

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF ERIE

---

**OUR CITY ACTION BUFFALO, INC.,  
UNIVERSITY DISTRICT BLOCK CLUB  
COALITION, INC., JAMES ANDERSON,  
NATHAN FEIST, HARPER BISHOP,  
BRIGIDANN "BRIDGE" RAUCH, SHIRLEY SARMIENTO,  
CASSANDRA EUBANKS, JOANN MECCA,  
IRIS MORTELLARO, and LUZ VELEZ,**

Petitioners,

For a Judgment Pursuant to Article 78 of the New York  
Civil Practice Laws and Rules

-against-

**VERIFIED PETITION**

**COMMON COUNCIL OF THE CITY OF BUFFALO** , and

Index No: \_\_\_\_\_

**HONORABLE BYRON BROWN**, in his official capacity as  
Mayor of the City of Buffalo, and

**THE CITY OF BUFFALO**, as successor-in-interest of the  
**CITIZENS ADVISORY COMMISSION ON  
REAPPORTIONMENT**, and

The **ERIE COUNTY BOARD OF ELECTIONS**,

Respondents.

---

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Petitioners, **OUR CITY ACTION BUFFALO, INC., UNIVERSITY DISTRICT  
BLOCK CLUB COALITION, INC., JAMES ANDERSON, NATHAN FEIST, HARPER  
BISHOP, BRIGIDANN "BRIDGE" RAUCH, SHIRLEY SARMIENTO, CASSANDRA  
EUBANKS, JOANN MECCA, IRIS MORTELLARO, and LUZ VELEZ**, (collectively,  
"Petitioners"), by their attorneys Stephanie A. Adams, lead counsel, and Adam L. Bojak and

Samantha White, assisting counsel, allege the following as and for their Verified Article 78 Petition against the Respondents **COMMON COUNCIL OF THE CITY OF BUFFALO** ("Respondent Common Council"), **HONORABLE BYRON BROWN** in his capacity as Mayor of the City of Buffalo ("Respondent Mayor"), and the **CITY OF BUFFALO** as successor-in-interest of the **CITIZENS ADVISORY COMMISSION ON REAPPORTIONMENT** (Respondent "City" or "Citizens Commission"; together, the Respondent Common Council, Respondent Mayor and Respondent City are the "City Respondents"), and the **ERIE COUNTY BOARD OF ELECTIONS** ("Respondent Board of Elections"):

### **PRELIMINARY STATEMENT**

1. In numerous stark and indisputable ways, the City of Buffalo's 2022 reapportionment process (the "2022 Process") determining the composition of its representational districts failed to meet the basic requirements of the law, necessitating this Court's intervention.

2. Petitioners are aware that even the best-run process for determining representational districts can create discontent, but submit this Verified Petition because they strongly believe it should be the rule of law--not the fiat of an entrenched few--that creates the playing field for democracy in the City of Buffalo.

3. By and through this Verified Petition, the Affidavit accompanying as "Exhibit A" (the "Expert Report"), and their individual Affidavits, Petitioners aver and plead a) the City Respondents' significant departures from the laws governing the redistricting process b) resulted in negative effects that c) create unique and specific injuries to each Petitioner that can d) only be remediated by the relief requested through this action.

4. Petitioners are a diverse, non-partisan assemblage of city residents and civic organizations united only by their request for relief: that this Court temporarily and permanently enjoin any further action by Respondents based on the district boundaries created by the 2022 Process; that the legislation signed into law by Respondent Mayor on August 15, 2022 and duly submitted to the New York Department of State for publication as required by law (attached as "B") be annulled; that the creation of an alternate set of district boundaries derived from a compliant process be directed; that said process will abide by the requirements of the Open Meetings Law; and other relief as this Court deems just and appropriate.

#### JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to CPLR §7804, which provides that the Supreme Court of the State of New York has exclusive jurisdiction over Article 78 special proceedings.

6. Venue is proper per CPLR Article 5 because every party and respondent is domiciled or based in the County of Erie.

7. This action is timely because it is commenced within four months of the determinations to be reviewed, and as shown below.

#### PARTIES

8. Petitioner **OUR CITY ACTION BUFFALO, INC.** is a not-for-profit organization that works to identify, nurture, and promote local leadership focused on counteracting legacies of systemic oppression and promoting housing and environmental justice in the City of Buffalo and Western New York through grassroots political organizing.

9. Petitioner **UNIVERSITY DISTRICT BLOCK CLUB COALITION, INC.** is a not-for-profit organization open to residents and block clubs in the "University" district of the

City of Buffalo and operates specifically to advance the concerns and priorities of member residents and block clubs through engagement with the City of Buffalo Common Council and other officials.

10. Petitioner **JAMES ANDERSON** is a registered voter and an individual residing in the Fillmore District of the City of Buffalo.

11. Petitioner **NATHAN FEIST** is a registered voter and an individual residing in the Ellicott District of the City of Buffalo.

12. Petitioner **HARPER BISHOP** is a registered voter and an individual residing in the Niagara District of the City of Buffalo.

13. Petitioner **BRIDGE RAUCH** is a registered voter and an individual residing in the Niagara District of the City of Buffalo.

14. Petitioner **SHIRLEY SARMIENTO** is a registered voter and an individual residing in the Fillmore District of the City of Buffalo.

15. Petitioner **CASSANDRA EUBANKS** is a registered voter and an individual residing in the Fillmore District of the City of Buffalo.

16. Petitioner **JOANN MECCA** is a registered voter and an individual residing in the Niagara District of the City of Buffalo.

