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 25, 2014

Mr. Scott W. Kroll, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Kroll:

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:	*Zydel, Richard and Pamela v. Erie County Board of Elections, Ralph Mohr, Dennis Ward and Mark A. Cartenuto*
Document Received:	Order to Show Cause
Name of Petitioners:	Richard and Pamela Zydel
Petitioners' attorney:	James Ostrowski, Esq. 63 Newport Avenue Buffalo, New York 14216

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: _____
Jeremy C. Toth
Second Assistant County Attorney
jeremy.toth@erie.gov

JCT/dld
Enc.

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 24th day of July, 2014.

PRESENT: JEREMIAH J. MORIARTY III

FILED
ACTIONS & PROCEEDINGS

JUL 24 2014

ERIE COUNTY
CLERK'S OFFICE

Matter of RICHARD ZYDEL and PAMELA ZYDEL,

Petitioners,

-against-

Index No.2014-660123

ORDER TO SHOW CAUSE

ERIE COUNTY BOARD OF ELECTIONS,
RALPH M. MOHR, As Commissioner of the Erie County Board of Elections,
DENNIS E. WARD, as Commissioner of the Erie County Board of Elections,
MARK A. CARTENUTO, Objector,

Respondents.

Upon the annexed Verified Petition of RICHARD ZYDEL and PAMELA ZYDEL, duly verified the 23rd day of July, 2014, it is hereby

ORDERED that the Respondents herein show cause before this Court at a Special Term, Part 15, to be held at 25 Delaware Ave, in the City of Buffalo, on the 1st day of ~~July~~ August, 2014, at 9:30 o'clock in the am of that day, or as soon thereafter as counsel can be heard, why an order should not be made and entered herein:

FILED
07/24/2014 12:28:11
ERIE COUNTY CLERK
RCPT # 1411368
I 2014000123

1. Directing the respondents to validate the Democratic designating petition of the petitioners for the office of Member of the County Committee, Cheektowaga, District 41, Democratic Party.

2. Overturning the ruling of the Erie County Board of Elections and Commissioners, dated July 22, 2014 in all respects;

This paper received at the
Erie County Board of Election's Office
From Jim Ostrowsk
On the 24 day of July 2014.
At 3:57 am/pm
Beth Bochnechio
Signature of BOE Employee

3. Granting all other, further, and/or alternative relief as it deems just and proper.

Sufficient cause appearing therefore, leave is hereby granted to the petitioner to submit upon the return day of this Order to Show Cause, and on the argument and hearing thereof, such additional affidavits, exhibits and other proof as may be necessary, and it is further

ORDERED that the respondent Board and respondent Commissioners produce in Court all original papers (or certified copies) related to this proceeding including their determination, any and all staff worksheets the determination is based on, the original objections and the designating petition.

ORDERED that good and sufficient service shall be had herein by the service of a copy of this Order to Show Cause together with the Petition and supporting papers upon which it was granted by the following:

1. Upon the ERIE COUNTY BOARD OF ELECTIONS and Commissioners MOHR and WARD, by delivering a copy for each of them to the Board of Elections by 5:00 p.m. on July 24, 2014.
2. Upon MARK A. CARTENUTO, by personal delivery on or before July 25, 2014;

or

[by affixing a copy to the door at his address, 683 Cayuga Creek Drive, Cheektowaga, New York, by 5:00 p.m., on July 24, 2014;

and

by mailing him a copy by U. S. Express Mail to the residence address listed on his specific objections, 683 Cayuga Creek Drive, Cheektowaga, New York, said mailing to be delivered to the Post Office by 5:00 p.m. on July 24, 2014.]

