of certified public accountants and the comptroller general of the United States and submit such audit reports to the legislature" [Charter, Article 19, Section 1902(g)] [emphasis added]; and; due to the important nature of these audits, the budget director is then mandated to "report to the county executive on the implementation of such audit recommendations... ." [Charter, Article 3, Section 305].
22. There is no higher public purpose than the oversight and audit of public funds to prevent theft, misappropriation, improper diversion and waste of county taxpayer money.

**Defendant County Executive's improper assertion of control over  
the Plaintiff Comptroller's budget for fiscal year 2011**

23. Plaintiff timely filed his departmental budget for the Comptroller's Office for fiscal year 2011 with the budget director in compliance with Article 26 of the Charter.

24. The Plaintiff's proposed 2011 budget appears at pages 24 through 30 of the tentative budget.

25. A true copy of the Plaintiff Comptroller's 2011 budget is attached hereto as Exhibit A to this Petition.

26. The Comptroller's 2011 budget Summary of Personal Services reports the Comptroller's budget under the heading of "Positions" and the "Salary" and "No. [number] and monetary amount designated "Dept. Req." [department request] and is attached as part of Exhibit A at page numbered 28.

27. In the County Executive's tentative 2011 budget, the columns to the right of the "Dept. Req." and designated as "No." [number] "Exec. Rec" [Executive Recommendation] and "Remarks" were supplied by and filled in by the Defendant County Executive.

28. The County Executive recommended that the 15 disputed positions be zeroed out and that funding for them also be zeroed out as is shown by the chart below:

<b>Position</b>	<b>2010 No.</b>	<b>2010 Salary</b>	<b>2011 No.</b>	<b>2011 "Dept. Req."</b>	<b>County Executive Rec. No.</b>	<b>County Executive Rec. [Dollars]</b>
Associate Deputy Comptroller	1	\$83,356	1	\$83,356	0	\$0
Secretary, Comptroller	1	\$32,604	1	\$32,604	0	\$0
Administrative Clerk	1	\$35,922	1	\$37,611	0	\$0
Senior Auditor	1	\$72,817	1	\$72,817	0	\$0
Staff Auditor	3	\$170,035	3	\$172,660	0	\$0
Accountant Auditor	2	\$81,665	2	\$87,239	0	\$0

<b>Position</b>	<b>2010 No.</b>	<b>2010 Salary</b>	<b>2011 No.</b>	<b>2011 "Dept. Req."</b>	<b>County Executive Rec. No.</b>	<b>County Executive Rec. [Dollars]</b>
Assistant Director of Revenue Recovery	1	\$56,252	1	\$56,252	0	\$0
Supervising Accountant	1	\$57,554	1	\$57,554	0	\$0
Junior Tax Accountant	1	\$41,964	1	\$44,165	0	\$0
Senior Cashier	2	\$87,760	2	\$87,760	0	\$0
Cashier	1	\$28,502	1	\$31,705	0	\$0

29. Each of the above 15 disputed positions is a position already in existence and within the parameters of the 2010 adopted county budget and was included in the Plaintiff's proposed 2011 budget submission.
30. Defendant County Executive Collins, under the Charter as amended in 2006, had no control over the 15 disputed positions or any other Comptroller positions listed in Exhibit A attached hereto.
31. Defendant County Executive Collins, under the Charter as amended in 2006, is not authorized to abolish the 15 disputed positions or the auditing function of the Erie County Comptroller.
32. The County Executive's recommendations to eliminate the 15 disputed positions in the Comptroller's office, including, but not limited to, the Comptroller's Office's sole Associate Deputy Comptroller, six auditors and two accountants, would abolish and render impossible the performance of the "audit" and other mandated functions of the Erie County Comptroller.
33. The public purse cannot be protected and the fundamental checks and balances within the Erie County government cannot be maintained if the Comptroller's "audit" functions are abolished or other staffing is eliminated so that accounting functions and audit functions cannot be routinely conducted.
34. The citizens of Erie County, through the overwhelming passage of the 2006 Charter amendments, demanded the existence of a strong audit and oversight function in the Comptroller's Office.