17. Petitioner **IRIS MORTELLARO** is a registered voter and an individual residing in the North District of the City of Buffalo.

18. Petitioner **LUZ VELEZ** is a registered voter and an individual residing in the Niagara District of the City of Buffalo.

19. Respondent **COMMON COUNCIL** is the legislative and representational body empowered by the New York Municipal Home Rule Law ("MHRL") and charged by the City of

Buffalo Charter (the "Charter") with initiating and preliminarily adopting representational districts of the City of Buffalo every ten (10) years.

20. Respondent **MAYOR** is the executive officer empowered by the MHRL and obligated by the Charter to review and adopt, veto, or allow by inaction legislation pertaining to the representational seats and districts of the City of Buffalo every ten (10) years.

21. Respondent **ERIE COUNTY BOARD OF ELECTIONS** is the public body responsible for overseeing elections in the County of Erie, including elections for seats in the Respondent City of Buffalo Common Council, and for receiving and administering its functions in part informed by the redistricting maps to be generated per the Charter.

22. Respondent **CITY OF BUFFALO** is named as successor-in-interest of the "**CITIZENS ADVISORY COMMISSION ON REAPPORTIONMENT**", a now-disbanded Commission of the City appointed pursuant to the Charter to render advice and make recommendations to the Respondent Common Council concerning the appropriate number of district and at-large council seats and the appropriate division of the City into districts for the election of council members.

#### **THE LAW:**

#### **REAPPORTIONMENT**

#### **STATE LAW REQUIREMENTS**

23. Per §10(13) of the MHRL, in addition to relevant local law, "redistricting" shall be governed by the MHRL.

24. The MHRL requires:

*(i.) If such plan of districting or redistricting includes only single-member districts, such districts shall be as nearly equal in population as is practicable;*

*the difference in population between the most and least populous district shall not exceed five percent of the mean population of all districts. ... and*

*(ii.) Districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minority groups to participate in the political process or to diminish their ability to elect representatives of their choice; and*

*(iii.) Districts shall consist of contiguous territory; and*

*(iv.) Districts shall be as compact in form as practicable; and*

*(v.) Districts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties. The maintenance of cores of existing districts, of pre-existing political subdivisions including cities, villages, and towns, and of communities of interest shall also be considered. To the extent practicable, no villages or cities or towns except those having more than forty percent of a full ratio for each district shall be divided; and*

*(vi.) Districts shall be formed so as to promote the orderly and efficient administration of elections.*

25. MHRL §10(13)(c) also requires that "*no person shall be deemed to have gained or lost a residence...by reason of being subject to the jurisdiction of the department of corrections and community supervision and present in a state correctional facility pursuant to such jurisdiction.*"

26. Additionally, MHRL §10(13)(c) requires that "*a population base for such a plan of apportionment shall utilize the latest statistical information obtainable from an official*

*enumeration done at the same time for all the residents, citizens, or registered voters of the local government. Such a plan may allocate, by extrapolation or any other rational method, such latest statistical information to representation areas or units of local government, provided that any plan containing such an allocation shall have annexed thereto as an appendix, a detailed explanation of the allocation."*

**THE LAW:**

**REAPPORTIONMENT**

**CITY OF BUFFALO CHARTER REQUIREMENTS**

27. §18-10 through §18-18 of the Charter govern the City of Buffalo's reapportionment process for developing representational (or "elective") districts (the "Redistricting Process").

28. §18-10 of the Charter provides: "*whenever a reapportionment or redefinition of the elective districts of the city is to be made, a citizens advisory commission on reapportionment shall be appointed pursuant to the provisions of this section, to render advice and make recommendations to the common council concerning the appropriate number of district and at-large council seats and the appropriate division of the city into districts for the election of council members.*"

29. §18-11 of the Charter provides: "*The citizens advisory commission on reapportionment shall consist of nine appointed members who are registered voters residing in the city of Buffalo. Commission members shall be recognized community leaders selected to assure the representation of the geographic, social, and ethnic diversity of the city. No member shall be an elected official, an employee of the city of Buffalo or of the Buffalo board of*

*education, or a relative by birth or marriage of the mayor, any council member or any member of the board of education."*

30. §18-12 of the Charter provides: "*In January of the year following each decennial census, the city clerk shall solicit nominations from citizens and community organizations of persons to be considered for appointment to the commission. The mayor and the president of the council shall not be required to appoint persons so nominated.*"

31. §18-12 of the Charter also provides: "*Prior to the end of February in the year following the decennial census, the president of the council with the approval of the council shall appoint five members of the commission and the mayor shall appoint four members. The chairman of the commission shall be elected by the members of the commission from the membership.*"

32. §18-13 provides: "*By the first day of June following the decennial census, the commission shall submit recommendations to the council concerning the number of district and at-large council seats and a plan for dividing the city into districts for the election of council members. In making its recommendations, the commission shall be guided by the criteria set forth in section 18-16 of this article.*"

33. §18-13 further provides: "*The commission shall hold one or more public hearings prior to submitting its recommendations to the common council.*"

34. §18-13 further provides: "*The commission may require city departments and agencies to provide it with technical assistance and may utilize funds appropriated by the council, upon recommendation of the mayor, in an amount sufficient to permit the commission to carry out its duties, to hire staff and contract for services.*"



35. §18-14 provides: *"The council shall consider the recommendations of the citizens advisory commission on reapportionment and, guided by the criteria set forth in section 18-16, adopt a plan determining the number of district and at-large council seats and dividing the city into districts for the election of district council members. The plan shall be adopted and forwarded to the mayor by the 30th day of July in the year following the decennial census."*