JUSTICE OF THE SUPREME COURT
JEREMIAH J. MORIARTY III

GRANTED

JUL 24 2014

BY MARGARET A. McCARTHY
COURT CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

Matter of RICHARD ZYDEL and
PAMELA ZYDEL,

Petitioners,

-against-

Index No.2014-_____

VERIFIED PETITION

ERIE COUNTY BOARD OF ELECTIONS,
RALPH M. MOHR, As Commissioner of the Erie County Board of Elections,
DENNIS E. WARD, as Commissioner of the Erie County Board of Elections,
MARK A. CARTENUTO, Objector,

Respondents.

The Petitioners RICHARD ZYDEL and PAMELA ZYDEL, by their attorney, JAMES OSTROWSKI, for their verified petition, allege as follows:

1. This is a special proceeding pursuant to Election Law Section 16-102 seeking an order compelling respondents to validate the Democratic designating petition of the petitioners for election to Erie County Democratic Committee Member from the Town of Cheektowaga, Election District 41 at the September 9, 2014 primary election.

2. This proceeding is being timely filed within the time limits set forth in Article 16 of the Election Law.

3. Petitioners RICHARD ZYDEL and PAMELA ZYDEL, reside at 670 Mapleview Road, Cheektowaga, New York.

4. Petitioners appeared on the same designating petition (attached as Exhibit "A") which was timely filed with the Erie County Board of Elections.

5. The Erie County Board of Elections is the agency charged with administering elections and petitions concerning County Committee Member.

6. The Board consists of the following Commissioners: RALPH M. MOHR and DENNIS E. WARD.

7. MARK A. CARTENUTO filed objections to the petition.

8. He resides at 683 Cayuga Creek Drive, Cheektowaga, New York.

9. The Board of Elections ruled the petition invalid on July 22, 2014. See Exhibit "B".

10. The Board found that the Petition contained 25 valid signatures.

11. The law requires 26 valid signatures for the office of Committee Member in the 41st District.

12. The Board's determination is erroneous and invalid for the following reasons.

13. The Board erroneously struck two signatures because they were allegedly printed.

14. However, printed signatures are explicitly authorized by General Construction Law §46.

15. Further, both signatures were witnessed by petitioner RICHARD ZYDEL who personally knows their identities.

16. Derrick Mertowski, who signed at page 2, line 6, is petitioner's cousin and did in fact sign the petition as indicated.

17. Petitioner also knows Keith Kozminski who signed at page 2, line 7 and can confirm that he is the voter who actually signed the petition.

18. Mr. Kozminski is also petitioner's cousin.

19. Since petitioners were only denied ballot status by one signature, if the Court finds either or both of the "printed" signatures to be valid, the petitioners would qualify for the primary ballot.

Wherefore, we respectfully request that the Court;

1. grant the relief requested in the attached order to show cause;
2. order the respondents to validate the designating petition and place petitioner on the primary election ballot; and
3. grant such other and further relief as the Court deems proper.

Dated: Buffalo, New York
July 23, 2014

JAMES OSTROWSKI
Attorney for Petitioners
RICHARD ZYDEL and
PAMELA ZYDEL
63 Newport Ave.
Buffalo, New York 14216
(716) 435-8918
Jameso@apollo3.com

VERIFICATION

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

RICHARD ZYDEL being duly sworn, deposes and says that he is petitioner in the within proceeding; that deponent 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 upon information and belief and that, as to those matters, he believes them to be true.

Subscribed and sworn to before
me this 23rd day of July 23, 2014

JAMES OSTROWSKI
Notary Public
Qualified in Erie County
My Commission Expires 7/5/15

VERIFICATION

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

PAMELA ZYDEL, being duly sworn, deposes and says that she is petitioner in the within proceeding; that deponent has read the foregoing petition and knows the contents thereof; that the same is true to her own knowledge, except as to those matters therein stated to be alleged upon information and belief and that, as to those matters, she believes them to be true.

Pamela Zydel

Subscribed and sworn to before
me this 23rd day of July 23, 2014

J.O.