35. The County Executive cannot, in effect, terminate the Comptroller's audit and oversight function by zeroing out funding for the vast majority of positions related to the provision of that mandated function.

36. The only enterprise or activity which will be benefited by or facilitated by or encouraged by the Defendant County Executive's recommendation to abolish the audit function of the Erie County Comptroller will be criminal enterprise and other unlawful activity that will result in misappropriation or improper diversion of county taxpayer money by persons not yet known who would be able to commit such egregious actions without fear of audit and discovery.

#### **Defendant County Executive's Conduct**

37. The Defendant County Executive's action to submit his tentative budget to the Legislature recommending zero personnel for the 15 disputed positions and zero dollars for the 15 disputed positions exceeded his authority and jurisdiction under the Charter.

38. The Defendant County Executive's purported veto of actions by the Erie County Legislature to "restore" the 15 positions is a nullity because the Legislature, at its annual budget meeting, did not cut any positions in the Comptroller's budget, and the Comptroller's budget as part of the tentative budget was "deemed adopted without any further action by the county executive" [Charter, Section 2608(B)].

#### **The appropriate budgetary process and Legislative action to adopt the 2011 county budget**

39. Pursuant to Charter Section 2608, budgets from independently elected officials, designated "budget requests" in the County Executive's tentative budget, constitute the "budget" before the

Legislature for purposes of striking items, adding items to, increasing items in and decreasing items in the budget prior to passage and adoption by the Legislature.

40. Since the 2006 amendments to the Charter gave control of the expenditures of each department overseen by independently elected officials to those independently elected officials, and since the 15 disputed positions were within the parameters of the 2010 adopted budget and included in the Office of the Comptroller's 2011 proposed budget submission, pursuant to Charter Section 2608, the County Executive's non-binding recommendations regarding those budget items (*i.e.*, to delete them or funding for them) is and was ineffective to eliminate the 15 disputed positions or the funding for the 15 disputed positions.
41. Pursuant to the Charter, as amended in 2006, any budget item within the proposed budget of a department overseen by independently elected officials as to which the County Executive had recommended a deletion or reduction shall, nevertheless, be adopted as proposed by the independently elected official unless, pursuant to Charter Section 2608, the Legislature, by affirmative action and a majority vote, strikes or decreases such budget item.
42. Since the Erie County Legislature did not cut any positions or decrease funding for any positions in the Erie County Comptroller's office at its annual budget meeting, Plaintiff is entitled to a declaration of rights as requested herein but specifically that the staffing levels of the Erie County Comptroller's office for 2010 continue, fully funded, for fiscal year 2011.

**Time is of the Essence**

43. The 2011 fiscal year begins on January 1, 2011 and the County Executive and/or County of Erie, under the direction of the County Executive or those responsible to him, have caused notices of lay-off to be prepared and delivered to the employees who occupy positions in the Comptroller's office.

44. Upon information and belief, the County Executive, unless enjoined by this court, intends to implement lay-offs of employees in the office of the Erie County Comptroller in violation of the Erie County Charter as described above.
45. Unless declaratory and injunctive relief is granted to Plaintiff, irreparable harm to the checks and balance of power among the executive, legislative and comptroller functions of Erie County government and the budgetary process will occur.
46. Unless declaratory and injunctive relief is granted to Plaintiff, irreparable harm will befall the taxpayers of Erie County because the annual one and a half-billion-dollar Erie County Budget will not be subject to audits by a coordinate arm of County government, namely the staff of the Comptroller's office which is overseen by an independently elected official.

### **RELIEF REQUESTED**

**WHEREFORE**, Plaintiff, Mark C. Poloncarz, Erie County Comptroller, requests that this Court direct entry of an Order and Judgment granting the following relief:

- A. An Order declaring that as to any Erie County positions within a department overseen by an independently elected official, that the independently elected official has the sole power and control over said positions and the Defendant County Executive does not have the power, by fiscal means or any other means, to delete or abolish or un-fund positions within such departments since such power is vested solely with the Erie County Legislature and not the County Executive under the Erie County Charter as amended in 2006, and effective January 1, 2007; and
- B. An Order declaring that the County Executive's "recommendations," contained in his fiscal 2011 Tentative Budget regarding positions and/or funding of positions within departments

overseen by independently elected officials, have and had no force and effect on positions or funding or appropriations for such positions and are and were “recommendations” only.