36. §18-14 further provides: *"The council shall hold one or more public hearings prior to its adoption of a redistricting plan."*

37. §18-15 provides: *"The mayor shall hold one or more public hearings before acting on the redistricting plan adopted by the council."*

38. §18-15 further provides: *"The final redistricting plan shall be transmitted to the board of elections before the first meeting of the common council scheduled to be held in September of the year following the decennial census."*

39. §18-16 provides: *"In the preparation of a plan for dividing the city into districts for the election of council members, the following criteria and standards shall be applied:*

*(a) The population of each district shall be approximately equal.*

*(b) Districts shall be compact, and the variation between the length and width of a district shall be minimized.*

*(c) All sections of a district shall be contiguous or physically connected.*

*(d) Identifiable communities of interest, including neighborhoods and communities with established social, racial, ethnic, or other ties, shall be preserved.*

40. In addition, Charter §18-2 requires that all meetings of the Citizens Commission *"shall be open to the public with notice of such being filed with the City Clerk."*

41. Further, Charter §18-2 requires that all meetings of the Citizens Commission “shall be recorded...streamed via live online video and broadcast on the Cable Access Television (CATV) channel as soon thereafter as practicable.”

42. In addition, Charter §18-2 also requires that the “Office of Management Information Systems shall post all such meetings on the City’s website for viewing as soon thereafter as practicable.”

43. Finally, Charter §18-3 requires that "the chair or head of each board, shall in addition to the reports required by this charter, once in each year and at other times as the mayor may direct, make to the mayor and file with the city clerk, in such form and under such rules as the mayor or this charter prescribes, reports of their operations and action."

## **THE FACTS**

### **THE CITY OF BUFFALO 2022 REAPPORTIONMENT PROCESS:**

#### **APPOINTMENT OF THE CITIZENS COMMISSION**

44. Upon information and belief, and as more fully outlined in the Expert Report, the first identifiable attempt by the City Respondents to empanel the Citizens Commission for the 2022 Redistricting was initiated on July 13, 2021.

45. In a letter of July 13, 2021, included in the Expert Report as "D" (the "July 13 Letter), Buffalo City Clerk Tianna Marks (the "City Clerk") called on the City’s Telecommunications Office to advertise a paragraph seeking nominations to the Citizens Commission.

46. Per the July 13 Letter, the solicitation was to be posted and active from August 1, 2021 through August 31, 2021.

47. The solicitation period of August 1 through August 31, 2021 put the City seven months behind its Charter-imposed redistricting timeline.

48. Although the City Clerk's call for nominations to the Citizens Commission went out past the deadline for such a call, Petitioners believe that, considering the context of COVID-impacted operations, it was reasonably well-aligned with the delayed 2020 census schedule, and not an abuse of discretion.

49. The timing of the process and deadlines missed by the City Respondents after August 31, 2021 have no relationship to the adjusted 2020 decennial census.

50. Specifically, under Charter §18-12, the City Clerk's solicitation for nominees to the Citizens Commission is to end by January 31 in the year following a decennial census.

51. After the January 31 deadline, the Common Council President and Respondent Mayor are, per the Charter, given one month – until the last day in February in the year following a decennial census – to appoint nine members to the Citizens Commission.

52. Departing markedly from this deadline, the Common Council President, with the approval of the Respondent Common Council, made the first four appointments to the Citizens Commission on November 16, 2021 – more than two-and-a-half months after the solicitation period closed.

53. The proceedings from the November 16, 2021 Common Council meeting approving the appointments are attached to the Expert Report as "E".

54. Under Charter §18-12, the Respondent Common Council, through its President, is charged with appointing five commissioners to the Citizens Commission within one month of the last date of the City Clerk's solicitation period.

55. The record shows that at the November 16, 2021 Common Council meeting, the Council President appointed only four commissioners, with the fifth appointment listed as “TBA”.

56. The Respondent Mayor did not make any of his four appointments on or before November 16, 2021.

57. After the Council President’s initial four appointments, the next formal action was taken on December 28, 2021; the proceedings of the Common Council meeting held on that date are attached to the Expert Report as “F”.

58. At the December 28, 2021 Common Council meeting, Fillmore District Council Member Mitch Nowakowski filed a resolution entitled “Finalizing All Appointments for the Citizens Advisory Commission on Reapportionment” (the "December 28 Resolution").

59. The December 28 Resolution contained the following provisions:

- *“Whereas, this Council has initiated the process by appointing four of Council-appointed members to this [Citizens’] Commission with one more appointment remaining;*
- *Whereas, it is now incumbent upon the Office of the Mayor to satisfy four of their remaining appointments to this Commission in order to move forward with the process;*
- *Whereas, it is of the utmost importance that the timeliness of this process is to remain consistent to what is outlined within the City Charter and the responsibilities of City government; and*
- *Whereas, The Buffalo Common Council shall appoint their final Council-appointed member of the Citizens Advisory Commission on Reapportionment by January 11, 2022 Common Council Meeting;”*

60. The December 28 Resolution concluded by the Respondent Common Council calling on the Respondent Mayor “*to fill the remaining four Mayoral appointments to the Citizens Advisory Commission on Reapportionment and file these appointments with the Common Council by the January 11, 2022 Council Meeting.*”

61. The December 28 Resolution was unanimously adopted by the Respondent Common Council.

62. The December 28 Resolution established January 11, 2022 as the City Respondents' deadline for finalizing the composition of the Citizens Commission.