JAMES OSTROWSKI
Notary Public
Qualified in Erie County
My Commission Expires 7/5/15

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

Matter of RICHARD ZYDEL and
PAMELA ZYDEL,

Petitioners,

-against-

Index No.2014-_____

AFFIDAVIT

ERIE COUNTY BOARD OF ELECTIONS,
RALPH M. MOHR, As Commissioner of the Erie County Board of Elections,
DENNIS E. WARD, as Commissioner of the Erie County Board of Elections,
MARK A. CARTENUTO, Objector,

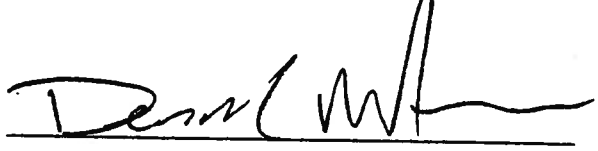
Respondents.

STATE OF NEW YORK)

COUNTY OF ERIE)

Derrick Mertowski, being duly sworn, deposes and states:

1. I am a registered Democrat residing at 666 Cayuga Creek Rd., Cheektowaga, New York.
2. I have examined the designating petition of Richard Zydel and Pamela Zydel and can state that I did sign said petition at page two, line 6.
3. I signed because I support their candidacy for Committee Member and wish to see them on the primary election ballot.



Subscribed and sworn to before
me this 23rd day of July 23, 2014

JAMES OSTROWSKI
Notary Public
Qualified in Erie County
My Commission Expires 7/5/15

DEMOCRATIC DESIGNATING PETITION

I, the undersigned, do hereby state that I am a duly enrolled voter of the Democratic Party and entitled to vote at the next primary election of such party, to be held on September 9, 2014; that my place of residence is truly stated opposite my signature hereto and I do hereby designate the following named person as a candidate for the nomination of such party for public office or for election to a party position of such party.

NAME OF CANDIDATE	PARTY POSITION	PLACE OF RESIDENCE
Richard Zydel	**Erie County Democratic Committee Member Town of Cheektowaga 41st Election District State of New York**	**670 Mapleview Road Cheektowaga, New York 14225**
Pamela Zydel		**670 Mapleview Road Cheektowaga, New York 14225**

I do hereby appoint: Frank C. Max Jr., 50 Red Oak Drive, Cheektowaga, NY 14227
Timothy J. Meyers, 136 Broad Street, Cheektowaga, NY 14225
James P. Rogowski, 131 Strasmer Road, Depew, NY 14043 (Town of Cheektowaga)
all of whom are enrolled members of the Democratic Party, as a committee to fill vacancies in accordance with the provisions of the Election Law,
IN WITNESS WHEREOF, I have hereunto set my hand, the day and year set opposite my signature.

	DATE 2014	Name of Signer (signature)	Residence	Town of
1	7/7	Eleanore Wienckowski	43 Jane Dr	CKTW
2	7-7	[illegible]	43 Jane Dr	CKTW
3	7-7	[illegible]	59 Jane Dr	CKTW
4	7-7	Norma Majchrzak	75 Jane Dr	CKTW
5	7-7	Ellen Konczykolski	83 Jane Dr.	CKTW
6	7-7	[illegible]	114 Jane Dr	CKTW
7	7-7	James E. [illegible]	106 JANE DR.	CKTW
8	7-7	[illegible]	94 Jane Dr	CKTW
9	7-7	Jeanette M. [illegible]	32 Jane Dr.	CKTW
10	7-7	[illegible]	74 Jane Dr	CKTW
11	7-7	[illegible]	74 Jane Dr	CKTW
12	7-7	[illegible]	46 Jane D	CKTW
13	7-7	[illegible]	42 Jane D	CKTW
14	7-7	[illegible]	38 Jane Dr.	CKTW
15	7-7	[illegible]	18 Jane	CKTW
16	7-7	[illegible]	10 Jane Dr	CKTW
17	7/7	[illegible]	258 Cayuga Creek Rd	CKTW
18	7/7	[illegible]	8 Brookfield, Cheektowaga	CKTW
19	7/7	[illegible]	8 Brookfield Ln #1 14227	CKTW
20	7/7	[illegible]	4 Brookfield Ln #1 14227	CKTW
21	7/7	[illegible]	4 Brookfield #1 14227	CKTW
22	7/7	[illegible]	12 Brookfield #5 14227	CKTW
23	7-7	[illegible]	12 Brookfield 14227	CKTW
24	7-7	[illegible]	12 Brookfield #1 14227	CKTW
25	7-7	Andy Redmore	12 Brookfield 14227	CKTW

