MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 29, 2013

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

Dear Mr. Graber:

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

File Name:	*New York State Committee of the Independence Party, et al. v. Ralph M. Mohr and Dennis E. Ward, Commissioners of and Constituting the Erie County Board of Elections, et al.*
Document Received:	Order to Show Cause
Name of Claimant:	New York State Committee of the Independence Party
Claimant's attorney:	Jeffrey T. Bochiechio, Esq. Main Place Tower 350 Main Street, Suite 1400 Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: Michelle Parker
Michelle M. Parker
First Assistant County Attorney

MMP:dld
Enclosure

At a Special Term of the Supreme Court held in and for the County of Erie, at the courthouse thereof in the City of Buffalo, New York, on the 23rd day of July, 2013.

PRESENT: HON. DIANE Y. DEVLIN
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ALBANY

In the Matter of the Application of

NEW YORK STATE COMMITTEE OF THE INDEPENDENCE PARTY,

EXECUTIVE COMMITTEE OF THE NEW YORK STATE COMMITTEE OF THE INDEPENDENCE PARTY,

FRANK M. MacKAY, Chairman of the New York State Committee of the Independence Party

WILLIAM BOGARDT, Secretary of the New York State Committee of the Independence Party

and

PATRICK J. KEEM, a candidate aggrieved

Petitioners

against

RALPH M. MOHR and **DENNIS E. WARD**, Commissioners of and constituting the Erie County Board of Elections,

NEW YORK STATE BOARD OF ELECTIONS,

MARY ROSE GAUGHAN, purported Presiding Officer of an authorization meeting asserted to have been conducted on the 17th day of April, 2013, and elected state committee member,

KENNETH R. WALSH, purported Secretary, of an authorization meeting asserted to have been conducted on the 17th day of April, 2013, and elected state committee member,

PATRICK J. HUMISTON, CHRISTINE M. SAGNIBENE, RICHARD L. WOLL, JOANNE A. SCHULTZ, ANTHONY J. MINGARELLI and **ELAINA M. MONTE**, who together with respondents Mary Rose Gaughan and Kenneth R. Walsh comprise the interim county organization in the County of Erie,

JANIS A. COLARUSSO, LYNMARIE PHILLIPS and **RONALD R. FRASER**, Candidates,

INDEPENDENCE PARTY OF ERIE COUNTY,

and

INTERIM COUNTY COMMITTEE OF THE INDEPENDENCE PARTY

Respondents

FILED
ACTIONS & PROCEEDINGS
JUL 24 2013
ERIE COUNTY CLERK'S OFFICE

ORDER TO SHOW CAUSE

Index No.:

Justice Assigned:
Hon.

Oral Argument Requested

FILED
07/24/2013/ 11:29:09
ERIE COUNTY CLERK
RECT # 1311767U
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Signature of BOE Employee

This paper received at the
Erie County Board of Election's Office
From _____
On the ____ day of _____ 20__
At ____ am/pm

ERIE CO. BOE JUL 24 '13 AM 9:27

This paper received at the
Erie County Board of Election's Office
From James
On the 24 day of July 2013
At 3:27 am/pm

Signature of BOE Employee

Upon the annexed petition, duly verified the 26th day of July, 2010, the exhibits annexed thereto, the rules and resolutions of the New York State Committee of the Independence Party, and upon all the papers and proceedings heretofore had herein, it is

ORDERED that respondents herein show cause before this Court at a special term thereof, to be held at the courthouse located at 50 DELAWARE AVE. PART 32 in the City of Buffalo, New York on the 8 day of August, 2013 at 11:00 AM o'clock of that day, or as soon thereafter as counsel may be heard, why a judgment and order should not be made and entered herein: (i) declaring petitioner Executive Committee of the New York State Committee of the Independence Party to be the sole and exclusive authority for the issuance of Independence Party nominations, authorizations, substitutions or cross endorsements of candidates for election to public office in Erie County; (ii) enjoining respondent boards of elections from giving force and effect to purported certificates of nominations, authorizations, substitutions or cross endorsements of candidates for election to public office in Erie County issued in contravention to the rules and resolutions of the New York State Committee of the Independence Party; (iii) declaring the three separate certificates of authorization filed on or about the 15th day of July, 2013 with respondent Erie County Board of Elections which had been executed by respondents Mary Rose Gaughan and Kenneth R. Walsh, as Presiding Officer and Secretary, respectively, purporting to authorize the designations of respondent Candidates to be ineffectual, invalid, null and void; and (iv) for such other and further relief as to this court may seem just and proper, and it is further

