

STATE OF NEW YORK  
SUPREME COURT: NIAGARA COUNTY

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In the Matter of the Application of  
BUFFALO NIAGARA COALITION FOR OPEN  
GOVERNMENT, INC.

Index No.

Petitioner-Plaintiff

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

**Verified Petition and  
Complaint**

-against-

NIAGARA COUNTY BOARD OF ETHICS;  
NIAGARA COUNTY LEGISLATURE;  
COUNTY OF NIAGARA;  
REBECCA J. WYDYSH AS CHAIRMAN OF THE  
NIAGARA COUNTY LEGISLATURE;  
JAMES SPANBAUER AS CHAIRMAN OF THE  
NIAGARA COUNTY BOARD OF ETHICS

Respondents-Defendants

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To the Supreme Court of the State of New York:

Petitioner, Buffalo Niagara Coalition for Open Government, Inc. by and through  
undersigned counsel, respectfully alleges as follows:

**PRELIMINARY STATEMENT**

1. This hybrid Article 78 petition and complaint against the Niagara County Board of Ethics, the County of Niagara, the Niagara County Legislature and the appropriate officials responsible for those entities arises out of Respondent's long documented practice of preventing the public from viewing the Annual Financial Disclosure Statements filed by county officials. Petitioner requested these documents under the New York State Freedom of Information Law.

Respondents denied that request in improper reliance on local ordinances. These documents are public records subject to disclosure under the New York State Freedom of Information Law.

2. Petitioner seeks (1) an Order pursuant to Article 78 of the New York Civil Practice Law and Rules, directing the Respondent to produce all records responsive to Petitioner's FOIL request within twenty (20) days of the Court's order; (2) a declaration pursuant to CPLR § 3001 that Local Law Number 2 adopted in 1996 and the amendment, entitled Local Law #1, adopted on May 7, 2019 by the Niagara County Legislature are invalid and contrary to FOIL; (3) a declaration pursuant to CPLR § 3001 that the Niagara County Board of Ethics, Niagara County, the Niagara County Legislature, Respondent Wydysh as successor to Wm. Keith McNall and Respondent Spanbauer acted unlawfully by withholding material that is not properly exempt from disclosure under FOIL and (4) an award to Petitioner of their costs and fees, together with such other further relief the Court deems just and proper.

### **JURISDICTION AND VENUE**

3. The actions of the respondents complained of herein are final in nature and cannot be reviewed adequately by another court, entity or officer. This Court has jurisdiction over this matter pursuant to Public Officers Laws § 89(4)(b), Article 78 of the CPLR, and CPLR § 3001.

4. This action is commenced in Niagara County because the Niagara County Board of Ethics and each respondent is located or resides in this county and because this county is within the judicial district in which the Respondents made the determination complained of and refused to perform the duties specifically enjoined upon them by law.

## **PARTIES**

5. The Buffalo Niagara Coalition for Open Government, Inc. (“Petitioner”), is a not-for-profit corporation organized under the Not-For-Profit Corporation Laws of the State of New York. The Coalition is a non-partisan membership corporation comprised of journalists, activists, attorneys, educators, and other concerned citizens dedicated to promoting open government and freedom of information.

6. Respondent Niagara County Board of Ethics is an agency with the meaning of Public Officers Law § 86(3), with its principal place of business located at 175 Hawley Street Lockport, NY 14094. The Niagara County Board of Ethics is an agency of the county of Niagara and the official “repository of annual Disclosure Statements and such other written instruments, affidavits, and disclosures as required by law.” (Exhibit A Local Law #2 § 12[1]).

7. Respondent James Spanbauer is the Chairman of the Niagara County Board of Ethics. Mr. Spanbauer conducts business on behalf of the Niagara County Board of Ethics at his office at 111 Main Street, Suite G2 Lockport, NY 14094. Respondent Spanbauer is named in his official capacity only.

