

STATE OF NEW YORK  
SUPREME COURT: ERIE COUNTY

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In the Matter of the Application of

Index No.

NEW YORK COALITION FOR  
OPEN GOVERNMENT, INC.

NATHAN FEIST

MATTHEW AUSTIN,

Petitioners,

**NOTICE OF PETITION  
PURSUANT TO CPLR  
ARTICLE 78**

For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules

-against-

CITY OF BUFFALO  
CITIZENS SALARY REVIEW COMMISSION  
CITY OF BUFFALO BOARD OF REVIEW  
CITY OF BUFFALO COMMON COUNCIL

Respondents.

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PLEASE TAKE NOTICE that, upon the annexed Verified Petition and the exhibits attached thereto, Petitioners will move this Court at the New York State Supreme Court, Erie County Courthouse, located at 25 Delaware Avenue, Buffalo, New York, on January 10, 2024, at \_\_\_\_\_ or as soon thereafter as counsel may be heard for an Order and Judgment pursuant to Article 78 of the Civil Practice Law and Rules (CPLR) and for the relief demanded in the annexed Verified Petition.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR. § 7804(c), Respondents' answer and supporting affidavits, if any, must be served upon the undersigned at least five days

before the return date. Petitioners will serve reply papers if needed, one day before the return date pursuant to CPLR § 7804(c).

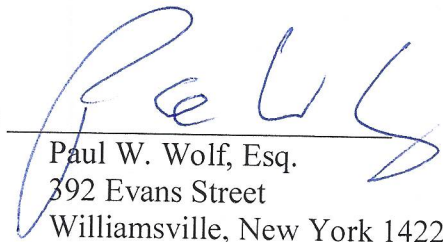
Dated: December 18, 2024

Amherst, New York

Respectfully submitted,

Berzer & Wolf

By:

A handwritten signature in blue ink, appearing to read 'Paul W. Wolf', written over a horizontal line.

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STATE OF NEW YORK  
SUPREME COURT: ERIE COUNTY

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In the Matter of the Application of

Index No.

NEW YORK COALITION FOR  
OPEN GOVERNMENT, INC.

NATHAN FEIST

MATTHEW AUSTIN

Petitioners,

**VERIFIED PETITION**

-against-

CITY OF BUFFALO  
CITIZENS SALARY REVIEW COMMISSION  
CITY OF BUFFALO BOARD OF REVIEW  
CITY OF BUFFALO COMMON COUNCIL

Respondents.

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Petitioners for their verified petition and for judgment pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR), by and through their undersigned counsel, respectfully allege as follows:

**BACKGROUND**

This proceeding is brought under Article 78 of the New York Civil Practice Law and Rules against Respondents City of Buffalo, Citizens Salary Review Commission (“Commission”), City of Buffalo Board of Review (“Board”), and City of Buffalo Common Council (“Council”), for the relief requested herein.

1. This is a story about arrogance and greed on the part of elected officials in the City of Buffalo: how raising their own salaries became more important than following the law and how

the public was kept in the dark throughout the process.

2. The story begins on April 18, 2023, when Council President Darius Pridgen brought up a late filed resolution to appoint members to the Commission during a Council meeting.

3. The first step in the process for Councilmembers to raise their own pay pursuant to the Buffalo City Charter, is the formation of a Commission.

4. The New York State Open Meetings Law requires meeting documents scheduled to be discussed by a public body to be posted online at least 24 hours prior to a meeting.

5. Whether on purpose or not, filing a resolution after the meeting agenda was posted online kept the public and the news media in the dark regarding the councilmembers' interest in increasing their salaries.

6. In seeking to raise councilmember pay days before a May 1 deadline imposed by the Charter of the City of Buffalo ("City Charter"), the Council violated its meeting rules and the City Charter by appointing Commission members whom it did not have the legal authority to appoint.

7. The only entity with the power to appoint Commission members pursuant to the City Charter is the Board of Review consisting of the mayor, council president and the city comptroller.

8. Missing the May 1 deadline for a Salary Review Commission report would require councilmembers to wait four more years to get a raise, as the City Charter requires the Council to vote on increasing their pay prior to an election, which occurs every four years.

9. The late filed Council resolution, which the public had no prior knowledge of and which was improperly passed by the Council, represented the first in a series of illegal actions taken to fast track salary increases for city elected officials.

10. Just three days after the Council resolution was passed, the Commission met and appointed former Council President David Franczyk as Chair of the Commission.

11. Franczyk was the perfect person to ensure that Councilmembers received a pay raise. Franczyk never voted against raising his own pay during his thirty-two years on the council.

12. One hour into the first Commission meeting, which was held without members of the public present, Franczyk asked if the members were in agreement to raise the salaries of elected officials. Without any research, public discussion, or public hearings, the decision was made to recommend an increase to the salaries of Councilmembers and other city elected officials.

13. One member of the Commission tried to attend the meeting but was unable to enter Buffalo City Hall as the doors were locked and had to appear by calling in on her cell phone.

14. The illegally formed Commission violated the New York State Open Meetings Law (“OML”) at each of the three meetings they held by not providing sufficient notice to the public; by not allowing the public the opportunity observe their meetings through Zoom as they did for their own members and government officials; and by holding an illegal executive session.

15. On Saturday April 22, 2023, the Commission issued an advisory inviting the media to attend a “public forum” to be held two days later on Monday April 24, 2023. With the exception of a reporter from Channel 4 News, not a single member of the public was present at the “public forum”. Councilmembers were aware that the Commission was meeting and four of them showed up to make pitches for a pay raise.

16. Thirty-five minutes into the “public forum,” a Commission member made a motion to enter executive session. The meeting minutes do not state what reason was given for the executive session. Not stating a reason for an executive session is a violation of the OML.

17. Furthermore, there is no basis under the OML for holding an executive session to discuss pay raises for public officials. The illegal 48-minute executive session caused a reporter as the only non-governmental person attending to be improperly removed from the “public forum”.

