

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NIAGARA**

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In the Matter of the Application of

**DEMETREUS T. NIX and
UNIQUIA D LEWIS,**
candidates aggrieved,

Petitioners,

-against-

Index No.

**THE NIAGARA COUNTY BOARD OF ELECTIONS
JENNIFER SANDONATO and LORA ALLEN,
Commissioners
Constituting the Board,**

VERIFIED

and

PETITION

JAMES DEAN, as purported Objector
herein,

Respondents.

For an Order Pursuant to Sections 16-100,
16-102 and 16-116 of the Election Law, and
Related sections of the Election Law,
CPLR 3001, and Article 78 of the CPLR
declaring VALID the Petitioners'
Designating Petition for Nomination of the
DEMOCRATIC PARTY, and to order the said
Board of Elections to place the name of said
Candidates upon the Official Ballots of said
Primary Election.

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**TO THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NIAGARA:**

Petitioners, by their attorney, James Ostrowski, for their verified petition, allege as follows:

1. That at all times hereinafter mentioned, your Petitioner, DEMETREUS T. NIX was and is a candidate for Public Office, specifically, MAYOR OF THE CITY OF NIAGARA FALLS.
2. That at all times hereinafter mentioned, your Petitioner, UNIQUIA D. LEWIS was and is a candidate for Public Office, specifically, COUNCIL MEMBER OF THE CITY OF NIAGARA FALLS.
3. Your Petitioners claim standing as candidates aggrieved in this proceeding under the provisions of the Election Law.
4. This proceeding is brought as a special proceeding under Article 16 of the Election Law by a verified petition and such oral or written proof as may be offered. Elec. Law § 16-116.
5. This proceeding is brought to validate Petitioners’ designating petition and ancillary documents & certificates pursuant to the Election Law, compel the Board of Elections to place the Petitioners’ name on the ballot

pursuant to Article 78 CPLR and to declare Petitioners right to be candidates pursuant to CPLR 3001.

6. That at all of the times hereinafter mentioned, the Respondent NIAGARA COUNTY BOARD OF ELECTIONS was and is charged with the responsibility of the supervision of the conduct of official elections held in THE COUNTY OF NIAGARA in the STATE OF NEW YORK, including the duties of receiving and filing designating petitions for public office, including the review and determination of objections and specifications of objections to such designating petitions, notification of a determination of non-compliance, maintaining the official voter registration list official maps for all election districts located within the subject political subdivision, and the preparation of official Primary Election and General Election ballots for use in the Primary and General Elections.
7. Respondent NIAGARA COUNTY BOARD OF ELECTIONS is located at 111 Main Street, Suite 100, Lockport, NY 14094.
8. The Commissioners of the Board are JENNIFER SANDONATO and LORA ALLEN. The Commissioners constitute the said Board of Elections.

9. Respondent JAMES DEAN (“Respondent Dean”) is a purported Objector to the joint designating petition filed by Petitioners with Respondent NIAGARA COUNTY BOARD OF ELECTIONS.
10. That on or about April 3rd to 10th, 2023, there were timely filed with the Respondent Board of Elections certain papers constituting a joint designating petition for the 2023 Democratic Party Primary Elections for MAYOR OF THE CITY OF NIAGARA FALLS, for the above captioned Petitioners DEMETREUS T. NIX and for UNIQUIA D. LEWIS for COUNCIL MEMBER, CITY OF NIAGARA FALLS.
11. Petitioners are, in all respects, duly qualified for the said designation.
12. The designating petition was and still 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 Niagara Falls for which the said designation was made, and the designating petition is otherwise valid, proper, sufficient, and legally effective.
13. The original designating petitions are / have been requested to be ordered delivered to the Court on the return date hereof and any adjourn dates. They are in the possession of the NIAGARA COUNTY BOARD OF ELECTIONS and are a document produced and filed by Petitioners.

14. The subject designating petitions are hereby incorporated by reference herein.
15. Upon information and belief, after the filing of the designating petition, written objections to the designating petition were filed with Respondent NIAGARA COUNTY BOARD OF ELECTIONS by Respondent Dean, whose purported residence was indicated as 435 79th Street, Niagara Falls, New York.
16. Upon information and belief, Respondent Dean filed specifications of objections in support of the aforesaid written objections to the designating petition with Respondent NIAGARA COUNTY BOARD OF ELECTIONS. See, Exhibit “C”.
17. Said objections do not properly identify the objector or list his address.
18. Said objections are hereby incorporated by reference.
19. Further, an order is requested herein directing the Respondent NIAGARA COUNTY BOARD OF ELECTIONS to produce all such documents.
20. Upon information and belief, the aforesaid objections and specifications of objections are insufficient, untimely, deficient as a matter of law, and do not comply with the rules of Respondent NIAGARA COUNTY BOARD OF ELECTIONS, and many of the allegations contained therein are without merit in law or in fact. A line-by-line analysis of the aforesaid

specifications of objections reveals that its conclusion that the designating petition has insufficient signatures is unsupported and incorrect.

