



## COUNTY OF ERIE

JEREMY A. COLBY  
ERIE COUNTY ATTORNEY

**CHRIS COLLINS**  
COUNTY EXECUTIVE  
DEPARTMENT OF LAW

MARTIN A. POLOWY  
FIRST ASSISTANT COUNTY ATTORNEY

THOMAS F. KIRKPATRICK, JR.  
SECOND ASSISTANT COUNTY ATTORNEY

May 13, 2011

GA

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

Dear Mr. Graber:

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

|                      |  |
|----------------------|--|
| File Name:           | <i>Olma, Gregory B. vs Chris Collins, Ind.<br/>and as Erie Co. Exec., Christopher M.<br/>Grant, Ind. and as employee of Erie<br/>County, John Greenan, Ind. and as<br/>Personnell Comm., Gregory Skibitsky,<br/>Ind. as as Comm of Erie Co. DES and<br/>the County of Erie</i> |
| Document Received:   | Summons and Complaint  |
| Name of Claimant:    | Gregory B. Olma<br>615 Fillmore Avenue<br>Buffalo, New York 14212  |
| Claimant's attorney: | James Ostrowski, Esq.<br>63 Newport Avenue<br>Buffalo, New York 14216  |

Should you have any questions, please call.

Very truly yours,

JEREMY A. COLBY  
Erie County Attorney

By:

THOMAS F. KIRKPATRICK, JR.  
Second Assistant County Attorney

TFK/mow  
Enc.

cc: JEREMY A. COLBY, Erie County Attorney

11D-5

UNITED STATES DISTRICT COURT

for the  
Western District of New York

Gregory B. Olma

*Plaintiff*

v.

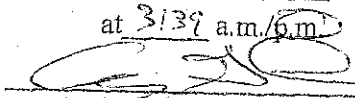
Chris Collins

*Defendant*

Civil Action No. 11-CV-61-RJA

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Chris Collins  
95 Franklin St.  
Buffalo, NY 14202

This paper received at the  
Erie County Attorney's Office  
from Dave Giesinger on  
the 6th day of May, 2011  
at 3:39 a.m./p.m.  
  
Assistant County Attorney

A lawsuit has been filed against you.


Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

JAMES OSTROWSKI,  
63 Newport Ave.  
Buffalo, NY 14216  
(716) 435-8918

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: MAY - 3 2011

  
Signature of Clerk or Deputy Clerk

Civil Action No. 11--CV--61-RJA

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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GREGORY B. OLMA  
615 Fillmore Ave.  
Buffalo, New York 14212

Plaintiff,

-against-

**COMPLAINT AND**  
**JURY DEMAND**

CHRIS COLLINS, individually and in his official capacity as  
Erie County Executive,  
CHRISTOPHER M. GRANT, individually and in his official  
capacity as an employee of Erie County,  
JOHN GREENAN, individually and in his official capacity as  
Personnel Commissioner of Erie County.  
GREGORY SKIBITSKY, individually and in his official capacity  
as Commissioner of the Erie County Department of Emergency  
Services,  
THE COUNTY OF ERIE,

Defendants.

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**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, the plaintiff GREGORY B. OLMA hereby demands a jury trial of all issues so triable.

**I. INTRODUCTION**

1. This is an action seeking declaratory and injunctive relief, as well as monetary damages, to redress illegal conduct by the defendants, who deprived the plaintiff of various rights and privileges secured by the Constitution and laws of the United States, specifically the First and Fourteenth Amendments to the United States Constitution and the Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1985(3).

## II. JURISDICTION

2. This action seeks to enforce rights guaranteed by the Constitution and laws of the United States and is brought pursuant to 42 U.S.C. §§ 1983 and 1985. Jurisdiction is based upon 28 U.S.C. §§ 1331 (federal question) and 1343 (civil rights). The substantive federal claims are brought pursuant to 42 U.S.C. §§1983 and 1985. Declaratory relief is sought pursuant to 28 U.S.C. §§2201-2202.
3. Venue is proper in the Western District of New York, under 28 U.S.C. §1391(b), because all parties reside in this District and because all of the events or omissions giving rise to the claims herein occurred within this District.