8. Respondent Niagara County is one of the sixty two counties of New York and has its principal place of business at 175 Hawley Street, Lockport, NY 14094.

9. The Niagara County Legislature created the Niagara County Board of Ethics and confirms the appointments of members of the Board of Ethics. The Niagara County Legislature has a principal place of business located at Niagara County Courthouse, First Floor, 175 Hawley Street, Lockport, NY 14094.

10. Respondent Rebecca J. Wydysch is the Chairman of the Niagara County Legislature, which is the governing body of the County of Niagara. She is named in her official

capacity. She is the proper successor to the prior Chairman Wm. Keith McNall who responded to Petitioner's freedom of information law administrative appeal. CPLR § 7802(b). On information and belief the Chairman of the Niagara County Legislature, the Niagara County Legislature and Niagara County serve as governing bodies or chief executives of the Niagara County Board of Ethics pursuant to Public Officers Law § 89(4).<sup>1</sup>

## **BACKGROUND**

11. Niagara County is required by state law to collect Annual Financial Disclosure Forms from certain elected officials, employees and political candidates. General Municipal Law §§ 810-812. These forms disclose the financial interests of certain government officials to proactively prevent conflicts of interest. Government officials, including county legislators, are required to disclose details including outside employment, property ownership, board membership, and gifts received. Petitioner sought the Annual Financial Disclosure Forms of county legislators from 2013 to 2019 through a Freedom of Information Law request. (Exhibit B). That request was denied with the exception that the Niagara County Board of Ethics produced the forms from 2019.

12. Until 2019 Niagara County kept these annual financial disclosures completely secret from public review, denying the public access to important information and the ability to investigate potential corruption or conflicts of interest. Niagara County continues to maintain the secrecy of annual financial disclosures filed before 2019.

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<sup>1</sup> The Niagara County Board of Ethics does not publish who is responsible for FOIL requests or appeals as required by law. N.Y. Pub. Off. Law § 87(4)(c) but Niagara County, the Niagara County Legislature, and the Chairman of the Niagara County Legislature were noticed on and involved in the denial of Petitioner's FOIL appeal.

13. In 1996 Niagara County enacted Local Law # 2 which established an Ethics Board and Ethics Code as required by Article 18 of the General Municipal Law. (Exhibit A). As required by state law, this local law appropriately required elected officials in Niagara County to disclose their financial interests that could cause conflicts in the administration of their duties in an Annual Financial Disclosure Form. (Exhibit A § 2). The express goal of the Code of Ethics was to “encourage public trust and to establish minimum standards of ethical conduct for County officers, employees, and other appointed officials... and to assure public confidence.” (Exhibit A § 1). Yet, the local law hid all financial disclosures from public view. (Exhibit A § 2[4]). “Such Disclosure Statements shall be confidential and may only be reviewed by the Board of Ethics, the District Attorney and the Sherriff.” *id.* The Annual Financial Disclosure Forms were sealed and stored by the Ethics Board for five years before being destroyed. *id.*

14. On information and belief, Niagara County is the only county in New York State that completely bars public access to annual financial disclosure laws.

15. Niagara County local law #2 of 1996 was almost immediately tested by a local citizen, Kathleen J. Cochran, who requested disclosure statements under Public Officers Law section 84 *et. seq.*, New York’s Freedom of Information Law (FOIL). New York State Committee on Open Government Advisory Opinion January 3, 1997 (Exhibit C). The New York State Committee on Open Government issued an advisory opinion that the Annual Financial Disclosure Forms were subject to FOIL but that portions of them may fall within other FOIL exemptions. (Exhibit C). On information and belief, Niagara County took no action to disclose the Annual Financial Disclosure Forms or amend the Ethics Code, despite receiving this legal opinion from the State of New York.