ORDERED that respondent New York State Board of Elections, be and is hereby directed to produce upon the hearing of this order to show cause, and on all adjournments thereof, any and all rules and resolutions of the state Independence Party which have been filed in the office of the New York State Board of Elections, and it is further

ORDERED that respondents, Ralph M. Mohr and Dennis E. Ward, as Commissioners of and constituting the Erie County Board of Elections, be and are hereby directed to produce upon the hearing of this order to show cause the aforesaid original certificates of authorization filed on behalf of respondent candidates, together with such rules and resolutions of the state Independence Party which have been filed in the office of the Erie County Board of Elections, and

Sufficient reason appearing therefor, it is further

ORDERED that leave is hereby granted to petitioners to submit upon the return date of this order to show cause and the argument thereof such additional proof, exhibits and other evidence in support of their allegations as may be necessary, and

Sufficient reason appearing therefor, it is further

ORDERED that service of a date stamped copy of this filed order to show cause, together with the verified

petition upon which it was granted (i) upon respondent New York State Board of Elections, by depositing a copy of the order to show cause together with the verified petition upon which it is granted in a securely sealed and postage paid express mail envelope addressed to the office of the New York State Board of Elections located at 40 N. Pearl Street, 5th Floor, Albany, New York 12207-2729 on or before the 24th day of July, 2013; (ii) upon respondents, Ralph M. Mohr and Dennis E. Ward, as Commissioners of and constituting the Erie County Board of Elections, by service upon either one of the said respondents personally or by leaving with clerical personnel at the office of the Erie County Board of Elections located at 134 West Eagle Street, Buffalo, New York 14202 on or before the 25th day of July, 2013; (iii) upon respondents Mary Rose Gaughan and Kenneth R. Walsh, respondents Patrick J. Humiston, Christine M. Sagnibene, Richard L. Woll, Joanne A. Schultz, Anthony J. Mingarelli and Elaina M. Monte, and upon respondent candidates, Janis A. Colarusso, Lynmarie Phillips and Ronald R. Fraser, by service upon each of them personally on or before the 25th day of July, 2013, or alternatively by both depositing a copy of the order to show cause together with the verified petition upon which it is granted in a securely sealed and postage paid first class envelope addressed to said respondent at his or her address as it appears on the certificate filed with the board of elections or their last known address, at a post office or branch thereof or a post office box regularly maintained by the United States Postal Service on or before the 24th day of July, 2013 and either by affixing a copy of the said order to show cause and the verified petition upon which it is granted to the outer or other door of the residence of the said respondent at his or her address as it appears on the certificate or board of elections record or by leaving a copy of said papers with a person of suitable age and discretion at the said residence or place of business of the respondent on or before the 25th day of July, 2013; and (iv) upon respondents, Independence Party of Erie County and Interim County Committee of the Independence Party, by service upon any member or purported officer thereof named in a certificate filed with the board of elections, in any manner prescribed by §308 of the civil practice law and rules of the state of New York designed to give notice to such party on or before the 25th day of July, 2013; and it is further

ORDERED that pursuant to Rule 2220 of the civil practice law and rules of the state of New York, the requirement of filing of this order prior to service upon the respondents is dispensed with, provided filing shall be accomplished as soon as practicable, and it is further

ORDERED that opposing papers, if any, shall be served upon the petitioner and delivered to the court at least 72 hours prior to the hearing of this matter.