18. In record time the wheels of government moved in a way like never seen before, the Commission held three meetings in six days, resulting in a written report recommending pay raises for city elected officials.

19. Councilmembers were made aware several times by Petitioner New York Coalition For Open Government that proper procedures were not followed and that the recommended pay raises should not proceed. Copies of emails sent to Councilmembers regarding the failure to follow proper legal requirements are attached hereto as **Exhibit A**.

20. Ignoring the concerns raised by Petitioners, the Common Council on June 13, 2023, approved with modifications the salary raises recommended by the Commission. Raises for Board of Education members were increased higher than recommended by the Commission.

21. On October 3, 2024, the Common Council adopted a local law to increase the salaries of the mayor, comptroller, councilmembers and Buffalo School Board members effective January 1, 2024.

22. On October 24, 2023, in the legal section of the Buffalo News a notice ran informing the public that on October 30, 2023, at 11:00 A.M., the mayor would hold a public hearing regarding a “Local Law Amending Article 24 of the Charter of the City of Buffalo in relation to Officers and Employees”.

23. With that vague description and without placing the law’s language in the notice as required by the City Charter, it would not be surprising if no one chose to attend the public hearing.

24. Mayor Byron Brown, having participated as a member of the Board of Review for the last pay raises passed in 2019, surely knows that the Board of Review is required to physically meet to appoint members of the Commission.

25. Mayor Brown as a member of the Board of Review, is surely aware that the Board of

Review did not meet in 2023 and a copy of the mayor's schedule provided pursuant to a FOIL request shows no meeting of the Board of Review occurred in 2023.

26. When asked by Channel 7 reporter Kristen Mirand on May 2, 2023, about the Commission, Mayor Brown stated "I'm concerned about raises. I haven't requested a raise... I had absolutely no involvement in that whatsoever."

27. Nonetheless, Mayor Brown on 30, 2023, approved the Local Law that raised his own salary from \$158,500 dollars to \$178,518.55 dollars.

28. The purpose of this lawsuit is to hold government officials accountable for their actions. It matters when Common Council rules are not followed; it matters when the City Charter is ignored; it matters when the Open Meetings Law is violated on multiple occasions; and it matters when elected officials let arrogance and greed govern their public actions.

29. A pay raise for elected officials enacted with so many violations of procedures and laws should not be allowed to stand. The public deserves better than self-interested politicians who ignore the rules for their own benefit.

30. While this case is pending a preliminary injunction should be imposed, preventing the pay raises from being implemented.

## **PARTIES**

31. Petitioner New York Coalition For Open Government ("Coalition") is a non-profit organization dedicated to advocating for transparency in government. The Coalition has members from across the state, including the City of Buffalo who would themselves have standing; the interests sought to be protected by this litigation are germane to the Coalition's purpose; and the participation of none of the members is necessary to the relief requested. As part of its purpose the Coalition monitors compliance with the OML and Freedom of Information Law. The Coalition

additionally has standing to challenge the illegal actions taken by the Respondents as this case involves a matter of significant municipal concern.

32. Petitioner Nathan Feist is a taxpaying registered voter who resides in the City of Buffalo. Petitioner has standing to challenge the illegal action taken by the Common Council as this case involves a matter of significant municipal concern. Petitioner Nathan Feist has been and will continue to be injured by the illegal actions taken by the Respondents as stated in his Affidavit which is attached hereto and made a part hereof as **Exhibit B**.

33. Petitioner Matthew Austin is a taxpaying registered voter who resides in the City of Buffalo. Petitioner has standing to challenge the illegal action taken by the Common Council as this case involves a matter of significant municipal concern.

34. Respondent City of Buffalo is a municipal corporation organized and existing pursuant to the laws of the State of New York, with its principal office located at 65 Niagara Square, Buffalo, New York 14202.

35. Respondent Citizens Salary Review Commission is a “public body” as that term is defined in Public Officers Law § 102, created by the Buffalo City Charter, with its principal office located at 65 Niagara Square, Buffalo, New York 14202.

36. Respondent City of Buffalo Board of Review is a “public body” as that term is defined in Public Officers Law § 102, created by the Buffalo City Charter, with its principal office located at 65 Niagara Square, Buffalo, New York 14202.

37. Respondent City of Buffalo Common Council is the legislative body of the City of Buffalo, with its principal office located at 65 Niagara Square, Buffalo, New York 14202.



## **JURISDICTION & VENUE**

38. This Court has jurisdiction pursuant to CPLR § 7801 *et seq.* to review the actions by bodies or officers who have acted in an unlawful, arbitrary, or capricious manner.

39. Venue properly lies in Erie County pursuant to CPLR § 506(b) and CPLR § 7804(b) because that is where Respondent's principal offices are located and because it is within the judicial district wherein the Respondents took the action petitioned against.

### **ONLY THE BOARD OF REVIEW HAS THE POWER TO APPOINT MEMBERS OF THE COMMISSION**

40. Pursuant to Section 281-10 (A)(1) of the Buffalo City Code, and Section 35-25 (c) of the City Charter, the Board of Review consists of the "Mayor, Council President and Comptroller of the City of Buffalo". A copy of said sections are attached hereto and made a part hereof as **Exhibit C**.

41. The Citizens Salary Review Commission ("Commission") is established by the Buffalo City Charter and consists of ten citizens, nine of whom shall be appointed by the Board of Review, and the tenth member of the commission shall be the commissioner of human resources, ex officio without a vote. A copy of the City Charter section regarding the Commission and how it is appointed is attached hereto and made a part hereof as **Exhibit D**.

42. The language of the City Charter is clear that the Board of Review and not the Common Council has the power to appoint Commission members.

43. In violation of the City Charter, the Buffalo Common Council on April 18, 2023, improperly appointed nine members to a Citizens Salary Review Commission. A copy of the appointment resolution passed by the Common Council is attached hereto as **Exhibit E**.

44. The resolution passed by the Common Council states the following:

Now therefore be it resolved that the Buffalo Common Council hereby

1. re-establishes the Citizens Salary Review Commission and the Mayor, Council President, and City Comptroller jointly appoint the following individuals to serve on the commission.