16. Niagara County's practice of shielding financial disclosure forms from public view continued unabated in the ensuing years. In 2014, journalist Mark Sheer documented the County's continued policy of hiding financial disclosures from the press and public. (Exhibit D). He noted that "reports shoved in sealed envelopes that get destroyed after five years do little good to the public at large." *id.*

17. In 2019, in response to public pressure from Petitioner and media outlets, the Niagara County Legislature amended Local Law number 2 by enacting Local Law number 1 of 2019 to permit public disclosure of annual financial disclosures prospectively. (Exhibit E Local Law 1). This amendment stated that any financial disclosures "filed in 2019 and all subsequent years ... shall be made available to the public upon proper written request." Yet, the local law stated that all other financial disclosures "shall be sealed, indexed and maintained on file for five years, in an appropriate manner, by the Board of Ethics." (Exhibit E § 4). Thus, Niagara County only made disclosure of Annual Financial Disclosure Forms prospective and continued to hide earlier forms still in its possession from public view.

### **ADMINISTRATIVE PROCEDURAL HISTORY**

18. On August 15, 2019 Petitioner made a freedom of information law request to the Niagara County Board of Ethics by writing to its Chairman, James Spanbauer. Petitioner requested "copies of Niagara County Annual Financial Disclosure Forms filed by Niagara County Legislators from 2013 to and including 2019." (Exhibit B).

19. On September 5, 2019 The Erie County Board of Ethics Board partially granted the request by providing ethics disclosure documents filed in 2019.

20. On October 7, 2019 Petitioner appealed the denial of ethics disclosure documents from 2013-2018 and requested an explanation for the denial. (Exhibit F).

21. On October 22, 2019 Wm. Keith McNall as Chairman of the Niagara County Legislature denied Petitioner's appeal on the basis that Niagara County's Local Law prohibits disclosure to other than specified entities and that the local law qualifies as a "state of federal statute" under Public Officers Law 87(2)(a). (Exhibit G).

22. Petitioner subsequently sought and received an advisory opinion for the New York State Committee on Open Government as to whether the requested records were subject to disclosure under FOIL. The advisory opinion of the Committee on Open Government concluded that the records from 2013 to 2018 "should be disclosed in response to a FOIL request in the same manner as those filed in 2019." (Exhibit H). This opinion was also sent to Niagara County through Chairman McNall. *id.*

23. Respondents took no action to release the requested records.

24. Petitioner, having exhausted its administrative remedies, now appeals the denial of Annual Financial Disclosure Forms pursuant to Public Officers Law § 89(4)(b) and Article 78.

25. Petitioner further seeks declarations that Respondents acted unlawfully in withholding Annual Ethics Disclosure Forms maintained by the Niagara County Board of Ethics that are subject to the Public Officers Law and that Niagara County Local Law #2 of 1996 and Local Law #1 of 2019 are void and unenforceable insofar as they prohibit disclosure of public records.

**FIRST CAUSE OF ACTION:  
(The records requested are subject to disclosure under FOIL)**

26. Plaintiff repeats and realleges Paragraphs 1 through 25 as if full set forth herein.

27. The Board of Ethics is an agency under Public Officers Law section § 86(3).

28. The requested Annual Financial Disclosure Forms are records within the meaning of Public Officers Law § 86(4) and were reasonably described in Petitioner's FOIL request.

29. Respondents improperly denied access to the requested financial disclosure documents on the basis that they are exempt from disclosure under Public Officers Law § 87(2)(a) which exempts documents from disclosure that “are specifically exempted from disclosure by state or federal statute.”

30. Local Law #2 of 1996 and Local Law #1 of 2019 are not “state or federal statutes.” Public Officers Law §87(2)(a). Rather they are local ordinances that cannot amend or affect the scope of the Public Officers Law.