ENTER:

GRANTED

JUL 23 2013

BY CAROL M. WILLIAMS
COURT CLERK

Hon. FREDERICK J MARSHALL
Justice of the Supreme Court
FOR JUSTICE DELLIN

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ALBANY

In the Matter of the Application of

NEW YORK STATE COMMITTEE OF THE INDEPENDENCE PARTY,

EXECUTIVE COMMITTEE OF THE NEW YORK STATE COMMITTEE OF THE INDEPENDENCE PARTY,

FRANK M. MacKAY, Chairman of the New York State Committee of the Independence Party

WILLIAM BOGARDT, Secretary of the New York State Committee of the Independence Party

and

PATRICK J. KEEM, a candidate aggrieved

Petitioners

against

RALPH M. MOHR and **DENNIS E. WARD**, Commissioners of and constituting the Erie County Board of Elections,

NEW YORK STATE BOARD OF ELECTIONS,

MARY ROSE GAUGHAN, purported Presiding Officer of an authorization meeting asserted to have been conducted on the 17th day of April, 2013, and elected state committee member,

KENNETH R. WALSH, purported Secretary, of an authorization meeting asserted to have been conducted on the 17th day of April, 2013, and elected state committee member,

PATRICK J. HUMISTON, CHRISTINE M. SAGNIBENE, RICHARD L. WOLL, JOANNE A. SCHULTZ, ANTHONY J. MINGARELLI and **ELAINA M. MONTE**, who together with respondents Mary Rose Gaughan and Kenneth R. Walsh comprise the interim county organization in the County of Erie,

JANIS A. COLARUSSO, LYNMARIE PHILLIPS and **RONALD R. FRASER**, Candidates,

INDEPENDENCE PARTY OF ERIE COUNTY,

and

INTERIM COUNTY COMMITTEE OF THE INDEPENDENCE PARTY

Respondents

VERIFIED PETITION

To the Supreme Court of the State of New York:

Petitioners, by their attorney, Jeffrey T. Bochicchio, as and for their petition, respectfully show to the court and allege as follows:

Parties to the Action

1. Petitioner, New York State Committee of the Independence Party, is a party committee, chosen and organized in accordance with the provisions of the election law of the state of New York to represent the enrolled members of the Independence Party within the state; that said petitioner operates pursuant to rules and resolutions duly adopted and filed with the New York State Board of Elections.

2. Petitioner, Executive Committee of the New York State Committee of the Independence Party, is a body of members of the state committee comprised of its officers, and empowered under the Rules of the New York State Committee of the Independence Party pursuant to a resolution adopted thereto, to make nominations, authorizations, substitutions and cross-endorsements of candidates for election to public office or to fill vacancies in designations or nominations for public offices falling entirely within a county having a population exceeding seven hundred fifty thousand persons in the last federal census.

3. Petitioner, Frank M. MacKay, a resident of the County of Suffolk and State of New York and an enrolled member of the Independence Party, at all times herein mentioned, was and still is the duly elected and recognized Chairman of the New York State Committee of the Independence Party, that he brings this action in his official capacity as chairman of a party committee and together with the secretary on behalf of the aggrieved party committee.

4. Petitioner, William Bogardt, a resident of the County of Suffolk and State of New York and an enrolled member of the Independence Party, at all times herein mentioned, was and still is the duly elected and recognized Secretary of the New York State Committee of the Independence Party; that he brings this action in his official capacity together with the chairman on behalf of the aggrieved party committee.

5. Petitioner, Patrick J. Keem, is a resident of the County of Erie and State of New York and a duly designated and authorized candidate of the Independence Party for the public office of Supervisor in the Town of Orchard Park, County of Erie and State of New York, aggrieved by the purported authorization filed by respondents Mary Rose Gaughan and Kenneth R. Walsh on behalf of respondent candidate Janis A. Colarusso.

6. At all times herein mentioned, the respondents, Ralph M. Mohr and Dennis E. Ward, are commissioners of and jointly constitute the Erie County Board of Elections, maintaining a principal office located in the County of Erie and State of New York; that respondents are charged with the duty of ruling on the validity of petitions and certificates filed with their office and certifying the form of the ballot to be utilized within their county with respect to the primary election of the Independence Party to be held on the 10th day of September, 2013.