21. On information and belief, petitioner LEWIS was never served with objections and is not the subject of the objections filed; hence, her petition should have been presumed valid by the Board and the Board erred in doing otherwise.
22. Upon information and belief, Respondent NIAGARA COUNTY BOARD OF ELECTIONS failed to send Petitioners a notice of the hearing occurring on or about April 20, 2023, to rule on the specification of objections.
23. Upon information and belief, Respondent NIAGARA COUNTY BOARD OF ELECTIONS failed to provide the petitioners an opportunity to review the Clerk's/Counsel's Report prior to the hearing on or about April 20, 2023.
24. On or about April 20, 2023, at a hearing held by the Respondent NIAGARA COUNTY BOARD OF ELECTIONS, the Respondent NIAGARA COUNTY BOARD OF ELECTIONS ruled and declared an undisclosed number of the signatures on petitioners' designating petition invalid.

25. That on April 20, 2023, the Respondent Board of Elections issued a NOTICE OF DETERMINATION. See the attached **EXHIBIT “A”**. Said NOTICE OF DETERMINATION declared the designating petition of Petitioner-Candidate DEMTREUS T. NIX invalid due to insufficient signatures for the Office of Mayor of the City of Niagara Falls, County of Niagara, State of New York. SAID NOTICE OF DETERMINATION was signed by the Commissioners of the Board, JENNIFER SANDONATO and LORA ALLEN, constituting the said Board of Elections.
26. On information and belief, said objections and the general objections that proceeds them were untimely and defective in form and substance.
27. That on April 20, 2023, the Respondent Board of Elections issued a NOTICE OF DETERMINATION. See the attached **EXHIBIT “B.”** Said NOTICE OF DETERMINATION declared the designating petition of Petitioner-Candidate UNIQUIA D. LEWIS invalid due to insufficient signatures for the Office of Council Member of the City of Niagara Falls, County of Niagara, State of New York. SAID NOTICE OF DETERMINATION was signed by the Commissioners of the Board, JENNIFER SANDONATO and LORA ALLEN, constituting the said Board of Elections.

28. Your Petitioners were responsible for securing the registration of hundreds of new voters in the City of Niagara Falls, many of whom chose to be enrolled in the Democratic Party.
29. Your Petitioners hand-delivered these new voter registrations to the Respondent NIAGARA COUNTY BOARD OF ELECTIONS on numerous occasions beginning in February 2023.
30. Your Petitioners were told by the Respondent, NIAGARA COUNTY BOARD OF ELECTIONS, and specifically by Commissioner JENNIFER SANDONATO, that the Board's regular and accepted practice is that new voters would be officially registered and enrolled the next business day after a new registration form was hand-delivered to the Lockport office.
31. Your Petitioners were told by the Respondent, NIAGARA COUNTY BOARD OF ELECTIONS, and specifically by Commissioner JENNIFER SANDONATO, that new voters would be officially registered and enrolled the next business day after a new registration form was hand-delivered to the Lockport office, and said new voters that were registered and enrolled in the Democratic Party would be legally able to then sign the Petitioner's designating petition on or after that next business day.

32. Accordingly, the NOTICES OF DETERMINATION declaring the designating petition of Petitioners-Candidate invalid due to insufficient signatures are erroneous as a matter of law and equity.
33. In addition to seeking to rehabilitate all signatures of newly registered voters disqualified by the Board contrary to law and practice and respondent's own assurances, petitioners will seek to rehabilitate all other signatures stricken by the Board.
34. Since the Board has refused to supply any information about which signatures they struck, petitioners are forced to rely on the specific objections filed herein to provide notice of which signatures objected to petitioners believe are valid, namely, all the signatures objected to.