63. Both the Respondent Common Council and the Respondent Mayor failed to meet the January 11, 2022 deadline imposed by the December 28 Resolution.

64. The Council President did not make his fifth and final appointment to the Citizens Commission until January 25, 2022 (as shown in the proceedings attached to the Expert Report as “G”), two weeks after the deadline imposed by the December 28 Resolution.

65. The Respondent Mayor’s four Charter-required appointments were not made until February 25, 2022.

66. Appointments to the Citizens Commission's membership were finalized at the Common Council meeting held on March 2, 2022.

67. The minutes from the March 2, 2022 Common Council meeting contain the Respondent Mayor’s February 25, 2022 letter to the Respondent Common Council in which he made his four appointments to the Citizens Commission (attached to the Expert Report as “H”).

68. The Citizens Commission was empaneled on March 2, 2022, more than five months after the City Clerk’s solicitation period ended – compared to the one month allowed for this process under the Charter.

69. The seating of the Citizens Commission was not done in accordance with the Buffalo City Charter.

## THE FACTS

### THE CITY OF BUFFALO 2022 REAPPORTIONMENT PROCESS:

#### WORK OF THE CITIZENS COMMISSION

70. The City Respondents made no public announcement that the Citizens Commission was appointed prior to the Commission's first meeting.

71. Upon information and belief, until at least May 18, 2022, the only reference to the Citizens Commission on the City of Buffalo's website, or in any City-published fora, was the City Clerk's then-outdated call for nominations that expired on August 31, 2021.

72. Upon information and belief, until at least May 18, 2022, aside from the reference to the Citizens Commission on the City of Buffalo's website described in the Paragraph "71" above, there was no other public notice regarding the Citizens Commission.

73. The Citizens Commission was a public body bound to follow the notice requirements of the Open Meetings Law.

74. The Citizens Commission was a body working under Charter Article 18 bound to follow the requirements of §18-2.

75. The first published communication from the City Respondents related to the 2022 Citizens Commission, or its work, came via a social media post on May 11, 2022, when the Respondent Common Council advertised a May 18, 2022 "public hearing", to be hosted by the 2022 Citizens Commission, to "discuss new Council District Borders".

76. The 2022 Citizens Commission went ahead with its May 18, 2022 meeting (the "May 18 Commission Meeting") as planned, just four days after the May 14, 2022 racist massacre where the shooter was reportedly motivated and informed by residential demographics.

77. Upon information and belief, there was no way for a person to sign up to participate verbally in the May 18 Commission Meeting through videoconferencing.

78. Upon information and belief, the May 18, 2022 public hearing was not structured to solicit or gather public input to guide the Citizens Commission redistricting work.

79. Upon information and belief, the Citizens Commission had already produced a redistricting plan, the "Commission Map", when it held its first and only public meeting on May 18, 2022.

80. Upon information and belief, at the May 18 Commission Meeting, the Commission members did not make a formal presentation to communicate their work process, the alternatives they considered, their deliberations, or any related information.

81. Upon information and belief, at the May 18 Commission Meeting, only one member of the public was physically present at the meeting.

82. Upon information and belief, the May 18, 2022 "public hearing" lasted just eight minutes.

83. On May 19, 2022, the Citizens Commission met to approve the "Commission Map" and forward that plan to the Respondent Common Council.

84. The public did not have had an opportunity to review the Citizens Commission's work product prior to seeing it for the first time on the evening of May 18, 2022.

85. There was no opportunity for the public to provide input to the Citizens Commission prior to the development of the Commission Map, nor after it was completed.

86. Upon information and belief, the Citizens Commission held just five meetings, including its May 18, 2022 public hearing.

87. Of the five meetings reportedly held by the Citizens Commission, only one meeting, the May 18 Commission Hearing, was publicized in advance as required by Public Officers Law §104.

88. As shown in the collective minutes of the five Citizens Commission meetings (attached to the Expert Report as “J”), there were no occasions on which all nine commissioners were present at a meeting.

89. The Citizens Commission did not provide notice of their meetings as required by the Charter §18-2.

90. The Citizens Commission did not provide broadcasts of their meetings as required by the Charter §18-2.

91. The Citizens Commission did not generate a report as required by the Charter §18-3.

92. At all times after the creation of the Citizens Commission, the City Respondents knew or should have known that the Citizens Commission's work was conducted in violation of the Buffalo City Charter and State Law.

#### **THE 2022 REAPPORTIONMENT PROCESS:**

#### **THE PROCESS OF THE RESPONDENT COMMON COUNCIL**

93. On June 15, 2022, via its social media platforms, the Respondent Common Council advertised that a public hearing on a proposed redistricting plan was scheduled for June 28, 2022.



94. As a follow-up to the June 15, 2022 announcement, the Respondent Common Council's social media also promoted a "Google Form" where residents unable to attend the June 28, 2022 hearing were able to submit comments for inclusion in the public record.

95. Upon information and belief, the "Commission Map" initially featured on the City of Buffalo "Reapportionment" webpage, first published on or after May 18, 2022, was replaced with a different plan at some point between June 14, 2022 and June 24, 2022.

96. The plan that replaced the "Commission Map" on the "Reapportionment" webpage is referred in this Verified Petition and in the Expert Report as "Council Map 1".

97. "Council Map 1" is different from the Commission Map.

98. The Respondent Common Council did not "consider the recommendations of the citizens advisory commission on reapportionment" (the Commission Map) as required by the Charter.