7. Respondent New York State Board of Elections is a state agency maintaining a principal office located in the County of Albany and State of New York; that said respondent is the repository of all political party rules and certification of officers pursuant to Article 2 of the election law of the state of New York.

8. Upon information and belief, respondent Mary Rose Gaughan was the purported presiding officer of an authorization meeting asserted to have been conducted on the 17th day of April, 2013 and a signatory upon three certificates evidencing the same.

9. Upon information and belief, respondent Kenneth R. Walsh was the purported secretary of an authorization meeting asserted to have been conducted on the 17th day of April, 2013 and a signatory upon three certificates filed with the board of elections evidencing the same.

10. Upon information and belief, respondents Patrick J. Humiston, Christine M. Sagnibene, Richard L. Woll, Joanne A. Schultz, Anthony J. Mingarelli and Elaina M. Monte are residents of the County of Erie and State of New York and were duly elected state members of the state committee from their respective senate district within the County of Erie.

11. Upon information and belief, respondents Janis A. Colarusso, Lynmarie Phillips and Ronald R. Fraser, are residents of the County of Erie and State of New York named upon certificates of authorization filed with the board of elections which purport to authorize the designation of their respective candidacy for public office at the Independence Party primary election to be conducted on the 10th day of September, 2013; that said purported authorizations are in conflict with that issued by petitioner Executive Committee of the New York State Committee of the Independence Party and creates a contested primary election for each such respective public office.

12. Respondent Independence Party of Erie County is a fictitious entity named in the purported certificate of authorization executed by respondents Mary Rose Gaughan and Kenneth R. Walsh; that the previously existing constituted county committee of the Independence Party, known as the Erie County Independence Party, dissolved the previous year by operation of law upon the failure of the Independence Party to elect county committeemen pursuant to §2-104 of the election law of the state of New York.

13. Respondent Interim County Committee of the Independence Party is a fictitious entity named in the purported certificate of authorization filed by respondents Mary Rose Gaughan and Kenneth R. Walsh; that respondents Patrick J. Humiston, Christine M. Sagnibene, Richard L. Woll, Joanne A. Schultz, Anthony J. Mingarelli and Elaina M. Monte, together with respondents Mary Rose Gaughan and Kenneth R. Walsh, collectively comprise the interim county organization; that pursuant to the final Order and Judgment of Hon. James Dillon, JSC granted and duly entered the 22nd day of July, 2013, this court ordered, adjudged and decreed that said interim county organization has no rules or officers.

Nature of Proceeding

14. This proceeding is brought pursuant to Article 16 of the election law of the state of New York for an order invalidating the certificates authorizing the designations of respondent candidates for various public offices within the

County of Erie, State of New York in the Independence Party primary election to be held on the 10th day of September, 2013, holding the same to be invalid, null and void..and ineffectual to place the name of said respondent candidates on the ballot as candidates of the Independence Party; that it is also brought pursuant to Article 78 of the civil practice law and rules of the state of New York for an order enforcing the rules and resolutions duly adopted by petitioner New York State Committee of the Independence Party by enjoining respondent Erie County Board of Elections from giving force and effect to the purported certificates of nominations, authorizations, substitutions or cross endorsements issued in contravention to the rules and resolutions of the New York State Committee of the Independence Party; that petitioners further seek judgment pursuant to §3001 of the civil practice law and rules of the state of New York declaring petitioner Executive Committee of the New York State Committee of the Independence Party to be the sole and exclusive authority for the issuance of Independence Party nominations, authorizations, substitutions or cross endorsements of candidates for election to public office in Erie County.

Jurisdiction and Venue

15. The within action has been timely commenced and instituted; that §16-102 of the election law of the state of New York requires that a proceeding with respect to a petition shall be instituted within fourteen days after the last day to file the petition; that the last day to file the petitions to which the challenged certificates relate was July 11, 2013; that the within action has been instituted within 14 days of said date and also has been commenced within 120 days of the action taken by respondents, Mary Rose Gaughan and Kenneth R. Walsh purporting to act on behalf of the Independence Party for the purpose of authorizing the designation of candidates pursuant to §6-120 of the election law of the state of New York.