- C. An Order declaring that the budgets of the departments overseen by independently elected officials and each item therein were the “budgets” before the Erie County Legislature for review and action at its annual budget meeting and without affirmative Legislature action by majority vote to “cut” or “decrease” or “eliminate” funding of a position in the budget of departments overseen by independently elected officials, those budgets of the independently elected officials are and were “deemed to have been adopted without any further action by the county executive” pursuant to Erie County Charter Section 2608(b); and
- D. An Order declaring that the Erie County Legislature’s purported action, at its annual budget meeting, to “restore” 15 disputed positions in the Comptroller’s office, was unnecessary under the Erie County Charter because all of the Erie County Comptroller’s positions, fully-funded, were before the Legislature and the Erie County Legislature took no action to reduce the number of positions and took no action to reduce funding for any positions in the Comptroller’s Office; and
- E. An Order declaring that the December 13, 2010 County Executive’s purported “veto” of alleged action by the Erie County Legislature regarding 15 positions in the Comptroller’s Office is a “nullity” and without force or effect; and
- F. An Order preliminarily and permanently enjoining the County Executive, the County of Erie, and any employee acting on behalf of the County Executive or the County, from taking any action to terminate any of the 15 employees whose positions the County Executive had recommended be “abolished” or “unfunded” and enjoining the County Executive and the County of Erie from taking any adverse action against said employees

including, but not limited to, failing to timely pay the salaries and benefits of said employees during the pendency of this action; and

G. An Order preliminarily and permanently enjoining the effective date or any lay-off notices issued to any employee of the Erie County Comptroller's office, including, but not limited to, the employees who occupy any of the 15 disputed positions that the County Executive seeks to eliminate and enjoining the County of Erie from interrupting or delaying the payment of any wages, salary or benefits to any employees in the Comptroller's Office during the pendency of this action; and

H. An Order maintaining continuing jurisdiction over the proceeding to ensure timely and proper compliance by all parties; and

An Order Granting such other and further relief as the Court may deem just and proper; and, it is further,

Dated: December 17, 2010  
Buffalo, New York



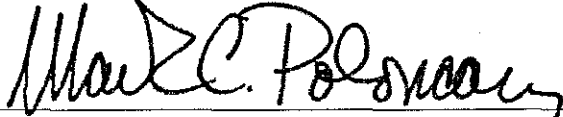
Jerome D. Schad, Esq.  
Attorney for Plaintiff, Mark C. Poloncarz  
199 Meadowview Lane  
Williamsville, NY 14221-3531  
716.634.8906  
716.445.0842 (cell)



**VERIFICATION:**

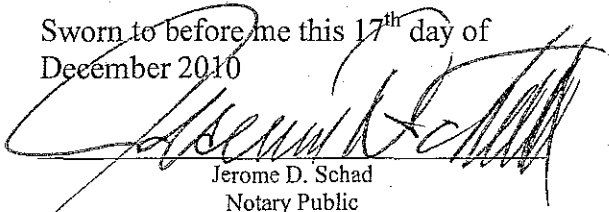
STATE OF NEW YORK)  
COUNTY OF ERIE ) ss.:

**Mark C. Poloncarz** being duly sworn deposes and says that he is the **PLAINTIFF** in this action; that he has read the foregoing **VERIFIED COMPLAINT** and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.



