

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

-----X
In the Matter of the Application of

BYRON W. BROWN

Petitioner-Candidate- Aggrieved,
-against-

ERIE COUNTY BOARD OF ELECTIONS,

Index No.

Respondent,

**VERIFIED
PETITION**

INDIA B. WALTON,

Respondent-Objector-Candidate,

JOAN L. SIMMONS,

Respondent-Objector.

For and Order and Judgment pursuant to the New York State Election Law, the New York State Constitution and the United States Constitution, to validate the independent nominating petition of Petitioner herein as a candidate for Mayor of the City of Buffalo on behalf of the independent entity known as the Buffalo Party in the General Election to be held on November 2, 2021, and to place his name on the ballot for said election.

,
-----X

TO THE SURPREME COURT OF STATE OF NEW YORK, COUNTY OF ERIE:

Petitioner-Candidate-Aggrieved BYRON W. BROWN, by his undersigned attorneys, respectfully alleges as follows:

1. At all times hereinafter mentioned, Petitioner-Candidate-Aggrieved BYRON W. BROWN (“Petitioner”) is a candidate within the meaning of Section 16-102 of the Election Law, having duly filed a Nominating Petition with Respondent ERIE COUNTY BOARD OF ELECTIONS (“Board of

Elections”) naming Petitioner as a candidate for MAYOR OF THE CITY OF BUFFALO for the General Election to be held on the November 2, 2021 (“Nominating Petition”).

2. Respondent Board of Elections is charged with the responsibility of the supervision of the conduct of official elections held in THE CITY OF BUFFALO including the duties of receiving Nominating Petitions for public office and party position in political subdivisions located entirely within THE CITY OF BUFFALO, the review and determination of Objections and Specifications of Objections to such Nominating Petitions, notification of a determination of non-compliance, maintaining the permanent personal voter registration poll records of voters and official maps for all election districts located within THE CITY OF BUFFALO, and the preparation of official General Election ballots for use in THE CITY OF BUFFALO.

3. On or about August 17, 2021, the said Nominating Petition was filed with Respondent ERIE COUNTY BOARD OF ELECTIONS naming Petitioner as a candidate for MAYOR OF THE CITY OF BUFFALO on the Buffalo Party in the General Election to be held on the November 2, 2021.

4. Petitioner is, in all respects, duly qualified for said nomination and to hold said public office.

5. The Nominating Petition is in due and proper form as prescribed by law, and contains more than the minimum number of signatures of duly enrolled voters of the City of Buffalo for which said nomination was made, and the Nominating Petition is otherwise valid, proper, sufficient and legally effective.

6. After the filing of the Nominating Petition, written General Objections to the Nominating Petition were filed with Respondent Board of Elections by the following persons referred to herein as the Respondent-Objector and Respondent-Objector-Candidate, whose purported respective residences were indicated on said written Objections, and Petitioner is therefore aggrieved:

NAME OF OBJECTOR(S)	ADDRESS OF OBJECTOR SET FORTH ON OBJECTIONS
JOAN L. SIMMONS (Objector)	65 HOLLING DRIVE, BUFFALO, NY14216
INDIA B. WALTON (Objector-Candidate)	815 7 TH STREET, #2, BUFFALO, NY 14213

7. Subsequent to the filing of said General Objections, said Respondent-Objectors filed Specifications of Objections with Respondent Board of Election in support of the aforesaid written General Objections. Petitioner served and filed with Respondent Board of Elections his response to said Objections on or about August 24, 2021, urging the Board not to sustain said Objections on the ground that its jurisdiction is limited to the review of the face of the Nominating Petition and that the filing deadline violated Petitioner’s and the Nominating Petition signers’ First and Fourteenth Amendment rights under the United States Constitution and parallel rights under the New York State Constitution.

8. The aforesaid General Objections and Specifications of Objections were deficient as a matter of law and the allegations contained therein were without merit in law or in fact.

9. Nevertheless, Respondent Board of Elections erroneously acted beyond its limited jurisdiction

and sustained said Objections and improperly invalidated Petitioner's Nominating Petition, invalidating his candidacy therein, on the specific ground that the Nominating Petition was not timely filed.

10. Pursuant to Article 16 of the Election Law of the State of New York, Petitioner commences the within Validating Petition so that this Court may review the pertinent issues of law and fact with regard to said Nominating Petition and Petitioner's candidacy therein, and determine that Respondent Board of Elections erroneously invalidated said Nominating Petition and Petitioner's candidacy therein.

11. Specifically, Respondent Board of Elections erroneously determined that the Nominating Petition was filed late, basing its conclusion on § 6-158(9) that nominating petitions were due twenty-three weeks prior to the General Election.

