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

August 1, 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:	*McKinnie, Sean v. Erie County Board of Elections and Howard Johnson*
Document Received:	Order to Show Cause
Name of Petitioner:	Sean McKinnie
Petitioner's Attorney:	Edward A. Betz, Esq. DeMarie & Schoenborn, P.C. 403 Main Street, Suite 615 Buffalo, New York 14203

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.

PAID
CHECK ___ CASH ___
JUL 31 2014
ERIE COUNTY
CLERK'S OFFICE

At a term of the Supreme Court of the State of New York, County of Erie, on the 31st day of July 2014.

This paper received at the Erie County Board of Election's Office
From Edward Betz
On the 1 day of August 2014
At 9:15 am/pm
Signature of BOE Employee

PRESENT:
HON. TIMOTHY J. DRURY, J.S.C. , J.S.C.

In the Matter of the Application of

SEAN McKINNIE, Aggrieved Candidate,

Petitioner,

v.

THE ERIE COUNTY BOARD OF ELECTIONS, and HOWARD JOHNSON, Objector,

Respondents.

For an Order Pursuant to Sections 16-100, 16-102 and 16-116 of the Election Law, Declaring Valid the Designating Petition Designating the Petitioner- Candidate for the Democratic Party Position of Member of the County Committee, Ellicott Ward, 20th District, County of Erie, State of New York, to be voted for at the Democratic Primary Election to be held on September 9, 2014 and to Order the said BOARD OF ELECTIONS to Print and Place the Name of Said Candidate Upon the Official Ballots of Such Primary Election.

x

ORDER TO SHOW CAUSE

Index No.: 136/14

ERIE CO BOE AUG 1 '14 AM 9:18

Upon the annexed petition of SEAN MCKINNIE duly verified the 31st day of July 2014, and upon the original Democratic Party designating petition designating the Petitioner-Candidate as a candidate for the party position of Candidate for the Democratic Party Position of Member of

the County Committee, Ellicott Ward, 20th District, County of Erie, State of New York and upon all the proceedings heretofore and herein;

LET, the Respondents named herein above Show Cause before this Court at a Special Term for Election Proceedings, to be held at the Supreme Court Chambers, 25 Delaware Avenue, Buffalo, State of New York, on the 5th **day of August, 2014** at ~~10:00~~ 3:00 a.m. of that day or as soon thereafter as counsel can be heard, why an order should not be made and entered herein:

1. Declaring sufficient and valid the designating petition(s) filed with the ERIE COUNTY BOARD OF ELECTIONS, designating the Petitioner-Candidate as particularized in the annexed petition as a candidates for the September 9, 2014 Democratic Party Primary Election; and

2. Declaring Valid the Designating Petition Designating the Petitioner-Candidate for the Democratic Party Position of Member of the County Committee, Ellicott Ward, 20th District, County of Erie, State of New York, to be voted for at the Democratic Primary Election to be held on September 9, 2014 and to Order the said BOARD OF ELECTIONS to print and place the name of said Candidate upon the official ballots of such Primary Election, and why the Petitioners should not have such other and further relief as to this Court may seem just and proper in the premises; and it is further

ORDERED, that the Respondent ERIE COUNTY BOARD OF ELECTIONS be and is hereby ordered and directed to produce upon the hearing of this Order to Show Cause and on all adjournments thereof, the aforesaid designating petition, cover sheet(s) and amended cover sheet(s) and any other documents purporting to designate and/or nominate the said Respondent(s)-Candidate(s), together with the objections and specifications relating to the aforesaid designating petition, any written notification of a determination of non-compliance together with proof of service upon the candidate designated therein, any writing purporting to cure or correct said determination of non-compliance, the permanent personal voter registration poll records of voters, computer generated registration lists for the last four (4) years and official maps for the Democratic

Party Position of MEMBER OF THE COUNTY COMMITTEE, Ellicott Ward, District 20, County of Erie, State of New York, Erie County, New York, and the report of the Clerks of the said BOARD OF ELECTIONS made on such objections and specifications for examination by this Court.