99. Council Map 1, as published on the Reapportionment webpage, was not accompanied by any narrative or justification regarding the ways in which the Respondent Common Council modified the Commission Map, or why they did so.

100. On Friday, July 8, 2022, the Respondent Common Council announced a special session to approve their redistricting plan, which had been amended a second time (generating what is referred to as "Council Map 2").

101. At the July 12, 2022 regular meeting of the Buffalo Common Council, legal counsel for the City Respondents stated that the Citizens Commission was the established vehicle to accept new additional maps or plans, and that, with the work of the Citizens Commission finished, the Respondent Common Council had neither the duty nor the authority to accept further public submissions of maps or plans for consideration.

102. The record of proceedings for a "Special Meeting" (the "Special Meeting") called by the Respondent Common Council held on Friday, July 19, 2022 records a unanimous vote to adopt Council Map 2.

### **THE FACTS**

#### **THE 2022 REAPPORTIONMENT PROCESS:**

#### **THE PROCESS OF THE RESPONDENT MAYOR**

103. When the Respondent Common Council voted to adopt Council Map 2 at the Special Meeting, the next step in the process was a mandatory hearing by the Respondent Mayor.

104. Under Charter §18-15, *“The mayor shall hold one or more public hearings before acting on the redistricting plan adopted by the council. The final redistricting plan shall be transmitted to the board of elections before the first meeting of the common council scheduled to be held in September of the year following the decennial census.”*

105. The Respondent Mayor’s Office conducted a public hearing on August 3, 2022.

106. The Respondent Mayor signed Council Map 2 into law on August 15, 2022.

107. The Respondent Mayor sent a copy of the signed copy of the law to the City Clerk on August 15, 2022 (attached to this Verified Petition as Exhibit "B" and referred to as the "Clerk's Copy").

108. The Local Law in the Clerk's Copy has two sections.

109. "Section 1" of the Clerk's Copy sets forth the new boundaries.

110. "Section 2" of the Clerk's Copy provides *"IT IS HEREBY CERTIFIED, pursuant to Section 3-17 of the Charter of the City of Buffalo, this Local Law shall take effect in the year 2023."*

## THE FACTS

### THE 2022 REAPPORTIONMENT PROCESS:

#### PUBLICATION BY THE NEW YORK DEPARTMENT OF STATE

111. Per §27 of the Municipal Home Rule Law, "*within twenty days after a local law shall finally have been adopted, the clerk, or other officer designated by the legislative body, shall file one certified copy thereof in the office of such clerk except that in the case of a county it shall also be filed in the office of the county clerk and one certified copy in the office of the secretary of state.*"

112. §27 of the Municipal Home Rule Law also provides "*Notwithstanding the effective date of any local law, a local law shall not become effective before it is filed in the office of the secretary of state.*"

113. §27 of the Municipal Home Rule Law also provides that "*[s]ubject to the provisions of subdivision three hereof, every local law shall take effect on the twentieth day after it shall finally have been adopted unless a different time shall be prescribed therein or required by this chapter or other provision of law.*"

114. The New York Department of State publishes laws so submitted on its website at the url <https://locallaws.dos.ny.gov>.

115. As of October 17, 2022, a copy of the law signed by the Respondent Mayor on August 15, 2022 could be found at the url:  
[https://locallaws.dos.ny.gov/sites/default/files/drop\\_laws\\_here/ECMMDIS\\_appid\\_DOS20220907123517/Content/0902134380314d89.pdf](https://locallaws.dos.ny.gov/sites/default/files/drop_laws_here/ECMMDIS_appid_DOS20220907123517/Content/0902134380314d89.pdf), and is attached as "C."

116. The document posted at the url listed in Paragraph 115, above, is attached to this Verified Petition as Exhibit "C".

117. The copy filed with the Department of State does not contain "Section 2" of the local law.

## THE FACTS

### THE 2022 REAPPORTIONMENT PROCESS:

#### THE ROLE OF RESPONDENT ERIE COUNTY BOARD OF ELECTIONS

118. §18-15 of the Charter requires that "[t]he final redistricting plan shall be transmitted to the board of elections before the first meeting of the Common Council scheduled to be held in September of the year following the decennial census."

119. The Respondent Erie County Board of Elections then performs its duties as informed by the maps and boundaries so transmitted, including the organization of elections and duties incident thereto.

### THE 2022 REAPPORTIONMENT PROCESS:

#### INJURIES TO PETITIONERS

120. Each Petitioner has reviewed the Expert Report attached as Exhibit "A" and incorporates it by reference into their accompanying Affidavit and this Verified Petition.

121. Based on the 2022 Redistricting Process recited in this Verified Petition and on the boundaries in "Council Map 2", and Exhibits "B" and "C", each Petitioner sets forth, in their Affidavits attached as "D" through "M", their unique injury.

122. Petitioner **OUR CITY ACTION BUFFALO, INC.**, who, as set forth in the Affidavit of Harper Bishop, was organizing attempts to inform residents and enable timely input into the 2022 Process, was: denied proper notice under the Open Meetings Law; denied the ability to fulfill its mission by organizing local residents in Buffalo, New York to effect timely and meaningful grassroots input and involvement; and will be impacted in an ongoing way by

the adoption of district maps demonstrably designed and adopted to protect incumbent Respondent Common Council, and other negative impacts as identified in the Expert Report.