Mark C. Poloncarz  
Comptroller of Erie County New York

Sworn to before me this 17<sup>th</sup> day of  
December 2010

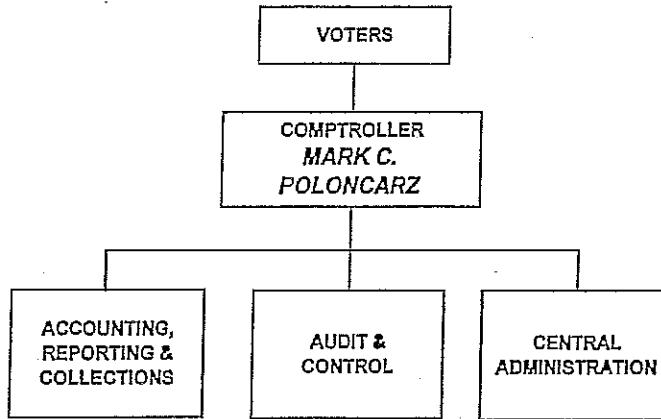


Jerome D. Schad  
Notary Public

Qualified in Erie County

My Commission Expires June 30, 2011

# COMPTROLLER



COMPTROLLER	2009 Actual	2010 Adopted	2010 Adjusted	2011 Proposed
Personal Services	2,971,380	3,395,784	3,395,784	2,497,177
Other	<u>623,296</u>	<u>426,880</u>	<u>426,882</u>	<u>356,246</u>
Total Appropriation	3,594,676	3,822,664	3,822,666	2,853,423
Revenue	<u>123,812</u>	<u>85,500</u>	<u>85,500</u>	<u>85,500</u>
County Share	3,470,864	3,737,164	3,737,166	2,767,923

## DESCRIPTION

The Erie County Comptroller is the independently elected official responsible under Article 19 of the Erie County Charter and Article 12 of the Administrative Code for performing the accounting, auditing, financial reporting and fiscal functions of the County. The Comptroller is the Chief Accounting and Reporting Officer, Chief Auditing Officer and Chief Fiscal Officer.

Accounting, Reporting and Collections: Under the direction of the Comptroller, the County's official accounting records are maintained and analyzed for propriety, consistency and compliance with legal requirements, policies, procedures and Generally Accepted Accounting Principles (GAAP) applicable to governmental entities. Reports are provided to the Legislature, County Executive and taxpayers regarding the fiscal condition of the County and the adequacy of and compliance with the County's system of internal accounting controls.

As the Chief Accounting and Reporting Officer, the Comptroller's responsibilities include maintaining the County's computerized general ledger, records of appropriations, encumbrances, expenditures and revenues, and preparing interim quarterly financial statements, annual financial statements and the Countywide Cost Allocation Plan. The Erie County Charter requires that the Comptroller prescribe accounting procedures to departments in accordance with GAAP.

Auditing: Financial audits performed by the Division of Audit and Control are designed to ensure that assets are safeguarded against unauthorized use or disposition; that transactions are executed in accordance with general or specific authorization of the charter, code, relevant statutes or legislative resolution; and that all transactions are properly recorded in accordance with GAAP. Management and performance audits are intended to measure the efficiency of operations within departments. Special audits are conducted at the request of the County Executive and the Legislature. The Division of Audit and Control also conducts special in-depth reviews on a range of issues and functions in County government.

Fiscal: As the Chief Fiscal Officer, the Comptroller oversees the fiscal affairs of the County. Primary functions include the receipt and investment of County funds, disbursement of funds, structure and sale of notes to meet the short-term cash needs of the County, and structure and sale of bonds for approved capital projects. The Comptroller also provides investment services to several County officials who are responsible for maintaining their own bank accounts. The Comptroller serves as the financial advisor and chief accountant to the Buffalo and Erie County Public Library, which is a separate legal corporation. The Comptroller is responsible for payment of all debt service and maintaining an agency fund and, as part of such responsibilities, serves as the banker for state, county, and city courts.

## MISSION STATEMENT

The Comptroller's Office serves as the independent fiscal watchdog, providing fiscal leadership, ensuring fiscal integrity, timely and accurate reporting, and maintaining the public trust and accountability through audits and reviews.

## ACCOUNTING, REPORTING AND COLLECTIONS

### Program and Service Objectives

- Develop and promulgate accounting policies, procedures and guidelines to all County departments in accordance with GAAP.
- Review, process and validate departmental accounting transactions for accruals, encumbrances, expenditures and revenues, and ensure transactions are in compliance with established policies and procedures and within authorized appropriations.
- Ensure reconciliation of the County's bank accounts.
- Develop and provide timely, accurate and informative accounting reports to the County Executive, Legislature and departments for managerial use and control.
- Prepare the County's quarterly interim and annual financial statements, the annual financial report to the New York State Comptroller, and other financial reports as required, and to assist the County's consultant in preparation of the countywide Cost Allocation Plan.
- Optimize the income from investments.