45. The Council does not have the authority to re-establish the Commission and the only way appointments to the Commission can occur is by action of the Board of Review, which does not involve or require any action on the part of the Common Council.

46. The last Citizens Salary Review Commission was appointed in March of 2019 and the process that occurred in 2019, is very different from what took place in 2023.

47. On March 31, 2019, *The Buffalo News* printed an article by reporter Deidre Williams which stated:

Per the City Charter, the mayor, comptroller and Council president comprise a board of review that can establish a salary review commission. At least two have to agree to convene a commission; in this case, all three did. As a group, they selected the nine appointees to the commission.

“Both the mayor and I agreed that there should be a review, especially when you look at the Board of Education and the stipend and how long that has been a stipend and how important education is. But we did, all three, physically meet to discuss it; and then we all three signed on”, stated Council President Darius Pridgen.

A copy of the referenced news article is attached hereto and made a part hereof as **Exhibit F**.

48. In 2019, the members of the Board of Review physically met to discuss appointing a Commission, and the three Board of Review members jointly signed a Certificate of Appointment, for each individual appointed, which had a copy of the appointees resume attached to the Certificate. A copy of the referenced Certificates of Appointment are attached hereto and

made a part hereof as **Exhibit G**.

49. In 2019, the Certificates of Appointment were filed with the Common Council as a communication from the mayor which were received and filed by the Council without voting on the appointments, as the Council pursuant to the City Charter does not have the power to appoint Commission members.

50. A copy of the Council meeting minutes from March 5, 2019, showing each appointment to the Commission being “Received and Filed” by the Council is attached hereto and made a part hereof as **Exhibit H**.

51. The process and procedure utilized in 2019 to empanel the Commission, complied with the City Charter whereas the process used in 2023 did not.

**THE BOARD OF REVIEW DID NOT MEET IN PUBLIC  
AS REQUIRED BY THE CITY CHARTER**

52. The Board of Review is a public body created by the City Charter consisting of the Mayor, Council President and Comptroller of the City of Buffalo.

53. Article 18 of the City Charter pertains to Boards and Commissions, with § 18-1 stating “This article shall govern the creation and activity of all appointed boards, commissions, committees, councils or other like bodies in the city of Buffalo except as otherwise provided by this charter or other law.” A copy of the referenced Charter section is attached hereto and made a part hereof as **Exhibit I**.

54. Pursuant to City Charter § 18-2 titled Meetings

All meetings shall be open to the public with notice of such being filed with the City Clerk. Each Board enumerated herein shall hold its meetings in Council Chambers or in Room 1417 of City Hall and all meetings shall be recorded by the Office of Telecommunications,

streamed via live online video and broadcast on the Cable Access Television (CATV) channel as soon thereafter as practicable. The Office of Management Information Systems shall post all such meetings on the City's website for viewing as soon thereafter as practicable.

A copy of the referenced Charter section is attached hereto and made a part hereof as **Exhibit J**.

55. Upon information and belief the Board of Review did not hold a public meeting in the Council Chambers or in Room 1417 of City Hall to discuss appointments to the Commission as required by § 18-2 of the City Charter.

56. Upon information and belief the Board of Review did not file a notice of their intention to hold a meeting regarding the Commission with the City Clerk as required by § 18-2 of the City Charter.

57. On May 22, 2023, the New York Coalition For Open Government filed a Freedom of Information Law (FOIL) request with the Buffalo City Clerk's Office.

58. The FOIL request asked for copies of meeting notices filed with the City Clerk for Board of Review meetings from January 1, 2022, until May 15, 2023.

59. The FOIL request additionally asked for Board of Review meeting minutes or meeting recordings from January 1, 2022 to May 15, 2023.

60. On June 12, 2023, the City Clerk responded to the FOIL request stating: "According to our diligent research of minutes and meeting notices, we found nothing on file in the City Clerk's Office or with the Council President related to the above inquiry in the City of Buffalo, NY." A copy of said FOIL request and response is attached hereto and made a part hereof as **Exhibit K**.

61. On May 23, 2023, the New York Coalition For Open Government sent an email to Council President Darius Pridgen asking him: "Can you advise on what dates and where the Board of Review met to discuss the Citizens Salary Review Commission appointments". A copy of said

email is attached hereto and made a part hereof as **Exhibit L**.

62. The Council President who serves as a member of the Board of Review, never responded to the email.

63. In May of 2023, the New York Coalition For Open Government submitted a FOIL request to the Buffalo City Clerk's Office requesting copies of "Any & all emails, texts, letters, memos from personal devices or a city-owned device involving communications sent by or received by the Mayor of Buffalo, City Comptroller & Council President regarding the Buffalo Citizens Salary Review Commission from 4/1/23 -5/11/23."

64. On June 22, 2023, the City Clerk responded that "No emails, text messages, letters or memos were found on any device from the Council President regarding the Buffalo Citizens Salary Review Commission from 4/1/2023-5/11/2023 in the City of Buffalo, NY." A copy of said response is attached hereto and made a part hereof as **Exhibit M**.

65. On June 14, 2023, Geoff Kelly, a reporter for *Investigative Post*, published an article regarding the Commission. As part of his reporting research, Kelly reached out to members of the Board of Review and inquired as to whether the Board ever met regarding Commission appointments. Kelly reported the following:

Representatives for the mayor and the comptroller did not respond when Investigative Post asked if the board of review met this year. A representative for Council President Darius Pridgen said he would seek an answer, but ultimately did not provide one.

A copy of the Investigative Post article is attached hereto and made a part hereof as **Exhibit N**.

66. Further proof that a Board of Review meeting did not occur is evidenced by a comment Buffalo Mayor Byron Brown made to a Channel 7 television news reporter. When asked by reporter Kristen Mirand on May 2, 2023, about the Salary Review Commission, Mayor Brown stated: "I'm concerned about raises. I haven't requested a raise... I had absolutely no involvement

in that whatsoever." A copy of the referenced news report is attached hereto and made a part hereof as **Exhibit O**.