123. As more fully set forth in the Affidavit of Lois D. Young attached as "D", Petitioner **UNIVERSITY DISTRICT BLOCK CLUB COALITION, INC.** was denied proper notice under the Open Meetings Law, denied the ability to fulfill its mission by organizing the residents and block clubs of the University District to receive and give timely input about the 2022 Process, and will be impacted in an ongoing way by the adoption of district maps demonstrably designed and adopted to protect incumbent Common Council members, and other negative impacts as identified by the Expert Report.

124. As more fully set forth in their Affidavit attached as "E", Petitioner **JAMES ANDERSON**, a registered voter and an individual residing in the Fillmore District of the City of Buffalo, has been and will continue to be injured by the non-compliance and arbitrary process and the results particular to their district, and other negative impacts as identified by the Expert Report.

125. As more fully set forth in their Affidavit attached as "F", Petitioner **NATHAN FEIST**, a registered voter and an individual residing in the Ellicott District of the City of Buffalo, has been and will continue to be injured by the non-compliance and arbitrary process and the results particular to their district, and other negative impacts as identified by the Expert Report.

126. As more fully set forth in their Affidavit attached as "G", Petitioner **HARPER BISHOP**, a registered voter and an individual residing in the Niagara District of the City of Buffalo, has been and will continue to be injured by the non-compliance and arbitrary process

and the results particular to their district, and other negative impacts as identified by the Expert Report.

127. As more fully set forth in their Affidavit attached as "H", Petitioner **BRIDGE RAUCH**, a registered voter and an individual residing in the Niagara District of the City of Buffalo, has been and will continue to be injured by the non-compliance and arbitrary process and the results particular to their district, and other negative impacts as identified by the Expert Report.

128. As more fully set forth in their Affidavit attached as "I", Petitioner **SHIRLEY SARMIENTO**, a registered voter and an individual residing in the Fillmore District of the City of Buffalo, has been and will continue to be injured by the non-compliance and arbitrary process and the results particular to their district, and other negative impacts as identified by the Expert Report.

129. As more fully set forth in their Affidavit attached as "J", Petitioner **CASSANDRA EUBANKS**, a registered voter and an individual residing in the Fillmore District of the City of Buffalo, has been and will continue to be injured by the non-compliance and arbitrary process and the results particular to their district, and other negative impacts as identified by the Expert Report.

130. As more fully set forth in their Affidavit attached as "K", Petitioner **IRIS MORTELLARO**, a registered voter and an individual residing in the North District of the City of Buffalo, has been and will continue to be injured by the non-compliance and arbitrary process and the results particular to their district, and other negative impacts as identified by the Expert Report.

131. As more fully set forth in their Affidavit attached as "L", Petitioner **LUZ VELEZ**, a registered voter and an individual residing in the Niagara District of the City of Buffalo, has been and will continue to be injured by the non-compliance and arbitrary process and the results particular to their district, and other negative impacts as identified by the Expert Report.

132. As more fully set forth in their Affidavit attached as "M", Petitioner **JOANN MECCA**, a registered voter and an individual residing in the Niagara District of the City of Buffalo, has been and will continue to be injured by the non-compliance and arbitrary process and the results particular to their district, and other negative impacts as identified by the Expert Report.

### **CAUSES OF ACTION**

#### **As and for a First Cause of Action:**

##### **The City Respondents failed to perform duties as enjoined upon on them by law**

133. Petitioners repeat and re-allege Paragraphs 1 through 132, above.

134. By failing to abide by the requirements of the MHRL and the City of Buffalo Charter as described in the Expert Report and this Verified Petition, specifically: not appointing the Citizens Commission in a timely manner, not notifying the public as to meetings of the Citizens Commission, not recording and broadcasting the meetings of the Citizens Commission, not receiving a report of the Citizens Commission, not considering the plan proposed by the Citizens Commission, and not adopting a plan that meets the requirements of relevant law, the City Respondents failed to perform duties as enjoined upon them by law, causing the injuries set forth above by Petitioners.

135. The unique harm being caused by this cause of action can only be remediated by the relief requested by Petitioners.

**As and for a Second Cause of Action**

**The City Respondents made determinations in violation of lawful procedure**

136. Petitioners repeat and re-allege Paragraphs 1 through 135, above.

137. By making determinations, to wit, the district boundaries in "B" and "C" in violation of the MHRL and the City of Buffalo Charter as described in the Expert Report and this Verified Petition, the City Respondents made determinations in violation of lawful procedures and caused the injuries set forth above by Petitioners.

138. The unique harm being caused by this cause of action can only be remediated by the relief requested by Petitioners.

**As and for a Third Cause of Action**

**The City Respondents made determinations affected by an error of law**

139. Petitioners repeat and re-allege Paragraphs 1 through 138, above.

140. By making determinations, to wit, adopting the district boundaries in "B" and "C", in violation of the MHRL and the City of Buffalo Charter as described in the Expert Report and the Verified Petition, and in particular by taking the firm position that the time for public input ended with the work of the Citizens Commission, the City Respondents deprived the public of meaningful notice of and participation in the 2022 Process and generated new representative districts that caused the injuries set forth above by Petitioners.

141. The unique harm being caused by this cause of action can only be remediated by the relief requested by Petitioners.



**As and for a Fourth Cause of Action**

**The City Respondents made determinations that are demonstrably  
arbitrary and capricious**

142. Petitioners repeat and re-allege Paragraphs 1 through 141, above.

143. By extending the deadlines, deterring public access and input to the proceedings, and adopting the legislation set forth in "B" and "C" in the manner described in the Expert Report and as set forth in the Verified Petition and Petitioner Affidavits, the City Respondents created a process and result that is demonstrably arbitrary and capricious.