SUFFICIENT CAUSE APPEARING THEREFORE, leave is hereby granted to the Petitioner(s) to submit, upon the return day of this Order to Show Cause and any adjournments thereof, and the argument thereof, such additional evidence, exhibits, and other proof as may be necessary.

SUFFICIENT CAUSE APPEARING THEREFOR, it is further

ORDERED, that service of a copy of this order, together with a copy of the papers upon which it is granted, on the Respondent ERIE COUNTY BOARD OF ELECTIONS be made by leaving a copy of said order and papers at the Office of the said BOARD OF ELECTIONS at 134 West Eagle Street, Buffalo, NY, or by delivering same to any one of the Commissioners of Elections of the said BOARD OF ELECTIONS, on or before the 1st day of August, 2014;

That service of a copy of this Order to Show Cause, together with a copy of the papers upon which it is granted, upon the Respondent(s)-Objector(s), be made either **(1)** by delivering the same to each such Respondent-Candidate personally pursuant to CPLR 308 (1) on or before the 1st day of August, 2014; or **(2)** by enclosing the same in a securely sealed and duly prepaid wrapper, addressed to each such Respondent-Objector at the address set forth in his or her designating petition filed with the Erie County Board of Elections and by depositing the same in a Post Office Branch regularly maintained by the United States Postal Service in Erie County, New York on or before the 1st day of August, 2014 (with certificate of mailing) and by affixing the same to the door of the residence of such Respondent-Objector at the address set forth in his or her specific objection

filed with the Erie County Board of Elections.

ENTER

HON. TIMOTHY J. DRURY, J.S.C.

JUSTICE OF THE SUPREME COURT OF
THE STATE OF NEW YORK

TIMOTHY J. DRURY, J.S.C.

GRANTED

JUL 3 1 2014

BY JUDITH M. CONNERS
JUDITH M. CONNERS
COURT CLERK

At a term of the Supreme Court of the State of New York, County of Erie, on the 21 day of July, 2014.

PRESENT:
HON. Timothy Drury, J.S.C.

In the Matter of the Application of

SEAN McKINNIE, Aggrieved Candidate,

Petitioner,

v.

THE ERIE COUNTY BOARD OF ELECTIONS, and HOWARD JOHNSON, Objector,

Respondents.

VERIFIED PETITION

Index No.:

Petitioner, SEAN McKINNIE, by and through his attorneys, DeMarie & Schoenborn, P.C., Edward A. Betz, Esq., of Counsel, does hereby allege and respectfully show as follows:

1. Petitioner is a Candidate for the Democratic Party Office of Member of the Democratic Party County Committee, Ellicott Ward, 20th District, City of Buffalo, County of Erie, State of New York, having duly filed a designating petition containing forty-eight (48) signatures with the Respondent Erie County Board of Elections for the Democratic Party Designation.

2. Respondent Board of Elections is charged under the laws of the State of New York with the administration of Elections throughout the Erie County, and more particularly, here, with the administration of the election Process in the Ellicott Ward, 20th District, City of Buffalo. This includes the filing of Petitions and the processing and determination of objections thereto.

3. Respondent Howard Johnson is a voter of the Ellicott Ward, 20th District, City of Buffalo who has filed objections to the subject Democratic Party Petitions designating Petitioner as a candidate.

4. Petitioner's designation for the Democratic Party line carried sufficient numbers of signatures of members of the Democratic Party for Petitioner to achieve ballot status.

5. Petitioner's designating petition was invalidated by Respondent Board of Elections upon the objections filed by Respondent Objector.

6. The basis of the Board's determination was that that four (4) of the persons signing the subject designating petition, although a duly enrolled party members and duly registered voters with registrations retrievable by the Respondents, herein hand-printed their names.

7. That six (6) of the persons signing the subject designating petition signed the petition for office on same or earlier date.

8. That twenty-five (25) of the signatures were voided by invalidity of witness statement in that the witness failed to initial modifications.

9. That sixteen (16) signatures are required to be placed on the ballot for the position at issue.

10. Petitioner is entitled to bring this proceeding under the provisions of the Election Law, Section 16-102, which provides, *inter alia,* that a candidate may bring a petition to validate to this Court within three (3) business days of invalidation.