STATEMENT OF WITNESS

I, (name of witness) Richard A. Zydel, state: I am a duly qualified voter of the State of New York, and am an enrolled voter of the Democratic Party.

I now reside at 670 Mapleview Road Cheektowaga, NY 14225
(residence address)

Each of the individuals whose names are subscribed to this petition sheet containing 25 signatures, subscribed
(fill in number)
the same in my presence on the dates above indicated and identified himself or herself to be the individual who signed this sheet.
I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

Date: 7/7, 2014

Richard A. Zydel
(Signature of Witness)

WITNESS IDENTIFICATION INFORMATION: The following information for the witness named above must be completed prior to filing with the board of elections in order for this petition to be valid.

Town or City Cheektowaga County Erie

Sheet No. 1

"A"

DEMOCRATIC DESIGNATING PETITION

I, the undersigned, do hereby state that I am a duly enrolled voter of the Democratic Party and entitled to vote at the next primary election of such party, to be held on September 9, 2014; that my place of residence is truly stated opposite my signature hereto and I do hereby designate the following named person as a candidate for the nomination of such party for public office or for election to a party position of such party.

NAME OF CANDIDATE	PARTY POSITION	PLACE OF RESIDENCE
Richard Zydel	**Erie County Democratic Committee Member Town of Cheektowaga 41st Election District State of New York**	**670 Mapleview Road Cheektowaga, New York 14225**
Pamela Zydel		**670 Mapleview Road Cheektowaga, New York 14225**

I do hereby appoint: Frank C. Max Jr., 50 Red Oak Drive, Cheektowaga, NY 14227
Timothy J. Meyers, 136 Broad Street, Cheektowaga, NY 14225
James P. Rogowski, 131 Strasmer Road, Depew, NY 14043 (Town of Cheektowaga)
all of whom are enrolled members of the Democratic Party, as a committee to fill vacancies in accordance with the provisions of the Election Law.
IN WITNESS WHEREOF, I have hereunto set my hand, the day and year set opposite my signature.

	DATE 2014	Name of Signer (signature)	Residence	Town of
1	6-26-14	Alex Cajak	666 Cayuga Cr Rd.	CKTW
2	6-26-14	Katherine A Cardamone	666 Cayuga Cr Rd	CKTW
3	6-29-14	Anthony Borucki	660 Cayuga Creek Rd	CKTW
4	6-29-14	Dorothy Borucki	660 Cayuga Creek Rd.	CKTW
5	7-2-14	Cheryl Cajak	666 Cayuga Cr Rd.	CKTW
6	7-2-14	Derrick Meitowski	666 Cayuga Cr Rd.	CKTW
7	7/2/14	Keith Kozminski	666 Cayuga Cr Rd	CKTW
8	7-2-14	Anthony Cardamone Jr.	666 CAYUGA CREEK RD.	CKTW
9	7-6-14	Barbara A. Zakela	760 Cayuga Creek Rd.	CKTW
10	7.7.14	Stan Zakela	766 Cayuga Creek Rd.	CKTW
11				CKTW
12				CKTW
13				CKTW
14				CKTW
15				CKTW
16				CKTW
17				CKTW
18				CKTW
19				CKTW
20				CKTW
21				CKTW
22				CKTW
23				CKTW
24				CKTW
25				CKTW

STATEMENT OF WITNESS

I, (name of witness) Richard A. Zydel, state: I am a duly qualified voter of the State of New York and am an enrolled voter of the Democratic Party.

