



COUNTY OF ERIE

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

MARK C. POLONCARZ

COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 29, 2016

Ms. Karen McCarthy, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Dear Ms. McCarthy:

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:	<i>Hunt, Sarah v. Erie, County Board of Elections, et al.</i>
Document Received:	Order to Show Cause
Name of Claimant:	Sarah C. Hunt 821 Potomac Avenue Buffalo, New York 14209
Claimant's attorney:	Matthew K. Pelkey, Esq. Colligan Law LLP 12 Fountain Plaza, Suite 600 Buffalo, New York 14202

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: 
Michelle M. Parker
First Assistant County Attorney

MMP: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 28 day of July 2016.

HON. HON. JOHN L. MICHALSKI, J.S.C.
PRESIDING JUSTICE

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

In the Matter of the Application of

SARAH C. HUNT
821 Potomac Avenue
Buffalo, NY 14209

Petitioner

vs

JAMES V. DEPASQUALE, JR.
7000 Erie Rd., Apt. 5
Derby, NY 14047

Respondent-Candidate,

**ORDER TO
SHOW CAUSE**

ERIE COUNTY BOARD OF ELECTIONS,
Leonard R. Lenihan and Ralph M. Mohr, Commissioners of and
Constituting the Erie County Board of Elections
134 West Eagle Street
Buffalo, NY 14202

Respondent,

INDEX NO.

12016-000109

For an Order and Judgment pursuant to New York Election Law Articles 6 and 16 invalidating Respondent-Candidate James DePasquale's Green Party Designating Petition for the public office of New York State Senate 60th District, State of New York, filed with the Erie County Board of Elections on July 13, 2016 and removing her name from the Ballot for the September 13, 2016 Primary Election.

PAID
07/28/2016/ 10:31:52
ERIE COUNTY CLERK
RCPT # 16123385
I 2016000109

TO THE NEW YORK STATE SUPREME COURT - ERIE COUNTY

Upon the Verified Petition of the Petitioner Sarah C. Hunt, dated the 28th day of July 2016, and

AFTER DUE DELIBERATION having been had and in order to comply with Election Law Section 16-116's requirement that these proceedings be "summarily determined" and "have preference over all other cause in all courts," it is hereby,

ORDERED, that the Respondents **SHOW CAUSE BEFORE THIS COURT**, at a Special Term, of Supreme Court, to be held in and for the County of Erie, State of New York, in the Courthouse at X 25 Delaware Avenue, 50 Delaware Avenue, 92 Franklin Street, Buffalo, NY in Part 18, on the 12 day of August, 2016 at 10⁰⁰ o'clock in the a.m. / PM of that day, or as soon thereafter as counsel can be heard,

WHY an ORDER should not be made and entered herein, pursuant to Election Law Articles 6 and 16, and including, but not limited to, Sections 6-130, 6-132, 6-134, 6-136, 16-100, and 16-102, **granting the following relief against the Respondents:**

1. An Order, pursuant to Election Law Articles 6 and 16, invaliding the Green Party petition of Respondent-Candidate James V. DePasquale, Jr. to be a candidate for the public office of New York State Senator, 60th District, by reason of the fact that said petition contains less than the minimum of 28 valid signatures, as required by Election Law Section 6-136(2), in order for a person's name to appear on the ballot on the Green Party line in the 60th State Senate District, New York;
2. An Order determining that the petition of Respondent-Candidate James V. DePasquale, Jr. is invalid (a) by reason of multiple failures to obtain a sufficient number valid signatures from registered Green Party voters in the 60th New York State Senate District, State of New York in violation of Election Law § 6-136(2), and (b) by reason of deficiencies on one or more pages of the petition which contain duplicate signatures of multiple voters who signed Respondent-Candidate James DePasquale's petition, (c) by reason of failure to comply with the designating petition requirements of Election Law Article 6, particularly § 6-132, 6-134 & 6-136, and the rules of the New York State Board of Elections, (d) by reason of failure to comply with Notary Public requirements set out by NYS Election by failing to identifying the correct city, town or county of the Notary Public, failing to identify the expiration

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date of the notary public, failing to set forth the correct expiration date of the notary public, failing to initial modifications to notary stamp by someone other than the notary public, failing to print the name of the notary public, failing to provide a legible signature of the notary public, failing to provide a valid NYS registration number for the notary public, and upon information and belief, failing to insert the witness information required by the subscribing witness statement of the notary public/commissioner of deeds prior to, or in the presence of the notary public witness signing the statement as required by NYS Election § 6-134(9), (e) by reason of failing to properly witness signatures in the presence of the witness/notary/commissioner of deeds, (f) by reason of failing to swear in or administer the requisite oath to person(s) who signed the Respondent-Candidate James DePasquale's petition, (g) by reason of irregularities in which one or more pages of the petition contain duplicate signatures of voters with different handwriting who signed Respondent-Candidate James DePasquale's petition in the presence of the same witness; (h) by reason of signatures appearing to be signed by the same person as a person who signed on a different line; (i) by reason of engaging in conduct, including but not limited to the above, which, upon information and belief, is alleged to constitute fraud; and (j) by reason of knowingly submitting petitions for Respondent-Candidate James DePasquale which, for the reasons set forth above, contained fatal defects, invalid page(s) and invalid signatures;

3. An Order directing the Erie County Board of Election to invalidate the petition of Respondent-Candidate James V. DePasquale, Jr. to be a candidate for the public office of New York State Senate, 60th District, State of New York, and, if the Erie County Board of Elections has made an administrative determination of validity prior to the conclusion of this proceeding, overruling and setting aside the decision of the