12. The statute that Respondent Board of Elections relied upon in making its erroneous determination is unconstitutional and should not have precluded the filing of said Nominating Petition and its validation. It is unconstitutional based upon well-established law, as articulated by the United States Supreme Court and a variety of federal courts, that a deadline for independent nominating petitions twenty three weeks before a general election is not rationally based, infringes upon the rights of candidates and those who have signed their nominating petitions in support of their candidacy, and violates the candidate's equal protection rights under the federal and state constitutions.

13. The pertinent statute also lacks any rational basis in that, until 2019, the deadline for submitting

nominating petitions to obtain a ballot line for a general election has been only eleven weeks, not twenty three weeks. Said Nominating Petition was filed eleven weeks prior to the General Election to be held on November 2, 2021.

14. Even when the primary election for congressional candidates was moved from September to June in 2012, 2014, 2016 and 2018, the deadline for the submission of nominating petitions for congressional office (and all other offices) was not changed. This retention of the deadline for nominating petitions as eleven weeks prior to a general election was supported by the New York State Board of Elections.

15. Accordingly, it was arbitrary and capricious and without any rational basis for the state legislature to simply change the date nominating petitions were due from eleven weeks to twenty three weeks prior to a general election. As such the new statute is unconstitutional.

16. Petitioner was not harmed by the unconstitutional change of the date nominating petitions were due until he lost the Democratic Party primary election and determined to continue to run for re-election. Accordingly, Petitioner circulated petitions and filed the Nominating Petition by the deadline of eleven weeks prior to this year's General Election.

17. For these reasons, this Court is requested to declare the statute requiring that nominating petitions be filed twenty three weeks prior to the General Election to be unconstitutional, reverse Respondent Board of Elections' erroneous decision to invalidate the Nominating Petition and Petitioner's candidacy, and order that Petitioner's name, under the Buffalo Party, be placed on all ballots

used in the General Election to be held on November 2, 2021.

18. It is respectfully requested that the within Order to Show Cause be granted so that this proceeding may be commenced in a timely fashion.

19. In accordance with prior decisions of this and other Courts, whose decisions are controlling, Petitioner requests the right to submit proof establishing the validity of the Nominating Petition and validity of Petitioner's candidacy.

20. Petitioner requests that Respondent Board of Elections produce upon the argument and hearing of this application the aforesaid Nominating Petition; and the minutes and proceedings of any meeting of Respondent Board of Elections made for the purpose of ruling upon said General Objections and Specifications of Objections filed by said Objectors herein

21. Petitioner request that the within Order to Show Cause be signed and issued forthwith because in an Election Law proceeding such as the instant one, commencement of the proceeding requires not only the filing of the petition, but the actual service of the Order to Show Cause and Petition upon all necessary parties before the expiration of the Statute of Limitations, which is three business days after the Respondent Board of Elections' adverse determination – in this case, September 1, 2021. Because of the highly truncated Statute of Limitations period, request is made for liberal service provisions requested, as is routinely provided as reflected in the Order to Show Cause. Furthermore, this election proceeding has a preference over all other matters. Accordingly, it is requested that the annexed Order to Show Cause be signed and issued today.

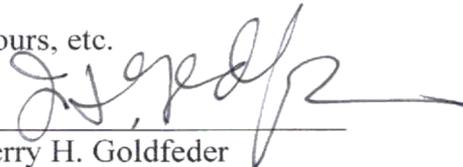
22. Petitioner has no adequate remedy at law.

23. No previous application has been made for the relief sought herein or for the Order to Show Cause hereto annexed, or for any similar relief.

WHEREFORE, Petitioner respectfully prays that the annexed Order to Show Cause be granted, for a final Order and Judgment granting the relief prayed for in the Order to Show Cause, and for such other and further relief as this Court deems just and proper.

Dated: New York, New York
August 27, 2021

Yours, etc.



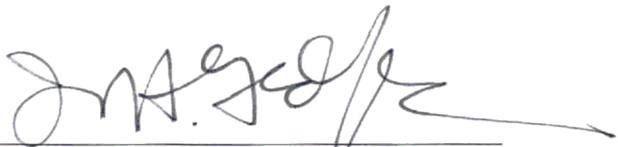
Jerry H. Goldfeder
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, NY 10038
917-680-3132
jgoldfeder@stroock.com

VERIFICATION

JERRY H. GOLDFEDER, an attorney duly admitted to practice law before the Courts of the State of New York, affirms under the penalties of perjury:

I am Special Counsel to Stroock & Stroock & Lavan LLP, attorneys for Petitioner BYRON W. BROWN in this proceeding. I am not a party to this proceeding. I have read the within Petition and know the contents thereof and the same are true to my knowledge; as to matters therein alleged on information and belief, I believe them to be true. The basis of my belief is that I have reviewed the pertinent law as well as the within Petition, as well as records of the Board of Elections, and have had communications with individuals with knowledge of the facts. The reason I am making this verification is that my office is in the County of New York and Petitioner is located in the County of Erie.

Dated: New York, New York
August 27, 2021



JERRY H. GOLDFEDER