67. Upon information and belief, if the Board of Review met regarding the Commission it was not recorded by the Office of Telecommunications, streamed via live online video and broadcast on the Cable Access Television (CATV) channel as soon thereafter as practicable. Nor did the Office of Management Information Systems post such meetings on the City's website for viewing as soon thereafter as practicable, as required by § 18-2 of the City Charter.

68. On June 15, 2023, the New York Coalition For Open Government filed a FOIL request with Thomas Tarapacki, Director of the City of Buffalo Office of Telecommunications, asking if the office possessed any recordings of Board of Review meetings from January 1, 2023 to June 15, 2023.

69. On September 22, 2023, Petitioner New York Coalition For Open Government followed up with Thomas Tarapacki the Director of the Office of Telecommunications and asked about the status of the FOIL request. A copy of said FOIL request and the follow-up email is attached hereto and made a part hereof as **Exhibit P**.

70. To date, the Office of Telecommunications has not responded to the FOIL request nor to the subsequent request for a status update.

71. It should be noted that there is not a recording or any minutes of any Board of Review meetings posted on the City of Buffalo website.

72. On July 19, 2023, the New York Coalition For Open Government submitted a FOIL request to the City of Buffalo requesting a copy of Mayor Brown's schedule from January 1, 2023 to July 19, 2023. The request explained that the reason for requesting the schedule was to determine when the Board of Review met to discuss appointments to the Commission.

73. The FOIL request stated that instead of providing seven months of the mayor's schedule, simply providing the date, time and place that the Mayor participated in a Board of Review meeting, would satisfy the request. A copy of said FOIL request is attached hereto and made a part hereof as **Exhibit Q**.

74. After filing an appeal due to the lack of response to the FOIL request, the City of Buffalo provided a copy of the Mayor's schedule from January 1, 2023 until July 19, 2023. A copy of the Mayor's schedule can be provided if necessary.

75. A review of the Mayor's schedule shows that a Board of Review meeting is not listed.

76. The only time that the Mayor had a scheduled meeting with the Council President, who serves on the Board of Review, was on June 26, 2023, which was long after the Council appointed the Commission members.

77. On September 22, 2023, the New York Coalition For Open Government submitted a FOIL request to the Buffalo Comptroller asking for a copy of her meeting schedule for 2023, or in the alternative advising as to whether the comptroller attended any Board of Review meetings during 2023.

78. On October 5, 2023, the comptroller's office responded to the FOIL request with an email in which the comptroller stated: "I had a conversation with Mayor Byron W. Brown and Common Council President Darius G. Pridgen individually on two separate calls. Additionally, I did not attend or participate in a formal Board of Review Meeting." A copy of said FOIL request and response is attached hereto and made a part hereof as **Exhibit R**.

79. The Council President has refused to answer whether the Board of Review met to discuss appointing members to the Commission. The mayor has publicly stated that he had nothing to do

with seeking a raise and his schedule does not contain any reference to a Board of Review meeting. The City Comptroller has made it clear that she did not attend or participate in a Board of Review meeting. The documentation received through FOIL requests makes it abundantly clear that a public meeting of the Board of Review appointing members to the Commission never occurred.

### **THE BOARD OF REVIEW DID NOT COMPLY WITH THE OPEN MEETINGS LAW**

80. The New York State Open Meetings Law requires the Board of Review as a public body to provide public notice of their meetings, to post meeting documents online at least 24 hours prior to a meeting, and to post meeting minutes or a recording online afterwards.

81. Under Public Officers Law § 102, a public body is defined as:

“... any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation ... or an entity created or appointed to perform a necessary function in the decision-making process for which a quorum is required in order to conduct public business and which consists of two or more members. A necessary function in the decision-making process shall not include the provision of recommendations or guidance which is purely advisory and which does not require further action by the state or agency or department thereof or public corporation...”

A copy of the referenced statute is attached hereto and made a part hereof as **Exhibit S**.

82. The Board of Review meets the above definition of a public body in that it consists of two or more members performing a governmental function for the City of Buffalo. Appointing the members of the Commission is a governmental function and a necessary function in the decision making process of creating the Commission, which requires the approval of at least two of the three Board of Review members.



83. Among other governmental and necessary functions, the Board of Review is empowered to address are hearing objections to awarding government contracts and the power to hear appeals of government contractors that have been debarred or suspended pursuant to § 10-27 of the City Charter; the power to affirm, reverse or reject public bids exceeding \$7,000 dollars and to require new bids to be advertised, pursuant to § 30-5 of the City Charter; the power to determine death benefits for members of the police and fire departments, pursuant to § 35-25 of the City Charter; all tax exemptions provided by the City of Buffalo are subject to the final approval of the Board of Review.

84. In all of the instances enumerated above, the Board of Review has more than just advisory or recommendation powers. As such, the Board of Review clearly meets the definition of a public body, which makes it subject to the New York State Open Meetings Law (“OML”).

85. Upon information and belief, the Board of Review never met in public as required by the OML.

86. There is no record of public notice being provided regarding a Board of Review meeting in 2023, as required by the OML.

87. The OML states that meeting documents “shall be made available, upon request therefor, to the extent practicable at least twenty-four hours prior to the meeting”. There is no record that the Board of Review posted meeting documents regarding Commission appointments online at least 24 hours prior to discussing the same, and there is no reason that doing so would not have been practicable.

88. After the Board of Review met, neither meeting minutes nor a recording of a meeting were posted online as required by the OML.

89. If Board of Review members conducted public business by way of individual telephone

calls, as stated by the City Comptroller, it is illegal and a violation of the OML for members of a public body to conduct business by way of private telephone conversations.

90. As a public body, the Board of Review cannot meet and conduct business without complying with the OML. If the Board of Review met without complying with the City Charter and the OML, then any appointments made to the Commission should be declared null and void, pursuant to Section 107 of the New York State Public Officers Law, also known as the Open Meetings Law.