16. Petitioners, aggrieved by the action of respondents in usurping their authority, have standing to seek the injunctive and declaratory relief being requested in the petition; that additionally, petitioner Frank M. MacKay, as chairman of a party committee has standing pursuant to §16-102(1) of the election law of the state of New York to challenge the designations of respondent candidates in a contested primary election; that further, petitioner Patrick J. Keem, as the duly authorized Independence Party candidate for the public office of Supervisor in the Town of Orchard Park, County of Erie, State of New York has standing pursuant to §16-102(1) of the election law of the state of New York as an aggrieved candidate to challenge the purported fraudulent authorization of the designation of another candidate for such office.

17. Venue in this county is proper.

Facts

18. Once again, petitioners New York State Committee of the Independence Party, Executive Committee of the New York State Committee of the Independence Party, Frank M. Mackay and William Bogardt, have been forced

to bring an action to enforce the rights of the state party which have been previously confirmed by multiple lower court and appellate decisions; in forcing the institution of this lawsuit the aforesaid county board has ignored party rules, resolutions and other documents duly filed with it by petitioners and has instead given force and effect to facially insufficient certificates fraudulently filed by respondents Mary Rose Gaughan and Kenneth R. Walsh on behalf of respondent candidates.

19. Paragraph 11(b) of article VI of the Rules of the New York State Committee of the Independence Party, permits the delegation of the power to make a nomination, authorization, substitution or cross-endorsement of candidates for election to public office to the State Executive Committee for any and all offices falling entirely within a county in all counties having a population exceeding seven hundred fifty thousand persons in the last federal census; that the population of Erie County as determined by the 2010 decennial census was 919,040 and such power was indeed delegated to the State Executive Committee, by resolution of the Independence Party State Committee duly adopted the 9th day of February, 2013; that a copy of said resolution, being the same form as was previously adopted and litigated by petitioners, was filed by mail with the Erie County Board of Elections and received on February 13, 2013; that a copy of the same is annexed hereto as Exhibit "A".

20. By virtue of the aforesaid rule and resolution, the power to authorize the designation of Independence Party candidates for public office within the County of Erie, a county having a population in excess of seven hundred fifty thousand persons as shown by the last federal census, is delegated to the State Executive Committee.

21. In contravention to said party rules and resolution, respondents Mary Rose Gaughan and Kenneth R. NWalsh, executed and caused to be filed with the Erie County Board of Elections three certificates, copies of which are annexed hereto as Exhibit "B", purporting to authorize the designation of respondent candidates for the public offices within the County of Erie as stated on each respective certificate; that such certificates of authorization were received for filing by the Erie County Board of Elections on July 15, 2013; that said certificates purport to be action undertaken at a meeting of the Interim County Committee of the Independence Party of respondent Independence Party of Erie County.

The Purported Certificate of Authorization is Invalid, Null and of no Effect

22. The New York State Court of Appeals has held that it is within the purview of a state political party to delegate to a state executive committee of such party the power to issue certificates of authorization for county, city or local public offices. See *Master v. Pohanka* 10 NY3d 620, 861 NYS2d 252 (2008); *Conroy v. State Committee of Independence Party of New York* 10 NY3d 896, 861 NYS2d 603 (2008).

23. When a state political party invokes such authority, a county committee is without authority to adopt rules or engage in activities in derogation or contravention of the rules of the governing state party and existing local rules

which conflict with such authority must be deemed and held to be invalid. Accordingly, as again is the case before us, the respondent Interim County Committee of the Independence Party and respondent Independence Party of Erie County, its subcommittees, officers and members, are without authority to authorize the designation of any candidates for public office within Erie County. *See* *Matter of Peluso v. The Erie County Independence Party* (4th Dept. 2009) 65 AD3d 820, reversed by, remitted by 13 NY3d 139 decided, later proceeding *Matter of Peluso v. Erie County Independence Party* (4th Dept. 2009) 66 AD3d 1329; see also *New York State Committee of the Independence Party v. New York State Board of Elections* (3rd Dept. 2011) 87 AD3d 806. This delegation of authority is binding upon respondents, Mary Rose Gaughan and Kenneth R. Walsh.