I now reside at 670 Mapleview Road
(residence address)

Each of the individuals whose names are subscribed to this petition sheet containing 10 signatures, subscribed
(fill in number)

the same in my presence on the dates above indicated and identified himself or herself to be the individual who signed this sheet.
I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

Date: 7/9, 2014

Richard A. Zydel
(Signature of Witness)

WITNESS IDENTIFICATION INFORMATION: The following information for the witness named above must be completed prior to filing with the board of elections in order for this petition to be valid.

Town or City Cheektowaga County Erie

Sheet No. 2

NOTICE OF DETERMINATION

BOARD OF ELECTIONS, COUNTY OF ERIE, STATE OF NEW YORK

(Pursuant To §6-154(3) of the Election Law)

Name and Address of Candidate:		Name and Address of Objector:
Richard Zydel	Pamela Zydel	Mark A Cartenuto
670 Mapleview Rd	670 Mapleview	683 Cayuga Creek Rd
Cheektowaga NY 14225	Cheektowaga NY 14225	Cheektowaga NY 14225

Petition Being Objected To: Member of County Committee Cheektowaga District 41

Party: Democratic Board Employees Assigned to Review: TG/RP

Number of Signatures Required: 28 Petition No.: 25-1504

Date General Objection Filed/Postmarked: 7/14 Date Specifications Filed/Postmarked: 7/14

UPON EXAMINATION WE REPORT THE FOLLOWING:

Signatures - Invalidated on a Line-by-Line Basis:

1A.	without proper date of signing	1A.	
2A.	dated prior to first day for signing	2A.	
3A.	dated prior to preceding date(s) listed on petition	3A.	
4A.	dated after date set forth in affidavit of subscribing witness	4A.	
5A.	of persons whose signatures are not identifiable	5A.	
6A.	of persons with unidentifiable or missing given name	6A.	
7A.	of persons with initials not identifiable with register	7A.	
8A.	of persons whose names are hand printed	8A.	2
9A.	of persons with incomplete or no residence address set forth	9A.	
10A.	of persons not registered at address set forth in petition	10A.	
11A.	of persons with mailing address rather than residence address set forth	11A.	
12A.	of persons who do not reside in political unit	12A.	
13A.	of persons with no town or city set forth	13A.	
14A.	of persons not registered in town or city as set forth	14A.	
15A.	of persons who witnessed own signature	15A.	
16A.	of persons who signed petition for office on same or earlier date	16A.	8
17A.	of persons who are not enrolled in political party making designation	17A.	
18A.	of persons written in lead pencil	18A.	
19A.	of persons who fail to initial modifications of the date or signature	19A.	
20A.		20A.	
21A.		21A.	
99A.	lines invalidated on the basis of multiple "A" type objections (Board use only)	99A.	

Subscribing Witness - Signatures Voided by Invalidity of Witness Statement:

1B.	who is not a registered voter	1B.	
2B.	who is not enrolled in political party making designation	2B.	
3B.	who is not otherwise qualified to circulate the petition	3B.	
4B.	who fails to set forth correct residence address	4B.	
5B.	who fails to set forth correct number of signatures subscribed to	5B.	
6B.	who fails to set forth a proper date of signing	6B.	
7B.	who is not identified by correct city or town, or county	7B.	
8B.	of notary public or commissioner of deeds who fails to set forth official title	8B.	
9B.	who fails to initial modifications	9B.	
10B.		10B.	
11B.		11B.	

Recapitulation:

Total Actual Signatures on Petition:	35
Less Total Invalid Signatures:	10
Total Remaining Valid Signatures:	25

Findings of Other Objections Raised:

DETERMINATION

_____ Petition is Qualified

✓ Petition is Rejected

Commissioner Dennis E. Ward votes to: reject petition

Commissioner Ralph M. Mohr votes to: reject petition

Date: July 22 2014

Revised May 16, 2007