91. Section 107 of the OML states:

... if a court determines that a public body failed to comply with this article, the court shall have the power, in its discretion, upon good cause shown, to declare that the public body violated this article and/or declare the action taken in relation to such violation void, in whole or in part, without prejudice to reconsideration in compliance with this article.

### **THE COUNCIL VIOLATED ITS RULES OF ORDER WHEN APPOINTING MEMBERS TO THE COMMISSION**

92. Instead of holding a Board of Review meeting as required by the City Charter to appoint members to the Commission, the Common Council unlawfully made appointments to the Commission.

93. On April 18, 2023, just a few hours before the 2:00 P.M. April 18, Council meeting, Councilmember Darius Pridgen filed a resolution titled “Appointments to the City of Buffalo Salary Review Commission”. A copy of the referenced resolution is attached hereto and made a part hereof as **Exhibit T**.

94. Pursuant to Rule 33 of the Council’s adopted Rules of Order, all resolutions, or communications of any nature, to be submitted to the Council, shall be filed with the City Clerk on or before 2:00 P.M. on the Thursday preceding the meeting.

95. Rule 33 states further that “[a]ny petition, resolution or communication which was not presented to the City Clerk in compliance with the deadline stated above, shall not be considered at said meeting except by unanimous consent of all members present [at said meeting]. Once an objection has been made, the Council shall not entertain any further objection or discussion on the item to which an objection has been made.” A copy of said Rule is attached hereto and made a part hereof as **Exhibit U**.

96. When the April 18, 2023, Council meeting agenda was posted online there was not a Resolution regarding appointments to Commission, as such the public had no knowledge of the resolution. Council President Darius Pridgen filed the resolution after the 2:00 P.M. Thursday deadline.

97. When the resolution came up for a vote, Councilmember Joseph Golombek objected to the item being considered by the Council. Based on Councilmember Golombek’s objection to the late filed item, which requires unanimous consent to be heard, the Council President correctly stated that the item could not be addressed and moved forward with finishing the meeting agenda.

98. Due to the objection to the late filed item, the prospect of getting a salary increase was dead for Councilmembers.

99. Seeing the prospect of a pay raise drifting away, Councilmembers had to come up with a creative way on the fly to bring the item back for consideration. With a Charter-imposed deadline of May 1, the issue of a pay raise could not wait until the next Council meeting, two weeks away.

100. The Council President then asked if there were any “revisits”, which is not a term defined in the Council Rules.

101. Under Rule 22, any member who voted in the majority on an item can request that the item be brought back for reconsideration. Councilmember Rasheed Wyatt spoke and questioned the procedure for objecting to a late filed item.

102. The Council President then brought back the late filed item for reconsideration, reversed his earlier ruling and moved the resolution appointing members to the Commission to a vote, where it was approved with Councilmember Golombek voting in the negative. A copy of Council Rule 22 is attached hereto and made a part hereof as **Exhibit V**.

103. Bringing the late filed resolution back for reconsideration was improper, as a vote had not occurred, and as such, there was no councilmember who voted in the majority and who could therefore request reconsideration of the item.

104. Reconsidering the item also violated Rule 33 of the Council Rules, which states that late filed items “shall not be considered at said meeting except by unanimous consent of all members present [at said meeting]. Once an objection has been made, the Council shall not entertain any further objection or discussion on the item to which an objection has been made.”

105. A city attorney attending the meeting was asked her opinion as to whether the item could be heard. She advised that the issue would have to be researched further.

106. In response to a concern voiced by Councilmember Mitchell Nowakowski as to whether rules were being properly enforced, Council President Pridgen stated that “if, then, corporation counsel comes back with a different ruling, then this item would be moot.”

107. On April 27, 2023, Councilmember Golombek submitted a written request to Cavette Chambers, Esq., the Corporation Counsel for the City of Buffalo, requesting a written opinion as to how under Rule 33 of the Council Rules, the late filed item was allowed to proceed forward after his objection. A copy of Councilmember Golombek’s written request is attached hereto and

made a part hereof as **Exhibit W**.

108. Upon information and belief, the Corporation Counsel for the City of Buffalo has never provided a written opinion explaining how under the Council Rules the late filed Salary Commission resolution was allowed to proceed to a vote after Councilmember Golombek objected to the item.

109. Despite Councilmember Golombek's objection to the late filed item, the Council proceeded to vote on the resolution to appoint Commission members.

110. It is Petitioners' position that the Council approval of the resolution was done in violation of the Council Rules and that any action taken by the Commission should be voided.

111. The meeting discussion described above can be viewed online at the Buffalo Common Council webpage, where a video of the April 18, 2023 Council meeting is posted (scroll forward to the 36 minute 47 second mark of the meeting and watch until the end).

**THE COUNCIL VIOLATED THE CITY CHARTER  
WHEN APPOINTING MEMBERS TO THE COMMISSION**

112. The City Charter, in § 18-19, states the following:

The citizens salary review commission shall consist of ten citizens, nine of whom shall be appointed by the board of review, and of whom some shall have had training or experience in executive compensation and benefit programs. The tenth member of the commission shall be the commissioner of human resources, ex officio without vote.

A copy of the referenced City Charter section is attached hereto and made a part hereof as **Exhibit D**.

113. Despite the City Charter's clear language that the Board of Review shall appoint citizen salary review commission members, the Council on April 18, 2023, in violation of the City

Charter, passed a resolution titled “Appointments to the City of Buffalo Salary Review Commission”.

114. Section 18-19 of the City Charter additionally states “At no time shall the commission consist of more than six citizens of one political party.”

115. Upon information and belief, nine of the ten appointments to the Commission named in the April 18 resolution were registered as Democrats, in violation of the City Charter requirement that not more than six members be of the same political party.

116. Upon information and belief, the only appointed Commission member not a Democrat was Brian Manley.

117. Between April 21, 2023 and April 25, 2023, the Commission held three meetings.

118. At the first meeting held by the Commission, David Franczyk advised Council staffers assisting the Commission that someone needed to verify the voter registration status of Commission members to ensure that not more than six members were of the same political party.