144. The unique harm being caused by this cause of action can only be remediated by the relief requested by Petitioners.

**As and for a Fifth Cause of Action**

**The City Respondents made determinations that amount to abuse of discretion**

145. Petitioners repeat and re-allege Paragraphs 1 through 144, above.

146. By delaying the formation of the Citizens Commission beyond what could reasonably be justified by the circumstances and causing delays that resulted in a rushed process that curtailed public notice and participation, the City Respondents created a process and result (to wit, the legislation in "B" or "C") amounting to an abuse of discretion.

147. The unique harm being caused by this cause of action can only be remediated by the relief requested by Petitioners.

**As and for a Sixth Cause of Action**

**The Effective Date of the Legislation is Uncertain**

148. Petitioners repeat and re-allege Paragraphs 1 through 147, above.

149. The legislation in "B" contains a "Section 2" which lists an effective date of "2023", while the legislation in "C" does not contain a "Section 2" and lists no effective date.

150. As averred in the Affidavit of Petitioner Nathan Feist, Petitioner Feist was informed by Councilmember Wingo that the effective date of the redistricting legislation would be "immediate."

151. The inconsistencies between the Local Law as published in "B" and "C", in addition to the position taken by Councilmember Wingo, create ambiguity regarding the effective date of the legislation.

152. The Charter does not set an effective date for reapportionment legislation.

153. MHRL §27 also provides that *"[s]ubject to the provisions of subdivision three hereof, every local law shall take effect on the twentieth day after it shall finally have been adopted unless a different time shall be prescribed therein or required by this chapter or other provision of law."*

154. The unique harm being caused by this ambiguity can only be remediated by the relief requested by Petitioners.

**As and for a Seventh Cause of Action**

**The Citizens Advisory Commission on Reapportionment**

**Failed to Comply with the Open Meetings Law**

155. Petitioners repeat and re-allege Paragraphs 1 through 154, above.

156. As set forth above, of the five meetings reportedly held by the Citizens Commission, only one meeting, the public hearing on May 18, 2022, was publicized in advance as required by Public Officers Law §104 (the "Open Meetings Law").

157. The ability to fully assess the failure of the City Respondents to abide by the Open Meetings Law was only enabled after the creation of the "Redistricting" web page on or after June 21, 2022.

158. As set forth in the Expert Report and the Affidavit of Petitioner Harper Bishop, of the five meetings reportedly held by the Citizens Commission, the minutes of those meetings were not made available to the public as required by Public Officers Law §106(3).

159. The ability to fully assess the failure of the City Respondents to ensure the Citizens Commission abided by §106(3) was only enabled after the creation of the Respondent Common Council's "Redistricting" web page on or after June 21, 2022.

160. These failures contributed to the harms caused by lack of meaningful public access to, and participation in, the work of the Citizens Commission and can only be remediated by the relief requested by Petitioners.

#### **REQUEST FOR RELIEF**

*As stated in the Public Officers Law: "It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy.*

*The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonweal will prosper and enable the governmental process to operate for the benefit of those who created it."*

On the basis of the Verified Petition, the Expert Report, and the Petitioners' Affidavits, Petitioners respectfully request that this Court find that the City Respondents: failed to perform duties as enjoined upon on them by law; made determinations in violation of lawful procedure;

made determinations affected by an error of law; took actions and made determinations that are demonstrably arbitrary and capricious; made determinations that are abuse of discretion; took action after a required public hearing that is not supported by substantial evidence; and failed to follow the Open Meetings Law; and, on that basis:

1. Issue a Preliminary Injunction barring Respondents from taking any action based on the legislation set forth in "B" and "C" during the pendency of this Article 78;

2. Issue a Permanent Injunction barring action by all Respondents based on the legislation set forth in "B" and "C";

3. Annul the legislation in "B" and "C";

4. Direct a new reapportionment process that properly allows public participation and observation, and creates reports, as required by the Municipal Home Rule Law, the Open Meetings Law, and the City of Buffalo Charter;

5. Confirm the effective date of any legislation determined to have been passed in accordance with all relevant law;

6. Grants any relief available per Open Meetings Law §107;

7. Grants any and all other relief deemed appropriate by this Court.

Respectfully Submitted:

s/Stephanie A. Adams

Stephanie A. Adams, Esq.

*Lead counsel to be noticed*

The Law Office of Stephanie Adams, PLLC

363 Grant Street

Buffalo, NY 14213

s/Adam L. Bojak

Adam L. Bojak, Esq.

Assisting, of Counsel

s/Samanth I.V. White

Samantha I.V. White, Esq.

Assisting Of Counsel


**SEE PETITIONERS' VERIFICATIONS ON FOLLOWING PAGES**

VERIFICATION

STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF ERIE        )

Courtney L. Friedline, being duly appointed by the Board of Our City Action Buffalo (“OCAB”), as Secretary, and authorized to sign for the organization, sworn, deposes and says:

I am the representative for OCAB, who is a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

  
\_\_\_\_\_  
Courtney L. Friedline

Sworn to before me this  
17 day of October, 2022

  
\_\_\_\_\_  
NOTARY PUBLIC

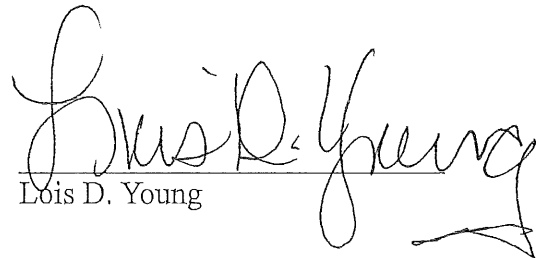
**STEPHANIE A. ADAMS**  
Notary Public, State of New York  
Qualified in Erie County  
Reg. No. 02AD6061216  
Commission Expires July 16, 2023