## III. PARTIES

4. Plaintiff GREGORY B. OLMA is, and at all times hereinafter mentioned was, a resident of the City of Buffalo, County of Erie and State of New York.
5. Defendant CHRIS COLLINS is, and was at all times hereinafter mentioned, a resident of Erie County. He is sued individually and in his official capacity as Erie County Executive.
6. Defendant CHRISTOPHER M. GRANT is, and was at all times hereinafter mentioned, a resident of Erie County. He is sued individually and in his official capacity as a member of the staff of the County Executive.
7. Defendant JOHN GREENAN is, and was at all times hereinafter mentioned, a resident of Erie County. He is sued individually and in his capacity as Personnel Commissioner of Erie County.
8. Defendant GREGORY SKIBITSKY is, and was at all times hereinafter mentioned, a resident of Erie County. He is sued individually and in his capacity as Commissioner of the Erie County Department of Emergency Services.

16. He had the highest score or tied for the highest score on his civil service exam.
17. On information and belief, JOHN GREENAN delayed release of his score so as to delay his possible permanent appointment to the position.
18. Senior Administrative Assistant is not a policy-making position.
19. Plaintiff's position involved no policy-making duties, minimal contact with the public, and no public contact that involved speaking on behalf of the County.
20. He was not a confidential assistant to a policymaker in the County government.
21. Plaintiff did not have the power to hire or fire, and had no supervisory control over County employees.
22. He had minimal contact with elected officials.
23. He was not in a position of authority in his department and in fact had no subordinates.
24. With respect to preparation of a county budget for 2008, plaintiff's position was recommended for inclusion in the new budget by his department head, the budget director and the County Executive at the time, Joel Giambra. It was then approved by the Erie County Legislature on or about December, 2007.
25. In November 2007, the Republican candidate for County Executive, Chris Collins, defeated James Keane, the Democratic nominee in the general election.
26. The new county executive and his staff, including CHRISTOPHER GRANT, JOHN GREENAN and GREGORY SKIBITSKY, proceeded to target plaintiff's position for elimination after the budget was passed.
27. Such a move is highly unusual and, on information and belief, had not happened in the prior eight years.

28. GRANT was COLLINS' campaign manager and was appointed chief of staff in the new administration with responsibility over political and patronage matters.
29. On December 31, 2007, COLLINS announced he was retaining SKIBITSKY as Commissioner of Emergency Services.
30. GREENAN remained as Personnel Commissioner pursuant to a term of office and was reappointed by COLLINS in or about September, 2008.
31. GREENAN'S working relationship with COLLINS was evidenced early on by his appointment in late 2007 to COLLINS' Transition Team (subcommittee on personnel).
32. In January, 2008, a memo was prepared by GREGORY SKIBITSKY to justify the elimination of plaintiff's position.
33. The memo argued that plaintiff's position and a position held by Janet L. Vogtli were being eliminated because of a loss of grant funding.
34. In fact, the memo was a pretext or subterfuge to cover up the true reason for the elimination of plaintiff's position.
35. Plaintiff's position was actually eliminated because of his political affiliation, activism, and speech.
36. According to the memo, a second Homeland Security position was also proposed to be eliminated: Grant Monitoring Specialist, a position held by Janet L. Vogtli.
37. The memo at the same time recommended creation of a new accounting position that was deemed unnecessary by the County Comptroller in a memo dated January 23, 2008.
38. At the same time, a budget restructuring occurred in the Health Department, that, on information and belief, resulted in the hiring of a Republican loyalist.

39. Janet L. Vogtli at all times herein was a registered Republican who was active in Republican politics for many years and once served as vice-chairman of the Erie County Republican Party and once ran for State Assemblyman on the Republican line.