11. The third business day after July 28, 2014 is Thursday, July 31, 2014.

12. That statute of limitations has not run.

AS AND FOR A
FIRST CAUSE OF ACTION

13. Respondent-objector has asserted that the date in the witness section has been changed from a "5" to a "6." Examination of this assertion finds it to be

plausible but by no means dispositive. See Page One of Petitioner's petition, which is attched hereto as *Exhibit A*. Nonetheless, Respondent Board of Elections has ruled in Respondent-Objector's favor. Attached hereto find Respondent Board of Elections' "Notice of Determination" in this regard. *See Exhibit B*.

14. "[W]here an explanation for the uninitialed change is provided by affidavit or testimony adduced at a hearing, the underlying signatures need not be nullified." Curley v. Zacek, 22 A.D.3d 954, 803 N.Y.S.2d 221, N.Y.A.D. 3 Dept., 2005, citing Matter of Keal v. Board of Elections of State of N.Y., 164 A.D.2d 962, 963, 559 N.Y.S.2d 763 [1990]; Matter of Gartner v. Salerno, 74 A.D.2d 958, 959-960, 426 N.Y.S.2d 169 [1980], *lv. denied* 49 N.Y.2d 703, 704, 427 N.Y.S.2d 1025, 404 N.E.2d 1341.

15. Attached hereto find the Affadavit of the subscribing witness, who is also the Petitioner in this matter, Sean McKinnie, detailing the reason for his unitialed modification to the date. See *Exhibit C*.

16. That venue is properly based in Erie County.

17. Petitioner respectfully requests leave, and reserves the right to present further proof at a hearing or trial of this matter by way of affidavits, documentary proof and testimony of witnesses to substantiate the allegations contained herein, at the time set down by the Court, and to amend this petition as may be required to add objections to the subject designating petition which may not have been before the Respondent Board of Elections, or to reargue objections and obtain court review of adverse determinations thereon by Respondent Board of Elections.

18. Alternate means of service have been requested by Petitioner because time is of the essence, due to the short statute of limitations imposed by the Election Law, and upon the advice and direct experience of counsel, it is often the case that the Respondent will be, and/or will make himself inaccessible or unavailable for personal service.

19. Petitioner has no other remedy or relief at law or in equity other than applied for herein.

20. Counsel hereby certifies the allegations contained herein are not frivolous, pursuant to 22 NYCRR 130-1.1a.

21. No application for the relief requested has been made to any court EXCEPT as described hereinabove.

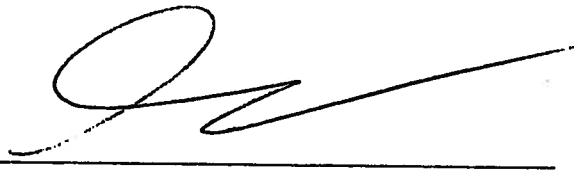
WHEREFORE, Petitioner, Sean McKinnie respectfully requests the Court:

1. Declare Petitioner Sean McKinnie's designating petition naming him as Candidate for the Democratic Party Office of Member of the Democratic Party County Committee, Ellicott Ward, 20th District, City of Buffalo, County of Erie, State of New York valid; and

2. Order the Respondent Erie County Board of Elections to certify the aforesaid candidacy of Sean McKinnie and place his name upon voting machines and ballots to be used at the primary election of the Democratic Party to be held on September 9, 2014; and

3. For such other and further relief as the Court deems just and proper.

DATED: July 30, 2014
Buffalo, New York



Edward A. Betz
DeMarie and Schoenborn, P.C.
Attorneys for Petitioner
SEAN MCKINNIE
403 Main Street, Suite 615
Buffalo, New York 14203
(716) 856-0024

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ERIE) ss:
CITY OF BUFFALO)

SEAN MCKINNIE, being duly sworn, deposes and says:

That he is the petitioner in this proceeding; 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 stated to be alleged upon information and belief and stated in accordance with his advice, and as to those matters he believes them to be true.

SEAN MCKINNIE

Sworn to before me this
31st day of July, 2014.

COMMISSIONER OF DEEDS
AND FOR BUFFALO ERIE COUNTY, N.Y.
My Commission Expires December 31, 2014

~~Notary~~ Public
Commissioner of Deeds