24. The delegation to the state executive committee to authorize the designation of candidates for public office within Erie County may not be defeated by respondent, Interim County Committee of the Independence Party or respondent Independence Party of Erie County, or its purported respondent officers, Mary Rose Gaughan and Kenneth R. Walsh exercising said function at a time prior to the statutory time to designate candidates if it is subsequent to the state resolution delegating the authority; that it is respectfully submitted no respondent committee, officer or candidate may benefit from action taken at a time when such action was delegated to another; that all respondents had notice of the adopted rules and resolution of the state party by virtue of its prior public filing with the Erie County Board of Elections on February 13, 2013.

25. Having knowledge of their lack of authority to authorize a candidate for public office pursuant to §6-120 of the election law of the state of New York, respondents nevertheless offered for filing a certificate which has no legal force and effect and which facially purports to be issued by a body lacking such power.

26. Petitioner respectfully requests an order of this court declaring and holding the three certificates of authorization filed by or on behalf of respondent candidates to be invalid, null and void, and to be afforded no effect to authorize the designation of any respondent candidate listed upon said certificate.

27. Petitioners request leave and reserve the right to submit upon the argument and hearing of this application additional and supplementary proof by way of affidavit, documentary proof and oral testimony to substantiate the allegations contained herein; that if there are issues of fact to be determined by the court, an evidentiary hearing to substantiate the allegations contained herein is hereby demanded by petitioners.

28. That because the time constraints for institution of this action are considerably shorter than those normally allowed by the civil practice law and rules of the state of New York, petitioners request the special provision of service set forth in the order to show cause.

29. Petitioners have no adequate remedy or relief at law or in equity other than the relief requested herein.

30. That the interests of justice would be served by the granting of the order to show cause and the permitting

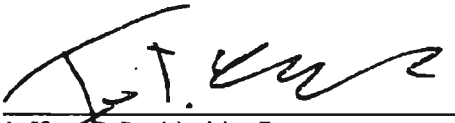
of the relief sought in the petition.

31. That no previous application has been made by petitioners for the relief sought herein, or for the order to show cause hereunto annexed, or for any other similar relief.

WHEREFORE petitioners respectfully pray for the annexed order to show cause and for a final judgment and order (i) declaring petitioner Executive Committee of the New York State Committee of the Independence Party to be the sole and exclusive authority for the issuance of Independence Party nominations, authorizations, substitutions or cross endorsements of candidates for election to public office in Erie County; (ii) enjoining respondent boards of elections from giving force and effect to purported certificates of nominations, authorizations, substitutions or cross endorsements of candidates for election to public office in Erie County issued in contravention to the rules and resolutions of the New York State Committee of the Independence Party; (iii) declaring the three separate certificates of authorization filed on or about the 15th day of July, 2013 with respondent Erie County Board of Elections which had been executed by respondents Mary Rose Gaughan and Kenneth R. Walsh, as Presiding Officer and Secretary, respectively, purporting to authorize the designations of respondent Candidates to be ineffectual, invalid, null and void; and (iv) for such other and further relief as to this court may seem just and proper.

DATED: Buffalo, New York
July 24, 2013

Yours, etc.



Jeffrey T. Bochiechio, Esq.
Attorney for Petitioners
Office and P.O. Address
Main Place Tower
350 Main Street, Suite 1400
Buffalo, New York 14202
Tel. No.: (716) 406-8354

VERIFICATION

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

Patrick J. Keem, being duly sworn, deposes and says that he is a petitioner in the above-entitled proceeding; that he has read the foregoing petition and knows the contents thereof; that the same is true to the knowledge of deponent, except as to those matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

Deponent further says that the grounds of his belief as to all matters therein stated to be alleged on information and belief are a review of documents or copies thereof on file with the board of elections wherein the same were filed.

Patrick J. Keem

Sworn to before me this 24th day
of July, 2013.