40. Vogtli was a heavy donor to Republican causes including to CHRISTOPHER COLLINS'

2007 campaign for County Executive as follows:

\$1,000.00 02-NOV-07 COLLINS FOR OUR FUTURE

\$150.00 28-DEC-07 COLLINS FOR OUR FUTURE

\$90.00 28-OCT-07 COLLINS FOR OUR FUTURE

\$150.00 26-FEB-02 SENATOR VOLKER CAMPAIGN

\$40.00 02-MAR-06 SENATOR VOLKER CAMPAIGN

\$150.00 14-FEB-05 SENATOR VOLKER CAMPAIGN

\$50.00 14-MAR-08 FRIENDS OF TIM HOWARD

\$30.00 26-AUG-08 FRIENDS OF TIM HOWARD

\$50.00 16-DEC-05 FRIENDS OF TIM HOWARD

41. Because of her Republican affiliation, financial support and activism, Janet L. Vogtli was privately assured by CHRISTOPHER GRANT that she would be rehired and that the double layoff was actually designed to mask the elimination of plaintiff's employment for political reasons.

42. CHRISTOPHER GRANT told Vogtli that they "were going to do what we had to do to get rid of Greg Olma but we will protect you."

43. GRANT referred to Olma as a "Democratic political operative."

44. GRANT warned Vogtli not to disclose these communications.

45. Vogtli was in fact later hired by the County in a different department.



46. In an email dated December 15, 2007, sent to CHRIS GRANT, then a private citizen and political aide to the County executive-elect (but not a listed member of his transition team), and copied to GREGORY SKIBITSKY, JOHN GREENAN stated, "I am going to have Greg [Skibitsky] move forward as if there will be no intent to keep Greg [Olma]. I will assume that there will be pressure to keep Janet [Vogtli] and will ask Greg [Skibitsky] to attempt to devise a plan to keep her."
47. While the email did express concern over the loss of grant money for plaintiff's position, it clearly placed a priority on political factors in resolving plaintiff's fate.
48. Moreover, it is significant that the email does not mention plaintiff's job title but refers to him by name.
49. At the time of the email, GREENAN and SKIBITSKY were members of the outgoing administration and had an incentive to curry favor with GRANT and COLLINS to secure continued employment, or in GREENAN's case, be appointed to a new term of office in the new administration.
50. GREENAN later told County Legislator Mazur in or about January, 2008, that plaintiff was "too hot to handle."
51. A substantial or motivating factor in the elimination of plaintiff's job was retaliation for his political speech, affiliation, and support of Democratic candidates for County Executive in 2007.
52. At all times herein, ERIE COUNTY and other agencies affiliated with ERIE COUNTY (such as the Erie County Water Authority and Board of Elections) maintained a policy or custom of indiscriminately making adverse employment decisions based on impermissible considerations of political speech, activism or affiliation.

53. However, neither the COUNTY OF ERIE nor CHRIS COLLINS properly trained or supervised employees in the importance of protecting the constitutional rights of workers.
54. In the case of CHRIS COLLINS, he also failed to properly supervise his subordinates in their dealings with plaintiff and concerning the elimination of plaintiff's position.
55. In fact, he actively participated in and endorsed the improper elimination of plaintiff's position.
56. In a conversation with county legislator Thomas Mazur, in or about January, 2008, concerning retention of the plaintiff's position, CHRIS COLLINS referred to the plaintiff as politically "toxic."
57. CHRIS COLLINS also failed to stop illegal behavior towards plaintiff that occurred in his presence or that he became aware of through communications with his subordinates.
58. On January 21, 2008, CHRIS COLLINS forwarded to the county legislature a letter with the memo referred to at paragraph 32 requesting that plaintiff's position be eliminated.
59. On or about February 7, 2008, the County Legislature approved the resolution eliminating plaintiff's position from the budget.
60. On February 15, 2008, plaintiff was notified by GREGORY SKIBITSKY that he was being terminated on February 27, 2008. See Exhibit "A".
61. The unlawful elimination of plaintiff's position was proposed, endorsed and approved of by the final policymakers of the County, including the County Executive and the County Legislature.
62. Given a history of politically-motivated hiring and firing in the County, the defendants' failure to properly train their staff was a substantial factor in the elimination of plaintiff's position.