- The primary objectives of the investment program are as follows in order of importance: compliance with legal requirements; safeguarding of principal; ensuring sufficient liquidity; and obtaining a reasonable rate of return.
- Make timely and accurate disbursement of all funds consistent with the best interests of the County and vendor requirements.
- Ensure the availability of cash resources as needed for the day-to-day operation of County government and the completion of authorized capital projects.
- Develop effective plans, policies and procedures for the borrowing and investment of funds in compliance with New York State Law.
- Working with the County's financial advisor and bond counsel, prepare all official statements for bond and note sales.
- Evaluate various financing alternatives available to the County and structure financing plans to meet County needs.
- Identify and investigate questionable transactions uncovered in the pre-audit review of payment requests submitted by departments.
- Timely deposit all revenues received to improve the County's cash flow.
- Monitor the collection of County property taxes during the period in which collection and recording is a mandated responsibility of local municipal tax receivers.
- Properly process court orders requiring adjustments and corrections to outstanding property tax amounts.

### Top Priorities 2011

- Work with Erie County Fiscal Stability Authority, the Administration and the Legislature to continue to improve the County's financial condition and credit rating.
- Work with the Administration and other departments and offices to efficiently operate and reduce the cost of County government.
- Continue to reduce the number of checks reconciled as the County employs more direct deposits and debit cards for payments to vendors and support collection clients.
- Continue the e-payables initiative and develop new banking processes, interfaces and relationships.
- Further streamline the depositing of County receipts through automation.
- Further deploy the countywide electronic payments process for the acceptance of payments by credit or debit card and electronic funds transfers or automated clearinghouse transactions.
- Support the continued movement of offline financial, accounting and related processes and transactions to SAP.
- Working with departments, particularly the Department of Probation and Department of Real Property Tax Services, to maximize amounts receivable and due to the County.

### Key Performance Indicators

	Actual 2009	Estimated 2010	Estimated 2011
Number of investments completed annually	2,220	2,100	2,100
Number of debt service payments	64	64	64
ECFSA Set-Asides for Debt Service	0	7	12
Number of cash flow schedules/analyses	65	65	65
Court and bail orders managed	925	925	925
Number of vendor, Probation and Senior Services PSA checks issued, including e-payments	45,113	53,941	54,700
Trust checks issued	3,034	3,000	3,000
Transactions validated	263,376	275,000	275,000
Number of checks reconciled	361,734	364,000	364,000

Electronic Benefits Issuance System payments reconciled	851,537	850,000	850,000
Number of month-end and year-end reports produced and distributed	3,900	3,900	3,900
Number of court orders for property tax adjustments reviewed and processed	463	450	450
Schedules/reports prepared for the County's independent auditors	56/20	56/20	56/20

### Outcome Measures

	Actual 2009	Estimated 2010	Estimated 2011
Years in which GFOA's Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association of the United States and Canada is earned	20	21	22
Consecutive years with non-qualified opinion on the annual financial statements	23	24	25

## AUDIT AND CONTROL

### Objectives

- Conduct financial and compliance audits of records and accounts and management and performance audits of County departments, in accordance with the provisions of the Erie County Charter, Administrative Code and Generally Accepted Government Auditing Standards (GAGAS), and submit audit and other reports to the Legislature and County Executive.
- Conduct special in-depth reviews of a range of issues and functions in County government.
- Investigate and if necessary, act on all reports concerning possible waste, fraud or abuse in County government.

### Top Priorities 2011

- Continue to increase the number, scope and range of audits and special in-depth reviews of County government.
- Continue to rapidly respond to and investigate all "whistleblower"-type complaints and allegations concerning possible waste, fraud or abuse in County government.
- Through the new whistleblower reporting mechanisms, encourage the reporting of potential waste, fraud or abuse and develop new response processes to address such reporting.
- Pursue the recruitment of new career auditor positions and personnel to buttress the Division of Audit and Control and ensure audit continuity.

