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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:	*Baines, Sandara v. Erie County Board of Elections and Shiela Green*
Document Received:	Order to Show Cause
Name of Petitioner:	Sandara Baines
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.

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

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

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

PRESENT:
HON. JOHN F. O'DONNELL, J.S.C.
in absence of ~~JOHN A. MICHALEK, J.S.C.~~

In the Matter of the Application of

SANDARA BAINES, Aggrieved Candidate,

Petitioner,

v.

THE ERIE COUNTY BOARD OF ELECTIONS, and SHIELA GREEN, Objector,

Respondents.

ORDER TO SHOW CAUSE

Index No.: I 2014-00134

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,~~ Masten, 27 MU 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.

ERIE CO BOE AUG 1 '14 AM 9:18

Upon the annexed petition of SANDARA BAINES, 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 Democratic Party County Committee, Masten Ward, 27th District, City of Buffalo, 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,~~ Part 24 25 Delaware Avenue, Buffalo, State of New York, on the 6th day of August, 2014 at 10:00 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 Democratic Party County Committee, Masten Ward, 27th District, City of Buffalo, 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 Democratic Party County Committee, Masten Ward, 27th District, City of Buffalo, County of Erie, State of 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 THEREFORE, 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 1 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 1 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 1 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;

and ordered that opposing papers be served on the Court and Counsel by August 4, 2014 at 10:00 a.m.

ENTER

HON.

/S/ John F. O'Donnell

JUSTICE OF THE SUPREME COURT

THE STATE OF NEW YORK

In the absence of

JOHN A. MICHALEK, J.S.C.

OF

GRANTED

July 31, 2014

/S/ Mary Louise Enser

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

PRESENT: Hon John F. O'Donnell in absence of John A Michalek
HON. _____, J.S.C.

In the Matter of the Application of

SANDARA BAINES, Aggrieved Candidate,

Petitioner,

v.

THE ERIE COUNTY BOARD OF ELECTIONS, and SHIELA GREEN, Objector,

Respondents.

VERIFIED PETITION

Index No.: I. 2014-00134

Petitioner, SANDARA BAINES, by and through her 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, Masten Ward, 27th District, City of Buffalo, County of Erie, State of New York, having duly filed a designating petition containing thirty-one (31) 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 Masten Ward, 27th District, City of Buffalo. This includes the filing of Petitions and the processing and determination of objections thereto.

3. Sheila Green purports to be a voter of the Masten Ward, 27th 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 based upon varied findings, not all of which are contested here.

7. Six (6) of the signatures were voided by the Board's finding that the signators printed rather than signed their names.

8. 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.

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

10. That statute of limitations has not run.

AS AND FOR A FIRST CAUSE OF ACTION

11. Respondent-Objector has asserted that six signatures should be invalidated because the names are printed rather than signed.

12. In Cotroneo v. Monroe County Bd. of Elections, Petitioners sought to have signatures validated by submitting affidavits from those who had printed their names indicating that such printed names were, indeed, their signatures. The court ruled that such was indeed the law, writing that "until the Election Law specifies otherwise, "(t)he term signature includes any memorandum, mark or sign, written, printed, stamped, photographed, engraved or otherwise placed upon any

instrument or writing with intent to execute or authenticate such instrument in writing." General Construction Law § 46. Since the General Construction Law should be read into every statute subsequently enacted unless the wording of such later statute plainly expresses a contrary intent (see, O'Keeffe v. Dugan (1918) 185 App.Div. 53, 172 N.Y.S. 558, aff'd. 225 N.Y. 667, 122 N.E. 887 [1919]), the Boards of Elections throughout the State should effect a statutory change requiring petition signatures be cursive." Cotroneo v. Monroe County Bd. of Elections, 166 Misc.2d 63, 631 N.Y.S.2d 490, N.Y.Sup.,1995.

13. Clearly, the statutory change sought by the Cotroneo court has not come pass. As such, affidavits are sufficient to ressurect any printed signature discarded by the Board of Elections. Due to the abbreviated time frame required by this proceeding, such affidavits will be provided to the Court on or before the date of this hearing, but are not attached to this Petition.

14. That venue is properly based in Erie County.

15. 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.

16. 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.

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

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

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

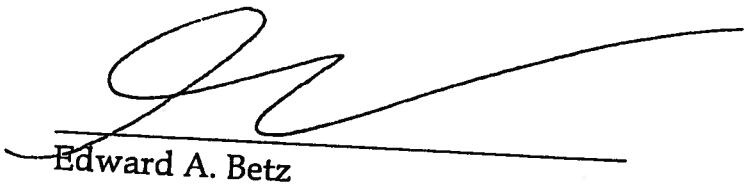
WHEREFORE, Petitioner, Sandara Baines respectfully requests the Court:

1. Declare Petitioner Sandara Baines's designating petition naming her as Candidate for the Democratic Party Office of Member of the Democratic Party County Committee, University Ward, 26th 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 Sandara Baines and place her 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
Sandara Baines
403 Main Street, Suite 615
Buffalo, New York 14203
(716) 856-0024

VERIFICATION

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

Sandara Baines, being duly sworn, deposes and says:

That she is the petitioner in this proceeding; that she has read the foregoing Petition and knows the contents thereof; that the same is true to her own knowledge, except as to those matters stated to be alleged upon information and belief and stated in accordance with her advice, and as to those matters she believes them to be true.

Sandara J. Baines
Sandara Baines

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