63. At all times relevant herein, the Defendants were acting under color of state law.

**V. LEGAL CLAIMS**

**FIRST CAUSE OF ACTION UNDER 42 U.S.C. § 1983-VIOLATION OF RIGHT TO POLITICAL SPEECH—FIRST AND FOURTEENTH AMENDMENTS, U.S. CONSTITUTION—AGAINST CHRISTOPHER M. GRANT, JOHN GREENAN and GREGORY SKIBITSKY.**

64. The defendants, acting jointly and severally, conspired to and did terminate GREGORY OLMA because of his open and public political activities including support for candidates for county executive in 2007. *Pickering v. Board of Education*, 391 U.S. 563 (1968).

65. The defendants' actions violated the Plaintiff's clearly established rights to political free speech as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

66. The Defendants knew, or reasonably should have known, that their conduct violated the Plaintiff's clearly established constitutional right to political free speech.

67. The Defendants acted with intent to violate, or with deliberate or reckless indifference to, the Plaintiff's clearly established First and Fourteenth Amendment rights.

68. At all times relevant herein, the Defendants were acting under color of state law.

69. As a direct result of the Defendants' conduct, the Plaintiff has suffered actual damages, attorneys' fees, and costs.

**SECOND CAUSE OF ACTION UNDER 42 U.S.C. § 1983-VIOLATION OF RIGHT TO POLITICAL AFFILIATION AND ASSOCIATION—FIRST AND FOURTEENTH AMENDMENTS, U.S. CONSTITUTION—AGAINST CHRISTOPHER M. GRANT, JOHN GREENAN and GREGORY SKIBITSKY.**

70. The defendants, acting jointly and severally, conspired to and did terminate GREGORY OLMA'S position because of his association with and support of the Democratic Party. *Elrod v. Burns*, 427 U.S. 347 (1976).

71. The defendants' actions violated the Plaintiff's clearly established right to freedom of political association as guaranteed by the First and Fourteenth Amendments to the United States Constitution.
72. The Defendants knew, or reasonably should have known, that their conduct violated the Plaintiff's clearly established constitutional right to freedom of political association.
73. The Defendants acted with intent to violate, or with deliberate or reckless indifference to, the Plaintiff's clearly established First and Fourteenth Amendment rights.
74. At all times relevant herein, the Defendants were acting under color of state law.
75. As a direct result of the Defendants' conduct, the Plaintiff has suffered actual damages, attorneys' fees, and costs.

**THIRD CAUSE OF ACTION UNDER 42 U.S.C. § 1983-VIOLATION OF RIGHT TO  
POLITICAL AFFILIATION, SPEECH AND ASSOCIATION—FIRST AND  
FOURTEENTH AMENDMENTS, U.S. CONSTITUTION—FAILURE TO TRAIN—  
AGAINST CHRIS COLLINS AND THE COUNTY OF ERIE**

76. With respect to the first two causes of action, the defendants COUNTY OF ERIE and CHRIS COLLINS were deliberately indifferent to the rights of the plaintiff by their failure to properly train their staff in the constitutional restrictions on terminating employees.
77. Said failure to train was a substantial factor in the unlawful elimination of plaintiff's position.
78. The Defendants or their policymakers knew, or reasonably should have known, that their conduct violated the Plaintiff's clearly established constitutional right to freedom of political association.

79. The Defendants or their policymakers acted with intent to violate, or with deliberate or reckless indifference to, the Plaintiff's clearly established First and Fourteenth Amendment rights.

80. At all times relevant herein, the Defendants were acting under color of state law.

81. As a direct result of the Defendants' conduct, the Plaintiff has suffered actual damages, attorneys' fees, and costs.