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- Erie County Board of Elections and directing the Erie County Board of Elections to invalidate the James V. DePasquale, Jr. petition and directing the Erie County Board of Elections to print ballots for the September 13, 2016 Primary Election without the name of James V. DePasquale, Jr. appearing thereon; and
4. An Order directing the Erie County Board of Elections to produce to the Court on the return date of this Petition and Order to Show Cause, and all subsequent court dates, the original petition of Respondent-Candidate James V. DePasquale, Jr., the original GENERAL and SPECIFIC OBJECTIONS to the petition filed by Petitioner-Objector Sarah C. Hunt and all documents constituting the records of proceedings by, of, and before the Erie County Board of Elections in relation to the petition of Respondent-Candidate James V. DePasquale, Jr. and the Board's actions with respect thereto;
 5. An Order granting such other, further and different relief as the Court may deem just and appropriate, including costs and disbursements.

SERVICE OF PROCESS:

And it is further,

ORDERED, that service of a conformed copy of this Order to Show Cause and the underlying Verified Petition, upon the Respondent-Candidate James V. DePasquale, Jr. and the Respondent Erie County Board of Elections shall be deemed good and sufficient if accomplished no later than 10 p.m. on the 1st day of August, 2016 as follows:

1. Respondent-Candidate JAMES V. DEPASQUALE, Jr.:

By delivery to **James V. DePasquale, Jr.** in any manner authorized by CPLR Section 308 or by overnight delivery service (as defined by CPLR § 2103(b)(6)) to him at 7000 Erie Road, Apt. D5, Derby, New York 14047, the address listed by her on her petition to be a candidate for New York State Senate 60th District, State

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of New York, with such overnight delivery service complete by delivery to the delivery service provider by the time and date above-stated;

2. Respondent **ERIE COUNTY BOARD OF ELECTIONS**:

By delivery to a person authorized to accept service at the offices of such Respondent **ERIE COUNTY BOARD OF ELECTIONS** at 134 West Eagle Street, Buffalo, NY 14202 in a manner authorized by CPLR Section 308 or by overnight delivery service (as defined by CPLR § 2103(b)(6)) to the Board at 134 West Eagle Street, Buffalo, NY 14202 with such overnight delivery service complete by delivery to the delivery service provider by the time and date above-stated;

PRODUCTION OF ORIGINAL DOCUMENTS

and it is further,

ORDERED, that the Respondent **ERIE COUNTY BOARD OF ELECTIONS** shall produce to the Court on the return date of this Petition and Order to Show Cause, and all subsequent court dates, the original Green Party petition of Respondent-Candidate James V. DePasquale a/k/a James V. DePasquale, Jr., the original **GENERAL** and **SPECIFIC OBJECTIONS** to the petition filed by Petitioner, and all documents constituting the records of proceedings by, of, and before the **ERIE COUNTY BOARD OF ELECTIONS** in relation to the petition of Respondent-Candidate James V. DePasquale, Jr. and the Board's actions with respect thereto;

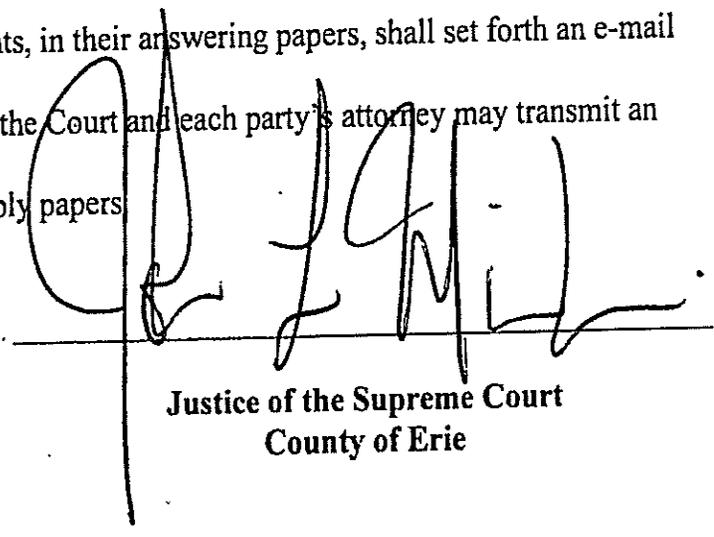
RESPONSIVE PAPERS

and it is further

ORDERED, that the Respondents shall file their verified answer to the petition, and affidavits or other responding papers, including motion papers, to the Court and deliver them to Petitioner's counsel, no later than the 1st ~~1st~~ (p.m) the 9th day of August 2016; and it is further

ORDERED, that the Respondents shall also deliver, in addition to the paper copy of the documents referred to above, an electronic copy of their verified answers and affidavits or other responding papers, including motion papers, to the Petitioner's counsel at mpelkey@colliganlaw.com as early as feasibly possible prior to service and filing of the original paper originals of said documents; and it is further

ORDERED, that the Respondents, in their answering papers, shall set forth an e-mail address to which communications from the Court and each party's attorney may transmit an electronic copy of responding and/or reply papers



Justice of the Supreme Court
County of Erie

GRANTED: July 28, 2016

Janna Rodriguez
Court Clerk

CLERK OF COURT
COUNTY OF ERIE
DEPT. OF COURTS
100 N. 3RD ST.
ERIE, PA 16501
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FAX: 814.833.1235
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