Notary Public - State of New York

SCOTT W. KROLL
Notary Public, State of New York
Qualified In Erie County
Commission Expires February 24, 2014

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

Jeffrey T. Bochiechio, being duly sworn, deposes and says that he is the attorney for the petitioners in the within action; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true; the reason this verification is not made by said remaining petitioners is that no remaining petitioner is within the County of Erie, which is the county where deponent has his office.

Deponent further says that the grounds of his belief as to all matters therein stated to be alleged on information and belief are a review of documents or copies thereof on file with the board of elections wherein the same were filed.

Jeffrey T. Bochiechio

Sworn to before me this 24th day
of July, 2013.

Notary Public - State of New York

SCOTT W. KROLL
Notary Public, State of New York
Qualified in Erie County
Commission Expires February 24, 2014

EXHIBIT "A"

RESOLUTION OF THE INDEPENDENCE PARTY STATE COMMITTEE

On February 9, 2013 The State Committee of the Independence Party readopted the following resolution:

Be it **RESOLVED,** that the State Committee pursuant to Article VI, section 11 (b) delegates to the State Executive Committee the power to make nominations, authorizations, substitutions, or cross endorsements of candidate(s) for election to public office(s) or to fill vacancies in designation(s) or nomination(s) for public office(s) in Erie County.

Be it further **RESOLVED,** that the Secretary transmit copies of this resolution to the State Board of Elections and the Erie County Board of Elections.

FRANK MAC KAY
Presiding Officer

WILLIAM BOGARDT
Secretary

Sworn to before me this 9th
day of February, 2013

Susan L McGuire
Notary Public State of New York
Qualified in Dutchess County, NY
01MC5047792
Expires 08/14/2013

EXHIBIT "B"

CERTIFICATE OF AUTHORIZATION

(Section 6-120, Election Law)

We, Mary Rose Gaughan (Presiding Officer) and Kenneth R Walsh (Secretary)

Presiding Officer and Secretary of the meeting of the Independence Party

of Erie County (Political Subdivision), DO HEREBY CERTIFY THAT: at a meeting of the

Interim County (Political Subdivision) Committee of the Independence, Party

held on the 17 day of April, 2013, a quorum being present, said committee, by

majority vote of the members present, did consent and authorize the nomination/designation of

Janis A Colarusso (Name of Candidate) residing at 6550 Chestnut (Place of Residence)

Ridge Rd, Orchard Park, NY 14127 for the office of Supervisor as

a candidate of the Independence Party for public office indicated, at the

Primary (Special/Primary/General) Election to be held on 9/10/2013 (Date of Election).

Said nomination/designation is authorized pursuant to the provisions of Section 6-120 of the New York State Election Law.

IN WITNESS WHERE OF, we have set our hands this 15 day of July, 2013.

Mary Rose Gaughan
Presiding Officer

Kenneth R Walsh
Secretary

On this 15 day of July, 2013 before me personally came

MARY ROSE GAUGHAN and KENNETH R WALSH

to me known and known to me to be the persons described in and who executed the foregoing instrument and he/she duly acknowledged to me that he/she executed the same.

MARIE C. CLARK
No. 01CL4874964
Notary Public, State of New York
Qualified in Erie County
My Commission Expires April 30, 2014

Marie C Clark
Notary Public

(11/99)f:files\forms\author

CERTIFICATE OF AUTHORIZATION

(Section 6-120, Election Law)

We, Mary Rose Gaughan (Presiding Officer) and Kenneth R. Walsh (Secretary)

Presiding Officer and Secretary of the meeting of the Independence Party

of Erie County (Political Subdivision), DO HEREBY CERTIFY THAT: at a meeting of the

Tonkin County (Political Subdivision) Committee of the Independence, Party

held on the 17 day of April, 2013 a quorum being present, said committee, by

majority vote of the members present, did consent and authorize the nomination/designation of

Lynmarie Phillips (Name of Candidate) residing at 62 Errington Terr (Place of Residence)

Orchard Park, NY 14127 for the office of Councilman - 4 year as

a candidate of the Independence Party for public office indicated, at the

Primary (Special/Primary/General) Election to be held on 9/10/2013 (Date of Election).