### Key Performance Indicators

	Actual 2009	Estimated 2010	Estimated 2011
Number of financial and compliance audits and/or management reviews performed and reports issued	10	10	12
Number of special reviews undertaken in conjunction with Comptroller administration	5	7	7
Number of whistleblower complaints investigated	86	100	100

2011 Budget Estimate - Summary of Personal Services

Fund Center: 11200											
Comptroller's Office		Job Group	Current Year 2010		Ensuing Year 2011						Remarks
			No:	Salary	No:	Depl-Req	No:	Exec-Rec	No:	Leg-Adopted	
Cost Center	1120010	Administration - Comptroller									
Full-time Positions		-----									
1	COUNTY COMPTROLLER	50	1	\$80,615	1	\$80,615	1	\$80,615			
2	DEPUTY COMPTROLLER	18	1	\$89,958	1	\$94,896	1	\$94,896			
3	ASSOCIATE DEPUTY COMPTROLLER	16	1	\$83,358	1	\$83,356	0	\$0			Delete
4	SECRETARY, COMPTROLLER	08	1	\$32,604	1	\$32,604	0	\$0			Delete
Total:		4		\$296,531	4	\$291,471	2	\$175,511			
Cost Center	1120020	Accounting									
Full-time Positions		-----									
1	DIRECTOR OF ACCOUNTING SERVICES	16	1	\$93,627	1	\$93,627	1	\$93,627			
2	DIRECTOR OF GRANT ACCOUNTING SERVICES	16	1	\$93,627	1	\$93,627	1	\$93,627			
3	CHIEF OF ACCOUNTING SERVICES	15	1	\$84,558	1	\$84,558	1	\$84,558			
4	SENIOR ACCOUNTING ANALYST	13	3	\$218,451	3	\$218,451	3	\$218,451			
5	ACCOUNTING ANALYST	11	1	\$61,452	1	\$61,452	1	\$61,452			
6	SYSTEMS ACCOUNTANT	11	3	\$170,035	3	\$172,660	3	\$172,660			
7	SUPV DATA PR CT CL	10	1	\$55,952	1	\$55,952	1	\$55,952			
8	ADMINISTRATIVE CLERK	07	1	\$35,922	1	\$37,611	0	\$0			Delete
9	CHIEF ACCOUNT CLERK	07	1	\$41,126	1	\$41,126	1	\$41,126			
10	JUNIOR ACCOUNTANT	07	1	\$30,586	1	\$34,228	1	\$34,228			
11	PRINCIPAL CLERK	03	1	\$39,855	1	\$39,855	1	\$39,855			
12	DATA PROCESSING CONTROL CLERK	05	2	\$72,114	2	\$72,114	2	\$72,114			
13	ACCOUNT CLERK-TYPIST	04	3	\$87,460	3	\$90,118	3	\$90,118			
14	SENIOR CLERK-TYPIST	04	1	\$25,083	1	\$27,737	1	\$27,737			
Total:		21		\$1,109,848	21	\$1,123,116	20	\$1,085,505			
Cost Center	1120030	Audit and Control									
Full-time Positions		-----									
1	DEPUTY COMPTROLLER	17	1	\$91,466	1	\$91,466	1	\$91,466			
2	SENIOR ACCOUNTING ANALYST	13	1	\$72,817	1	\$72,817	1	\$72,817			
3	SENIOR AUDITOR	13	1	\$72,817	1	\$72,817	0	\$0			Delete
4	STAFF AUDITOR	11	3	\$170,035	3	\$172,660	0	\$0			Delete
5	ACCOUNTANT AUDITOR	09	2	\$81,665	2	\$87,239	0	\$0			Delete
Total:		6		\$498,800	6	\$498,999	2	\$164,283			
Cost Center	1120040	Revenue Recovery									
Full-time Positions		-----									
1	ASSISTANT DIRECTOR OF REVENUE RECOVERY	11	1	\$56,252	1	\$56,252	0	\$0			Delete
2	BILLING COLLECTIONS SPECIALIST	10	1	\$52,333	1	\$52,333	1	\$52,333			
3	SENIOR BILLING ACCOUNT CLERK	08	1	\$38,916	1	\$38,895	1	\$38,895			
Total:		3		\$145,501	3	\$147,481	2	\$91,229			
Cost Center	1120050	Collections									
Full-time Positions		-----									
1	SUPERVISING ACCOUNTANT	11	1	\$57,554	1	\$57,554	0	\$0			Delete
2	JUNIOR TAX ACCOUNTANT	09	1	\$41,954	1	\$44,165	0	\$0			Delete
3	SENIOR CASHIER	07	2	\$87,760	2	\$87,760	0	\$0			Delete
4	CASHIER	06	1	\$28,502	1	\$31,705	0	\$0			Delete
5	DATA PROCESSING CONTROL CLERK	05	1	\$33,517	1	\$33,517	1	\$33,517			
Total:		6		\$249,297	6	\$254,701	1	\$33,517			