119. On April 24, 2023, it appears that the Council recognized that there was a problem with having nine out of ten Commission members registered as Democrats in violation of the City Charter.

120. On April 24, 2023, five Councilmembers signed a request to call a Special Meeting on less than 24 hours notice, with the only agenda item being “Amendments to the Appointments to the City of Buffalo Citizens Salary Review”.

121. On the morning of April 25, just hours before the Commission’s final meeting, The Council held a special meeting with the sole agenda item being a resolution to remove Dr. Constance Moss (a Democrat and a Niagara County resident), and to remove Peter Cammarata (a Democrat) and replace them with two Republicans, Tom Vossler and Kevin Helfer. A copy of the special meeting

request, agenda, and referenced resolution are attached hereto and made a part hereof as **Exhibit X**.

122. Interestingly, Peter Cammarata's name does not appear on the list of original Appointees approved by the Council on April 18. The name of David Stebbins appears on the original appointment list, however Stebbins, according to Commission meeting minutes, never attended any Commission meetings and was never replaced by the Council or the Board of Review.

123. The last minute effort by the Common Council to fix the violation of the City Charter with nine out of ten Commission members being registered Democrats still failed to bring the Commission into compliance with the City Charter.

124. With the last-minute appointment changes made by the Common Council, which does not have the legal authority to appoint Commission members, seven of the ten Commission members were registered Democrats, which still exceeded the Charter requirement that not more than six members be members of the same political party.

125. Upon information belief, only three members of the ten member Commission are not members of the Democratic party, namely Brian Manley, Tom Vossler and Kevin Helfer.

126. The Commission held three meetings between April 21 and April 25. For two of those meetings, nine of the ten members were of the same political party, in violation of the City Charter, and two of the members were not City of Buffalo residents, as required by the City Charter.

127. Based on the Common Council's illegal actions in violation of the City Charter, the actions taken by the Commission should be declared null and void.

128. The City Charter is clear that only the Board of Review has the power to appoint members to the Commission.

129. Upon information and belief, the Board of Review met by phone to appoint members to the Salary Review Commission. It is uncertain whether the Board of Review met between April 18, 2023, and April 25, 2023, to remove two appointees and replace them with new appointees.

130. The Council violated the City Charter by exceeding their authority by appointing members on April 18, 2023, to the Commission.

131. The Council violated the City Charter a second time by exceeding its authority and removing two Commission members on April 25, 2023, and replacing them with two new members.

**THE COMMISSION IS A PUBLIC BODY  
SUBJECT TO THE OPEN MEETINGS LAW**

132. The Commission is established by the City Charter and its duties are to review the salaries of all elected city officers, including members of the board of education, every two years and report their recommendations to the Council by May 1.

133. Under Public Officers Law Section 102, commonly referred to as the Open Meetings Law, a public body subject to the law includes:

... an entity created or appointed to perform a necessary function in the decision-making process for which a quorum is required in order to conduct public business and which consists of two or more members.

134. The Commission is an entity consisting of ten members created by the City Charter and appointed by the Board of Review to perform a necessary function in the decision-making process regarding elected official salaries.



135. In order for the salaries of Buffalo elected officials to be changed, the appointment of a Commission is necessary. As stated in the City Charter, the Commission is required to be appointed every two years to review the salaries of all elected city officers, including members of the board of education, and to report its recommendations to the common council by May 1 of that year.

136. In order to change the salaries of elected city officers, it is necessary for the Commission to conduct a review and report its recommendations to the Council by a required date imposed by the City Charter.

137. The recommendations by the Commission are not purely advisory. Recommendations by a purely advisory body do not require further action by the Council.

138. The City Charter requires that the Council **must** act upon the recommendation made by the

139. Commission as the City Charter states: “The common council **must adopt, modify or reject the report of the commission by June 15** of said year” (emphasis added).

140. Section 102 of the Open Meetings Law states:

A necessary function in the decision-making process shall not include the provision of recommendations or guidance which is purely advisory and which does not require further action by the state or agency or department thereof or public corporation as defined in section sixty-six of the general construction law.

141. For the reasons stated above, the Commission meets the definition of a public body that is appointed to perform a necessary function in a governmental decision-making process.

**THE COMMISSION VIOLATED THE OPEN MEETINGS LAW  
BY NOT PROVIDING REMOTE ACCESS TO THE PUBLIC**

142. At the first Commission meeting, not a single member of the public was present. A copy of the April 21, 2023, meeting minutes are attached hereto as **Exhibit Y**.

143. At the first meeting of the Commission, it was agreed that raises should be provided to elected officials, with the only question being how much of a raise.

144. The meeting's minutes also indicate on page six that Commission member Angela Blue tried to enter City Hall to attend the meeting but the doors were locked. As Ms. Blue was unable to enter City Hall she participated in the meeting through Zoom.

145. Four members of the Commission attended the meeting through Zoom, which was not an option made available to members of the public or to the news media. A copy of a Media Advisory is attached hereto as **Exhibit Z**.

146. Providing the ability for Commission members to participate in the meeting remotely and not providing that same access to the public or the news media is a violation of the OML.

147. According to the April 21<sup>st</sup> meeting minutes the Commission, in another insult to the public, decided against holding a public hearing to hear from the public and instead at 6:30 pm on a Friday evening decided to hold a public forum to hear from Common Council members on Monday April 24<sup>th</sup> at 5:30 pm.

148. Two members of the Commission and the City Comptroller attended the Commission's April 24 meeting through Zoom. In violation of the Open Meetings Law, the public and the news media were not provided the opportunity to attend the meeting through Zoom; a copy of the meeting's media advisory is attached hereto as **Exhibit AA**.

149. On April 9, 2022, the Open Meetings Law was amended by adding a new Section 103-a.

150. Pursuant to 103-a, a public body that wishes to allow for remote attendance by its members at their meetings is required to adopt a local law or adopt a resolution authorizing such remote attendance, and must establish written procedures that set forth what they determine to be “extraordinary circumstances.”

