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 28, 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:	*Manna, Cynthia A. and Mark A. v. Erie County Board of Elections, Ralph M. Mohr, Dennis E. Ward and Judith E. Colby*
Document Received:	Order to Show Cause
Name of Petitioners:	Cynthia and Mark Manna
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 28th day of July, 2014.

PAID
CHECK____CASH____

PRESENT: JOHN A. MICHALEK, J.S.C.

JUL 28 2014

ERIE COUNTY CLERK'S OFFICE

Matter of CYNTHIA A. MANNA and MARK A. MANNA,

Petitioners,

-against-

Index No.2014-126

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,
JUDITH E. COLBY, Objector,

Respondents.

FILED
JUL 28 2014
ERIE COUNTY CLERK'S OFFICE

Upon the annexed Verified Petition of CYNTHIA A. MANNA and MARK A. MANNA, duly verified the 28th day of July, 2014, and the affidavit of Joel Brinson, sworn to on July 8th 014, it is hereby

ORDERED that the Respondents herein show cause before this Court at a Special Term, Part 26 to be held at County courthouse, 25 Delaware Ave, Buffalo, NY 4th floor, in the City of Buffalo, on the 11th day of August, 2014, at 9:30 o'clock in the fore of that day, or as soon thereafter as counsel can be heard, why an order should not be made and entered herein:

1. Directing the respondents to validate the Democratic designating petition of the petitioners for the office of Member of the County Committee, Ton of Amherst, District 11, 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 _____
On the ____ day of _____ 20 __
At _____ am/pm

Signature of BOE Employee

ERIE CO BOE JUL 28 '14 PM 4:13

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 28, 2014.
2. Upon JUDITH E. COLBY:
   a. by personal delivery or delivery to a person of suitable age and discretion at her residence on or before July 28, 2014;

      or

   b. if, after two attempts to serve the respondent or a person of suitable age and discretion at her residence, by affixing a copy to the door at her address, 63 Charlestown Rd., Amherst, New York, by 8:00 p.m., on July 28, 2014; opposing papers to be served on the Court and Counsel by August 4, 2014.

GRANTED JUSTICE OF THE SUPREME COURT

JUL 28 2014

BY MARY LOUISE ENSER
COURT CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

Matter of CYNTHIA A. MANNA and
MARK A. MANNA,

Petitioners,

-against-

Index No.2014-126

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,
JUDITH E. COLBY, Objector,

Respondents.

The Petitioners CYNTHIA A. MANNA and MARK A. MANNA, 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 Amherst, Election District 11 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 CYNTHIA A. MANN and MARK A. MANNA reside at 52 Charleston Rd., Amherst, New York.
4. Petitioners appeared on the same designating petition 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. JUDITH E. COLBY filed objections to the petition.

8. She resides at 63 Charleston Rd., Amherst, New York.

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

10. The Board found that the Petition contained 21 valid signatures.

11. The law requires 22 valid signatures for the office of Committee Member in the 11th District.

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

13. The Board sustained an objection to page two of the petition containing 20 signatures due to failure to initial modifications to the witness statement.

14. However, on information and belief, in the absence of fraud or other misconduct, such alleged and minor alteration should not invalidate the petition.

15. Also, we contend that the alleged alterations are not of the type to even require being initialed.

16. In any event, we request an opportunity to present testimony from the witness to explain the nature of the alterations.

17. On information and belief, the petition substantially complies with the Election Law and should be validated in the absence of any indication of fraud.

18. If this Court rules that the witness statement substantially complies with the statute, the petitioner will have enough valid signatures to qualify for ballot status.

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 28, 2014

JAMES OSTROWSKI
Attorney for Petitioners
CYNTHIA A. MANNA
MARK A. MANNA
63 Newport Ave.
Buffalo, New York 14216
(716) 435-8918
Jameso@apollo3.com

VERIFICATION

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

MARK A. MANNA, being duly sworn, deposes and says that he is a 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.

Mark A. Manna

Subscribed and sworn to before
me this 23rd day of July 28, 2014

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

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:
Cynthia Manna	Mark Manna	Judith E Colby
52 Charlestown Rd	52 Charlestown Rd	63 Charlestown Rd
Amherst NY 14226	Amherst NY 14226	Amherst Ny 14226

Petition Being Objected To: Member of County Committee Amherst District 11

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

Number of Signatures Required: 22 Petition No.: 25-2155

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.	
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.	
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.	

"A"

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.	20
10B.		10B.	
11B.		11B.	

Recapitulation:

Total Actual Signatures on Petition:	41
Less Total Invalid Signatures:	20
Total Remaining Valid Signatures:	21

Findings of Other Objections Raised:

DETERMINATION

_____ **Petition is Qualified**

✓ **Petition is Rejected**

Commissioner Dennis E. Ward votes to: reject petition

Arthur E. Ward Jr

Commissioner Ralph M. Mohr votes to: reject petition

Date: July 22 2014

Revised May 16, 2007

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

Matter of CYNTHIA A. MANNA and
MARK A. MANNA,

Petitioners,

-against-

Index No.2014-_____

AFFIDAVIT OF JOEL BRINSON

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,
JUDITH E. COLBY, Objector,

Respondents.

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

JOEL BRINSON, being duly sworn, deposes and states:

1. I am the witness who carried page two of the petitioners' designating petition in this matter.
2. I have reviewed the petition with respect to alterations in the statement of witness.
3. With respect to the alteration after "name of witness," I started out signing the form and then realized that I should print my name so I crossed out the partial signature.
4. With respect to the alteration of the date, I initially wrote a "6" for June by mistake, realized it was in fact July, then traced over the "6" with a "7" for July.
5. I did in fact sign the statement of witness on July 9, 2014.

6. I did not write "TTON" under "WITNESS IDENTIFICATION INFORMATION," however, I do indeed reside in the Town of Tonawanda.

7. Finally, I did in fact witness the twenty signatures on page two.

Subscribed and sworn to before
me this 23rd day of July 28, 2014

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