2011 Budget Estimate - Summary of Personal Services

Fund Center: 11200

Comptroller's Office

Job Group	Current Year 2010			Ensuing Year 2011				Leg-Adopted	Remarks
	No:	Salary	No:	Dept-Req	No:	Exec-Rec	No:		

Fund Center Summary Totals

Full-time:	42	\$2,279,977	42	\$2,313,768	27	\$1,550,045		
Fund Center Totals:	42	\$2,279,977	42	\$2,313,768	27	\$1,550,045		

COUNTY OF ERIE

Fund: 110  
 Department: Comptroller  
 Fund Center: 11200

Account Appropriations	2009 Actuals	2010 Legislative Adopted	2010 Adjusted Budget	2011 Department Request	2011 Executive Recommendation	2011 Legislative Adopted
500000 Full Time - Salaries	2,172,682	2,290,713	2,290,713	2,313,763	1,550,045	-
500330 Holiday Worked	2,397	1,800	1,800	1,800	1,800	-
500350 Other Employee Payments	2,300	2,500	2,500	2,500	2,500	-
501000 Overtime	975	500	500	-	-	-
502000 Fringe Benefits	793,026	1,100,266	1,100,266	1,032,563	942,832	-
505000 Office Supplies	8,468	12,000	12,000	5,000	5,000	-
506200 Maintenance & Repair	761	800	800	-	-	-
510100 Out Of Area Travel	-	1,000	1,000	-	-	-
510200 Training And Education	9,093	7,000	7,000	6,000	6,000	-
516020 Professional Svcs Contracts & Fees	412,767	415,850	415,850	350,900	360,900	-
516030 Maintenance Contracts	1,750	3,300	3,300	1,500	1,500	-
530000 Other Expenses	172	500	500	300	300	-
910600 ID Purchasing Services	-	5,037	5,037	-	4,737	-
910700 ID Fleet Services	-	154	156	-	1,221	-
911200 ID Comptroller's Office Services	(122,675)	(113,200)	(113,200)	(118,860)	(118,860)	-
912215 ID DEP Mail Svcs	-	3,500	3,500	-	3,396	-
980000 ID BISS Services	312,960	90,839	90,839	79,704	92,052	-
<b>Total Appropriations</b>	<b>3,594,676</b>	<b>3,822,664</b>	<b>3,822,666</b>	<b>3,645,180</b>	<b>2,853,423</b>	<b>-</b>

Account Revenues	2009 Actuals	2010 Legislative Adopted	2010 Adjusted Budget	2011 Department Request	2011 Executive Recommendation	2011 Legislative Adopted
415050 Treasurer Fees	76,550	50,000	50,000	50,000	50,000	-
422050 R-Payable Rebates	-	-	-	55,000	-	-
466000 Miscellaneous Receipts	46,566	35,000	35,000	35,000	35,000	-
466010 NSF Check Fees	696	500	500	500	500	-
<b>Total Revenues</b>	<b>123,812</b>	<b>85,500</b>	<b>85,500</b>	<b>140,500</b>	<b>85,500</b>	<b>-</b>