151. Upon information and belief the Commission did not adopt a resolution as required establishing written procedures for their members to attend Commission meetings remotely.

152. Section 103-a additionally requires that if a public body uses videoconferencing to conduct a meeting, the public notice for the meeting must inform the public that videoconferencing will be used and must include directions for how the public can view and/or participate (if participation is permitted) in such meeting. The public body must provide the opportunity for members of the public to view the meeting, using remote technology or in person, in real time. A copy of Section 103-a of the Open Meetings Law is attached hereto as **Exhibit BB**.

153. None of the Commission’s meeting notices directed to the news media included directions as to how the public could view Commission meetings remotely in real time.

154. According to the Commission’s meeting minutes, of the 17 individuals present at the “public forum”, only one, a reporter from WIVB Channel 4 was not a government official.

**THE COMMISSION HELD AN ILLEGAL EXECUTIVE SESSION  
IN VIOLATION OF THE OPEN MEETINGS LAW**

155. As a public body, the Commission, if it desires to conduct an executive session, must do so in accordance with the requirements of the Open Meetings Law.

156. At the second meeting held by the Commission in Buffalo City Hall on April 24, 2023, a motion was made by member Arthur Robinson to go into executive session without stating any reason for the executive session; the motion was seconded by member Angela Blue.

157. The meeting minutes reflect that an executive session occurred from 6:06 pm to 6:54 pm. During this executive session, a representative of WIVB Channel 4 News, a local news media team had to leave and was not allowed to observe what was discussed in executive session.

158. Incredibly, the only member of the public present at the “public forum”, who was not a government official or a government employee was asked to leave “public forum”.

159. The Open Meetings Law provides eight limited circumstances where a public body can meet in private. A proper motion for an executive session requires that a specific reason that is valid under the law be stated. The meeting minutes reflect that no reason was given for holding a private executive session discussion. A copy of the April 24, 2023 meeting minutes are attached hereto and made a part hereof as **Exhibit CC**.

160. The minutes further reflect that Commission Chair David Franczyk directed staff to “... create a chart of the salary numbers and rates that were discussed in executive session.”

161. Discussing elected official salaries behind closed doors in an executive session was a clear violation of the Open Meetings Law.

162. The public and the news media have a legal right under the Open Meetings Law to observe and hear the discussion and thoughts of the Commission members regarding the salary numbers and rates that were discussed in private behind closed doors.

163. Elected officials have no privacy rights or expectations of privacy regarding their public office salaries.

164. The fact that the Commission discussed salary numbers and rates in private, for which

Council staff members were directed to prepare charts, should result in the Commission's recommendations to the Common Council being invalidated, pursuant to Section 107 of the Open Meetings Law.

**A PRELIMINARY INJUNCTION SHOULD BE ISSUED  
PREVENTING THE PAY RAISES FROM BEING IMPLEMENTED DURING THE  
PENDENCY OF THESE PROCEEDINGS**

165. The pay raises illegally enacted by the Council become effective January 1, 2024.

166. The first paychecks that will have salary increases will not be issued until January 18, 2024.

167. A preliminary injunction halting the issuance of salary increases should be issued as the Petitioners have demonstrated (1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the Petitioner's favor.

168. The Petitioners have documented violations of Council Rules, the City Charter, and the OML, demonstrating a likelihood of success in invalidating the pay raises approved by the Buffalo Common Council.

169. Petitioners' case will be injured if the pay raises proceed while litigating the issue of whether the pay raise legislation was properly enacted. It may be administratively difficult to claw back any funds paid should Petitioner's lawsuit be successful. For these reasons, the status quo should be maintained until this matter is decided.

170. The balance of equities tip in Petitioners' favor. In contrast to the irreparable injury suffered if an injunction is not issued, backpay corresponding to the salary increases could easily be awarded if the Court decides in favor of Respondents after having issued an injunction.

**FIRST CAUSE OF ACTION**

**(The Board of Review Violated the City Charter)**

171. Petitioners repeat and reallege Paragraphs 1 through 170.

172. Board of Review members did not meet in public as required by the Buffalo City Charter Section 18-2, regarding appointments to the Commission.

173. The Board of Review did not provide public notice of their meetings, as required by the City Charter Section 18-2.

174. The Board of Review did not broadcast their meeting and have a recording posted on the City of Buffalo website, as required by the City Charter Section 18-2.

175. The failure to comply with the requirements of the City Charter should result in the illegal appointments made to the Commission being declared null and void.

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

**SECOND CAUSE OF ACTION**

**(The Board of Review Violated the Open Meetings Law)**

177. Petitioners repeat and reallege Paragraphs 1 through 176.

178. Board of Review members did not meet in public as required by the Open Meetings Law.

179. The Board of Review did not provide public notice of its meeting(s) regarding the Commission, as required by the OML Section 104.

180. Meeting documents were not posted online for the public to see at least 24 hours prior to their meeting as required by the OML Section 103(2)(e).

181. Meeting minutes or a recording of the meeting were not posted online, as required by the

OML Section 106(3).

182. The failure to comply with multiple requirements of the OML should result in the illegal appointments made to the Commission being declared null and void, pursuant to Section 107(1) of the OML.

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

### **THIRD CAUSE OF ACTION**

#### **(The Buffalo Common Council Acted In Violation of Lawful Procedure)**

184. Petitioners repeat and reallege Paragraphs 1 through 183.

185. On April 18, 2023, the Council violated their own Rules of Order, by violating Rule 33 and Rule 22.

186. By voting on a late filed resolution making appointments to the Commission, after the item was objected to by a councilmember, the Council acted in violation of lawful procedures.

187. The resolution should have never been voted on and as such the Council appointments to the Commission should be declared null and void.

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

### **FOURTH CAUSE OF ACTION**

#### **(The Buffalo Common Council Acted In Violation of Lawful Procedure)**

189. Petitioners repeat and reallege Paragraphs 1 through 188.

190. Under Section 18-19 of the City Charter only the Board of Review has the authority to

make appointments to the Commission.