VERIFICATION

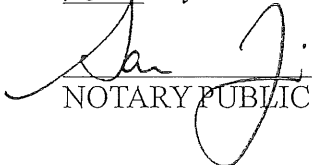
STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE         )

Lois D. Young, being duly appointed by the Board of University District Block Club Coalition, Inc. (the "University District Coalition"), as Secretary, and authorized to sign for the organization, sworn, deposes and says:

I am the representative for University District Coalition, who is a Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

  
Lois D. Young

Sworn to before me this  
18<sup>th</sup> day of October, 2022

  
NOTARY PUBLIC


**SARA M. LOVIZA**  
**NOTARY PUBLIC, STATE OF NEW YORK**  
Registration No. 01LO6426293  
Qualified in Erie County  
Commission Expires December 6, 2025

VERIFICATION

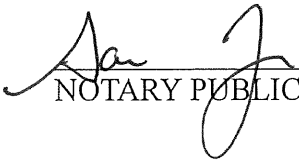
STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE         )

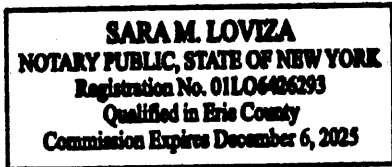
Jim Anderson, being duly sworn, deposes and says:

I am the Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

  
James E. Anderson

Sworn to before me this  
18<sup>th</sup> day of October, 2022

  
NOTARY PUBLIC

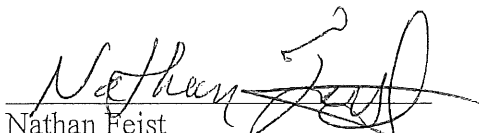


VERIFICATION

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE         )

Nathan Feist, being duly sworn, deposes and says:

I am the Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

  
Nathan Feist

Sworn to before me this  
17<sup>th</sup> day of October, 2022

  
\_\_\_\_\_  
NOTARY PUBLIC

STEPHANIE A. ADAMS  
Notary Public, State of New York  
Qualified in Erie County  
Reg. No. 02AD6061216  
Commission Expires July 16, 2024



VERIFICATION

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE         )

BRIGIDANN M. RAUCH, being duly sworn, deposes and says:

I am the Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

  
\_\_\_\_\_  
BRIGIDANN M. RAUCH

Sworn to before me this  
14<sup>th</sup> day of October, 2022

  
\_\_\_\_\_  
NOTARY PUBLIC

**ADAM L. BOJAK**  
Notary Public, State of New York  
Qualified in Erie County  
Commission Expires 3/25/2025

VERIFICATION

STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF ERIE        )

Shirley Sarmiento, being duly sworn, deposes and says:

I am the Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

  
\_\_\_\_\_  
Shirley Sarmiento

Sworn to before me this  
14<sup>TH</sup> day of October, 2022

  
\_\_\_\_\_  
NOTARY PUBLIC

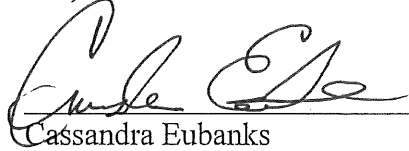
**ADAM L. BOJAK**  
Notary Public, State of New York  
Qualified in Erie County  
Commission Expires 3/25/20 25

**VERIFICATION**

STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE         )

Cassandra Eubanks, being duly sworn, deposes and says:

I am the Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

  
Cassandra Eubanks

Sworn to before me this  
14<sup>th</sup> day of October, 2022

  
NOTARY PUBLIC

ADAM L. BOJAK  
Notary Public, State of New York  
Qualified in Erie County  
Commission Expires 3/25/20 25

VERIFICATION

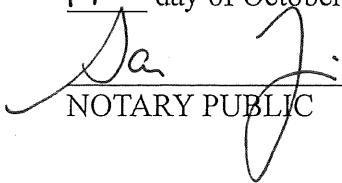
STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF ERIE        )

Iris Mortellaro, being duly sworn, deposes and says:

I am the Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

  
\_\_\_\_\_  
Iris Mortellaro

Sworn to before me this  
17<sup>th</sup> day of October, 2022

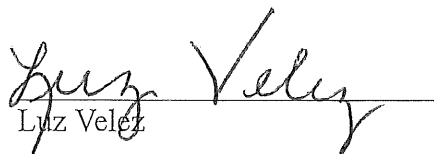
  
\_\_\_\_\_  
NOTARY PUBLIC

VERIFICATION

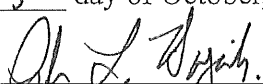
STATE OF NEW YORK     )  
  ) SS:  
COUNTY OF ERIE         )

Luz Velez, being duly sworn, deposes and says:

I am the Petitioner in the within action; I have read the annexed VERIFIED PETITION and know the contents thereof, and upon information and belief, believe them to be true.

  
Luz Velez

Sworn to before me this  
13<sup>TH</sup> day of October, 2022

  
\_\_\_\_\_  
NOTARY PUBLIC  
ADAM U. BOJAK  
Notary Public, State of New York  
No. 02BO6278638  
Qualified in Erie County  
Commission Expires 3/25/2025