

At a Motion Term of the Supreme Court of the State of New York, held in and for the County of Onondaga, in Syracuse, New York, on the \_\_\_\_\_ day of August, 2019.

PRESENT: HON. \_\_\_\_\_  
JUSTICE OF THE SUPREME COURT

NEW YORK STATE SUPREME COURT  
ONONDAGA COUNTY

UPSTATE JOBS PARTY, JOHN BULLIS, JOHN RYAN  
MCMAHON II, INDEPENDENCE PARTY OF NEW YORK,  
FRANK MACKAY, and JESSICA HARRIS,

*Petitioners-Plaintiffs,*

v.

DUSTIN M. CZARNY, Onondaga County Board of Elections  
Commissioner, and MICHELE L. SARDO, Onondaga County  
Board of Elections Commissioner,

*and*

PETER S. KOSINSKI, New York State Board of Elections Co-  
Chair Commissioner, DOUGLAS A. KELLNER, New York  
State Board of Elections Co-Chair Commissioner, ANDREW J.  
SPANO, New York State Board of Elections Commissioner, and  
GREGORY P. PETERSON, New York State Board of Elections  
Commissioner,

*Respondents-Defendants.*

Index No.: E2019007058

## ORDER TO SHOW CAUSE

### IN AN ELECTION LAW PROCEEDING

Upon the reading and filing of the EMERGENCY AFFIRMATION of MICHAEL A. BURGER, counsel for petitioners-plaintiffs (“Petitioners”), dated August 5, 2019, and the accompanying VERIFIED PETITION-COMPLAINT dated August 5, 2019 (“Petition”) with attached exhibits, offered

as an affidavit under CPLR section 105(u), it is hereby:

**PRELIMINARY INJUNCTION HEARING**

ORDERED, that the Respondents-Defendants named hereinabove (“Respondents”) show cause before a Term of this Court to be held at the Onondaga County Supreme Court, located at 505 S. State Street, Syracuse, NY, on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, at \_\_\_\_\_ o’clock in the \_noon, or as soon thereafter as counsel can be heard, why an Order should not be made and entered herein granting a PRELIMINARY INJUNCTION enjoining and restraining Respondents from printing, issuing, or distributing for use during the General Election to be held on the 5<sup>th</sup> day of November, 2019, any and all official ballots that include the Onondaga County Executive’s race in the said General Election pending further Order of the Court; and it is further

**MERITS HEARING**

ORDERED, that Respondents show cause before a Term of this Court to be held at the Onondaga County Supreme Court, located at 505 S. State Street, Syracuse, NY, on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, at \_\_\_\_\_ o’clock in the noon, or as soon thereafter as counsel can be heard, why an Order should not be made and entered herein to:

- (a) Declare N.Y. Elec. Law § 7-104(4) unconstitutional as applied to petitioners;
- (b) Declare N.Y. Elec. Law § 7-104(4) facially unconstitutional;
- (c) Direct, order, enjoin, and/or restrain respondents from enforcing N.Y. Elec. Law § 7-104(4) against petitioners;
- (d) Direct, order, enjoin, and/or restrain respondents from enforcing N.Y. Elec. Law § 7-104(4);
- (e) Direct, order, enjoin, and/or restrain respondents to provide the UJP, its candidate(s), and voters with UJP’s own ballot line in this and all future elections;

(f) Award petitioners' attorneys their reasonable attorney's fees pursuant to CPLR § 8601 and/or 42 U.S.C. § 1988, whichever may provide the fullest relief; and

(g) Award such other relief as the Court may deem just and proper; and it is further

### **EXPEDITED DISCOVERY**

ORDERED, that Respondents Boards of Election be and are hereby ordered and directed to produce and provide to Petitioners' counsel within ten (10) days of this Order, and upon the hearing of this Order to Show Cause and on all adjournments thereof:

- (a) A proposed printed ballot form for the November 5, 2019 general election showing the UPSTATE JOBS PARTY with a separate ballot line and listing Mr. McMahon as candidate for Onondaga County Executive;
- (b) A proposed printed ballot showing a consolidated UPSTATE JOBS PARTY line and listing Mr. McMahon as candidate for Onondaga County Executive; and
- (c) All evidence supporting Respondents' opposition to the petition.

SUFFICIENT CAUSE APPEARING THEREFOR, leave is hereby granted to Petitioners to submit, upon the return date 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, including without limitation, such proof as may be necessary to support any allegations in the Petition.

SUFFICIENT CAUSE APPEARING THEREFOR, leave is hereby granted to the parties hereto to engage in expedited discovery with discovery demands and all further papers to be served by email and to be returnable within ten (10) days of such service by email.

**EXPEDITED SERVICE**

SUFFICIENT CAUSE APPEARING THEREFOR, it is further

ORDERED that that service of a copy of this Order to Show Cause and Verified Petition with index number and date of filing endorsed thereon, together with the papers upon which it is granted, be made upon Respondents by delivering same to their respective business offices, and to the office of the Onondaga County Attorney and to any office of the New York State Attorney General on or before the \_\_\_\_\_ day of July, 2019, and that any such method of service shall be deemed good and sufficient service thereof; and it is further

ORDERED that that Respondents shall serve all responding papers including, without limitation, a duly verified answer to the Petition by delivering same by email at mike@litgrp.com and donna@litgrp.com, and by overnight mail to Michael A. Burger, Esq., Santiago Burger LLP, attorneys for Petitioner, and by filing same with the Court by \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, on July \_\_\_\_\_, 2019; and it is further

ORDERED that that Petitioners may serve all reply papers by delivering same by email at email addresses that counsel for Respondents shall supply with their Verified Answers, and by overnight mail to Respondents' counsel, and by filing same with the Court by \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, on \_\_\_\_\_, 2019; and it is further

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ORDERED, that any requirement that any affidavits of service be filed with the Clerk of the Court be extended to the return date of this motion, and such affidavits may be filed with the Clerk of the Part on the return date, and that any requirement that substituted service be preceded by due diligence attempt(s) at personal delivery upon Respondent(s) be and is hereby waived, and that the ten day completion of service provision be and is hereby waived by this Order.

Dated: August \_\_\_\_, 2019  
Syracuse, New York

Enter.

\_\_\_\_\_  
HON. \_\_\_\_\_  
JUSTICE OF THE SUPREME COURT