191. By making appointments to the Commission in violation of the City Charter Section 18-19, the Council acted in violation of lawful procedures.

192. The appointments made to the Commission by the Council should be declared null and void.

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

#### **FIFTH CAUSE OF ACTION**

**(The Buffalo Common Council Took Actions That Are Demonstrably Arbitrary & Capricious)**

194. Petitioners repeat and reallege Paragraphs 1 through 193.

195. By making appointments to the Commission in violation of the City Charter, the Council acted in an arbitrary and capricious manner.

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

#### **SIXTH CAUSE OF ACTION**

**(The Salary Review Commission Violated the Open Meetings Law)**

197. Petitioners repeat and reallege Paragraphs 1 through 196.

198. The Commission violated the OML Section 104 by failing to conspicuously post public notices regarding their meetings “in one or more designated public locations at a reasonable time prior thereto.”



199. The Commission violated Section 103-a, of the OML by failing to pass a resolution establishing rules for their members to attend meetings remotely.

200. The Commission violated Section 103-a of the OML by failing to provide the public with an opportunity to attend its three meetings via Zoom, while providing their members and government officials the opportunity to attend their meetings via Zoom.

201. The Commission violated the Section 105 of the OML by holding an illegal executive session on April 24, 2023, without stating an appropriate reason for conducting such a session by way of a proper motion.

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

### **SEVENTH CAUSE OF ACTION**

#### **(A Preliminary Injunction Should Be Granted)**

203. Petitioners repeat and reallege Paragraphs 1 through 202.

204. Petitioners have demonstrated the requirements for a preliminary injunction (1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the Petitioners' favor.

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

### **REQUEST FOR RELIEF**

206. Petitioners respectfully request that this Court find that Respondents Citizens Salary Review Commission, City of Buffalo Board of Review, and City of Buffalo Common Council

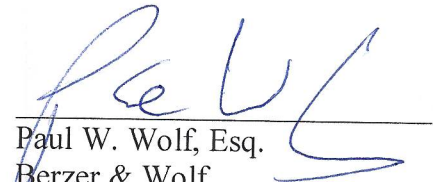
took actions in violation of lawful procedure and that are demonstrably arbitrary and capricious.

207. Petitioners respectfully request this Court to grant judgment:

- (a) That the Board of Review violated the City Charter by not providing public notice of their meeting regarding the Commission; by not meeting in public, by not broadcasting their meeting and by not posting a recording of the meeting on the City of Buffalo's website;
- (b) That the Board of Review violated the OML by not holding a meeting in public; with notice to the public; by not posting their meeting documents online prior to a meeting and by not taking meeting minutes and posting minutes or a recording online as required;
- (c) That the Council violated the Council Rules, by voting on a late filed resolution after an objection was properly made to the item being considered;
- (d) That the Council violated City Charter § 18-19, by illegally appointing members to the Commission, having no authority to take such action;
- (e) That the Commission appointments made by the Council are null and void;
- (f) That the Council adoption of the Commission recommendations on June 13, 2023, are null and void;
- (g) That Local Law #2, passed by the Council on October 3, 2023, is null and void;
- (h) That the Commission's report dated April 27, 2023, is null and void;
- (i) That the Commission violated the OML by not providing the public the opportunity to attend their three meetings through Zoom, while allowing Commission members and government officials to do so;
- (j) That the Commission violated the OML by holding an illegal executive session on April 24, 2023;
- (k) Granting a preliminary injunction preventing pay raises for city elected officials from being

implemented until this matter is decided;

- (l) Awarding Petitioner their costs and attorney fees; and
- (m) Awarding Petitioner such other and further relief as the Court deems just and proper.



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Paulwolf2@gmail.com

VERIFICATION

STATE OF NEW YORK     )  
COUNTY OF ERIE        ) :ss

Nathan Feist, being duly sworn, deposes and says that I am the Petitioner in this action; I am authorized to make this Verification; I have read the forgoing Verified Petition and know the contents thereof; that the same is true to my knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters I believe them to be true.

Nathan Feist

Sworn to before me this 19 day

of December, 2023

SA Adams  
Notary Public

Stephanie A. Adams  
Notary Public, State of New York  
Reg. No. 02AD0011716  
Qualified in Erie County  
Commission Expires 07/28/2027

VERIFICATION

STATE OF NEW YORK )  
COUNTY OF ERIE ) :ss

Matthew Austin, being duly sworn, deposes and says that I am the Petitioner in this action; I am authorized to make this Verification; I have read the forgoing Verified Petition and know the contents thereof; that the same is true to my knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters I believe them to be true.

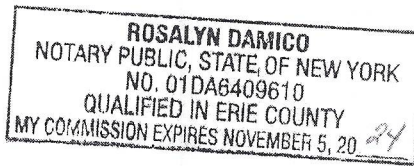
Matthew Austin

Sworn to before me this 19 day

of December, 2023

Rosalyn Damico

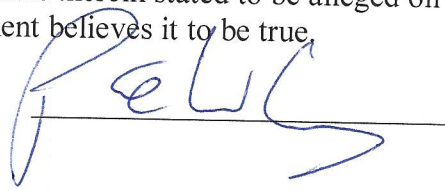
Notary Public



**VERIFICATION**

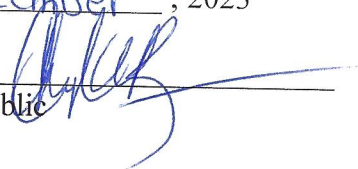
STATE OF NEW YORK ) )  
SS: COUNTY OF ERIE )

Paul W. Wolf, being duly sworn, deposes and says that he is the President of the New York Coalition For Open Government, Inc., the petitioner in the above proceeding, that deponent has read the foregoing Notice of Petition and Petition and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.



Sworn to before me this 18<sup>th</sup> day

of December, 2023

  
Notary Public

**CHERYL A. BERZER**  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires February 07, 26