Said nomination/designation is authorized pursuant to the provisions of Section 6-120 of the New York State Election Law.

IN WITNESS WHERE OF, we have set our hands this 15 day of July, 2013.

Mary Rose Gaughan
Presiding Officer

Kenneth R. Walsh
Secretary

On this 15 day of July, 2013 before me personally came

MARY ROSE GAUGHAN and KENNETH R WALSH

to me known and known to me to be the persons described in and who executed the foregoing instrument and he/she duly acknowledged to me that he/she executed the same.

MARIE C. CLARK
No. 01CL4674954
Notary Public, State of New York
Qualified in Erie County
My Commission Expires April 30, 2014

Marie C. Clark
Notary Public

(11/99)f:files\forms\author

CERTIFICATE OF AUTHORIZATION

(Section 6-120, Election Law)

We, Mary Rose Gaughan (Presiding Officer) and Kenneth R. Walsh (Secretary)

Presiding Officer and Secretary of the meeting of the Independence Party

of Erie County (Political Subdivision), DO HEREBY CERTIFY THAT: at a meeting of the

Interim County (Political Subdivision) Committee of the Independence, Party

held on the 17 day of April, 2013, a quorum being present, said committee, by

majority vote of the members present, did consent and authorize the nomination/designation of

Ronald R Fraser (Name of Candidate) residing at 7744 Center Rd, (Place of Residence)

West Falls, NY 14170 for the office of Councilman as

a candidate of the Independence Party for public office indicated, at the

Primary (Special/Primary/General) Election to be held on 9/10/2013 (Date of Election).

Said nomination/designation is authorized pursuant to the provisions of Section 6-120 of the New York State Election Law.

IN WITNESS WHERE OF, we have set our hands this 15 day of July, 2013.

Mary Rose Gaughan
Presiding Officer

Kenneth R Walsh
Secretary

On this 15 day of July, 2013 before me personally came

MARY ROSE GAUGHAN and KENNETH R WALSH

to me known and known to me to be the persons described in and who executed the foregoing instrument and he/she duly acknowledged to me that he/she executed the same.

MARIE C. CLARK
No. 01CL6074664
Notary Public, State of New York
Qualified in Erie County
My Commission Expires April 30, 2014

Marie C Clark
Notary Public

(11/99)f:files\forms\author

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ALBANY

In the Matter of the Application of

NEW YORK STATE COMMITTEE OF THE INDEPENDENCE PARTY,

EXECUTIVE COMMITTEE OF THE NEW YORK STATE COMMITTEE OF THE INDEPENDENCE PARTY,

FRANK M. MacKAY, Chairman of the New York State Committee of the Independence Party

WILLIAM BOGARDT, Secretary of the New York State Committee of the Independence Party

and

PATRICK J. KEEM, a candidate aggrieved

Petitioners

against

RALPH M. MOHR and **DENNIS E. WARD**, Commissioners of and constituting the Erie County Board of Elections,

NEW YORK STATE BOARD OF ELECTIONS,

MARY ROSE GAUGHAN, purported Presiding Officer of an authorization meeting asserted to have been conducted on the 17th day of April, 2013, and elected state committee member,

KENNETH R. WALSH, purported Secretary, of an authorization meeting asserted to have been conducted on the 17th day of April, 2013, and elected state committee member,

PATRICK J. HUMISTON, CHRISTINE M. SAGNIBENE, RICHARD L. WOLL, JOANNE A. SCHULTZ, ANTHONY J. MINGARELLI and **ELAINA M. MONTE**, who together with respondents Mary Rose Gaughan and Kenneth R. Walsh comprise the interim county organization in the County of Erie,

JANIS A. COLARUSSO, LYNMARIE PHILLIPS and **RONALD R. FRASER**, Candidates,

INDEPENDENCE PARTY OF ERIE COUNTY,

and

INTERIM COUNTY COMMITTEE OF THE INDEPENDENCE PARTY

Respondents

ORDER TO SHOW CAUSE

Index No.:

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