AS AND FOR A CLAIM IN EQUITY, FOR A DECLARATORY JUDGMENT THAT PETITIONERS' DESIGNATING PETITION IS VALID PURSUANT TO ELECTION LAW § 16-102

35. Petitioners' designating petition was and is in proper form as prescribed by law, and contains more than the minimum number of duly enrolled voters of the Democratic Party residing in the City of Niagara Falls for which the designation was made, and the petition is otherwise valid, proper, sufficient, and legally effective.
36. Respondent NIAGARA COUNTY BOARD OF ELECTIONS failed to provide Petitioners an opportunity to review neither the Clerk's Report

prior to the hearing on or about April 20, 2023, nor to administratively contest the NOTICE OF DETERMINATION, thus violating Petitioner's procedural due process rights under the Election Law and Respondent NIAGARA COUNTY BOARD OF ELECTIONS' Rules.

37. As a result, Respondent NIAGARA COUNTY BOARD OF ELECTIONS ruling at the hearing on or about April 20, 2023, and the resultant NOTICES OF DETERMINATION should be voided for failure to provide Petitioner written notice of the hearing and failure to provide Petitioner an opportunity to review the Clerk's/Counsel's Report as well as an opportunity to present to the Respondent NIAGARA COUNTY BOARD OF ELECTIONS a list of exceptions to identify any erroneous claims or rulings in the Clerk's/Counsel's Report and/or the NOTICE OF DETERMINATION. Respondent NIAGARA COUNTY BOARD OF ELECTIONS' ruling and NOTICE OF DETERMINATION purporting to invalidate Petitioner's designating petition was done in violation of the above provisions of law, and this Court should exercise its statutory power to declare the said ruling void.

38. Additionally, Respondent NIAGARA COUNTY BOARD OF ELECTIONS' ruling and NOTICE OF DETERMINATION purporting to invalidate Petitioner's designating petition was arbitrary, capricious,

erroneous, in violation of the constitutions of the United States and the State of New York, and done in violation of the applicable provisions of law, and this Court should exercise its statutory power to declare the said ruling void.

39. Petitioner has no other remedy or relief at law or in equity other than applied for herein.
40. No application for the relief requested herein has been made to any Court.
41. This matter is of the utmost urgency as it affects the Primary Election Ballot. See Election Law § 16-116 (“The proceeding shall have preference over all other causes in all courts.”)
42. The Court of Appeals has determined that Elections Matters are to be treated with urgency, even allowing orders to show cause to be signed on Sundays when the Courts are not in session. *Banko v. Webber*, 7 N.Y.2d 758 (1959).
43. Venue is proper in Niagara County. Petitioners hereby designate venue as Niagara County for this and any related proceedings.
44. In order to effect immediate personal service of the annexed Order to Show Cause and this Petition on the Respondent-Objector and the Respondent NIAGARA COUNTY BOARD OF ELECTIONS, the


Commissioners of whom are required at various times to be on official business at places other than their official business offices, it is respectfully requested that this Court direct that such service may be made upon any Commissioner of Elections, Officers of the Board including the Executive Directors, counsels, or at the Offices of the said Board.

45. This proceeding is being timely filed within three business days after petitioners were notified of the determinations herein, namely, on Friday, April 21, 2023

46. No previous application by Petitioner(s) has been made for the relief sought herein or for the Order to Show Cause hereunto the annexed.

WHEREFORE, it is respectfully prayed that this Court sign the Order to Show Cause, declare Petitioners' designating petition to be valid and effective, and grant the relief requested therein and within this petition, together with such other and further relief as the Court may deem just and proper in the premises.

Dated: April 25, 2023
Buffalo, New York



JAMES OSTROWSKI
Attorney for Petitioners
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UNIQUIAD LEWIS
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VERIFICATION

JAMES OSTROWSKI, an attorney at law admitted to practice in this State, affirms as follows under penalties off perjury:

1. He is the attorney for the petitioners in this proceeding.
2. He has personally reviewed copies of the relevant alleged documents on file with the Board of Elections and interviewed my clients about all the relevant facts, together with other and upon the conclusion of the said review, believes the within allegations to be true, on information and belief.
3. He has reviewed the contents of the within petition with his clients and, at the conclusion of said review, believes the contents thereof to be true.
4. All allegations made upon information and belief he believes to be true, based upon a review of the Board of Elections documents and an investigation of the attendant facts and circumstances.
5. This verification is used pursuant to the provisions of the CPLR as counsel has offices in the County of Erie and the petitioners herein reside outside said county.

Dated: April 25, 2023
Buffalo, New York.



JAMES OSTROWSKI