**FOURTH CAUSE OF ACTION UNDER 42 U.S.C. § 1983-VIOLATION OF RIGHT TO  
POLITICAL AFFILIATION, SPEECH AND ASSOCIATION—FIRST AND  
FOURTEENTH AMENDMENTS, U.S. CONSTITUTION—FAILURE TO SUPERVISE—  
AGAINST CHRIS COLLINS**

82. With respect to the first two causes of action, the defendant CHRIS COLLINS failed to properly supervise his staff and subordinates and failed to intervene to stop the illegal plans and activities he was aware of or which occurred in his immediate presence.

83. Said failure to supervise or intervene was a substantial factor in the unlawful elimination of plaintiff's position.

84. The Defendant knew, or reasonably should have known, that his conduct violated the Plaintiff's clearly established constitutional rights to freedom of political speech and association.

85. The Defendant acted with intent to violate, or with deliberate or reckless indifference to, the Plaintiff's clearly established First and Fourteenth Amendment rights.

86. At all times relevant herein, the Defendant was acting under color of state law.

87. As a direct result of the Defendant's conduct, the Plaintiff has suffered actual damages, attorneys' fees, and costs.

**FIFTH CAUSE OF ACTION—MUNICIPAL LIABILITY**

88. The termination of plaintiff's position was proposed, supported and endorsed by all the final policymakers in the County including the County Executive and the Legislature.
89. Thus, municipal liability may be imposed in this instance.
90. As a direct result of the Defendant's conduct, the Plaintiff has suffered actual damages, attorneys' fees, and costs.

**VI. DAMAGES**

91. On account of the Defendants' actions and violations of their rights as set forth above, the Plaintiff has suffered actual damages, including loss of income, loss of employment benefits, pain, suffering and emotional distress, and has incurred attorneys' fees and costs.
92. Plaintiff is entitled to recover his damages, attorney's fees, costs, and punitive damages against the individual defendants.
93. Plaintiff demands prejudgment interest on all elements of out-of-pocket loss.

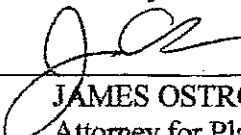
**VII. PRAYER FOR RELIEF**

WHEREFORE Plaintiff requests that this Court:

- A. Assume jurisdiction of this action;
- B. Declare that Defendants' actions violated the Constitution and Laws of the United States;
- C. Enter judgment against the Defendants and in favor of the Plaintiff;
- D. Enter an injunction restoring GREGORY OLMA to his former position at the COUNTY OF ERIE;
- E. Award the Plaintiff compensatory damages of \$500,000, including prejudgment interest;

- F. Impose on each individual defendant punitive damages of \$100,000 for a total of \$400,000;
- G. Award Plaintiff all costs and disbursements incurred in the prosecution of this action, including reasonable attorneys' fees under 42 U.S.C. §1988; and
- H. Enter such other and further relief as the Court deems just and proper.

Dated: Buffalo, New York  
January 21, 2011



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JAMES OSTROWSKI  
Attorney for Plaintiff  
63 Newport Ave.  
Buffalo, New York 14216  
(716) 435-8918  
jameso@apollo3.com

POI # 18286



**County of Erie**

Chris Collins  
County Executive

GREGORY W. SKIBITSKY  
Commissioner

**DEPARTMENT OF EMERGENCY SERVICES**

45 Elm Street - Buffalo, NY 14203  
716 858-6578 - FAX 858-7937  
[www.erie.gov](http://www.erie.gov)

February 15, 2008

Gregory B. Olma  
615 Fillmore Avenue  
Buffalo, New York 14212

Dear Mr. Olma,

As a result of a lack of funding for your position and action by the Erie County Legislature, your position has been eliminated. Therefore, pursuant to your Collective Bargaining Agreement, your employment with Erie County will be terminated on February 27, 2008.

Thank you for your service to the residents of Erie County.

Sincerely,

Gregory Skibitsky  
Commissioner of Emergency Services

**Exhibit "A"**