**SECOND CAUSE OF ACTION  
(Niagara County Local Laws are invalid and contrary to FOIL)**

31. Plaintiff repeats and realleges Paragraphs 1 through 30 as if full set forth herein.

32. Niagara County Local Law #2 of 1996 and Niagara County Local Law #1 are invalid and contrary to FOIL.

33. Both local laws purport to limit the scope of disclosure under FOIL. Yet, FOIL is a comprehensive statutory scheme that does not impart upon localities the power to affect its scope.

34. Respondents’ position that Annual Financial Disclosures prior to 2019 are not subject to FOIL is improper but also unequivocal. On information and belief, Respondents continue to contend that all financial disclosure forms are unavailable to the public and should continue to remain secret. (Exhibit I).

35. Petitioner is a membership group devoted to open government. It expends significant time and resources making FOIL requests, analyzing the responses, and promoting transparency in local government by publishing reports and speaking to elected officials and the public. A summary of Petitioner’s work is available at <http://www.nyopengov.org/>. Petitioner has requested some, but not all, of the Annual Financial Disclosures within the possession of the



Board of Ethics. Without a declaration that these local laws are invalid, Petitioner will be impeded in its ability to request the remaining Annual Financial Disclosures and analyze the financial interests of elected officials in Niagara County for potential conflicts of interest or corruption.

36. The continued presence of Local Law #1 of 2019 and Local Law #2 of 1996 sends a message to the public that Niagara County values secrecy in its financial dealings and will not honor valid public records requests. Those without the resources to hire an attorney will be stymied in their attempts to obtain any document filed before 2019 covered by the local laws.

**THIRD CAUSE OF ACTION  
(Entitlement to Attorney's Fees under FOIL)**

37. Petitioner repeats and re-alleges paragraphs 1 through 36 as if full set forth herein.

38. Petitioner is entitled to an award of attorney's fees and costs. *see* Public Officers Law § 89(4)(c).

39. Under FOIL, as recently amended, the Court "shall" make an award of attorney's fees when the petitioner has "substantially prevailed and the court finds that the agency had no reasonable basis for denying access." Public Officers Law § 89(4)(c)(ii).

40. Petitioner is likely to substantially prevail because the law is clear that a local ordinance does not qualify as a state or federal statute under Public Officers Law § 87(2)(a).

41. Respondents have no reasonable basis for denying access to the requested records. Niagara County has been directly advised, at least as far back as 1997, that its local law conflicted with FOIL and was pre-empted by FOIL. (Exhibit C). Niagara County was also advised again by the Committee on Open Government in 2019 after denying the records request that its local law was pre-empted and did not qualify under the "state or federal statute" exemption. (Exhibit H). Niagara County also expressly considered whether to amend the law to

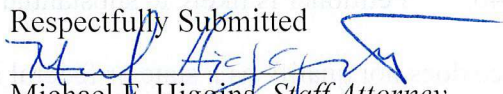
include all Annual Financial Disclosure Forms and decided against it. (Exhibit E). All legal authority available to the county indicated that their policy and local laws violated FOIL.

42. As such, Petitioner, pursuant to Public Officers Law § 89(4)(c) is entitled to an award of attorney's fees and other litigation costs reasonably incurred.

WHEREFORE Petitioner respectfully request this Court to grant judgment:

- (1) Ordering the Niagara County Board of Ethics to produce all records responsive to Petitioner's FOIL request within twenty (20) days of the Court's order;
- (2) Declaring that Local Law Number 2 adopted in 1996 and the amendment, Local Law #1, adopted on May 7, 2019 by the Niagara County Legislature are invalid and contrary to FOIL;
- (3) Declaring that the Niagara County Ethics Board, Niagara County, the Niagara County Legislature, Respondent Wydysch and Respondent Spanbauer acted unlawfully by withholding from Petitioner material that is not properly exempt from disclosure under FOIL;
- (4) Awarding Petitioners its costs and attorney's fees pursuant to Public Officers Law 89(4)(c); and
- (5) Awarding Petitioner such other and further relief as the Court deems just and proper.

Dated: Amherst, New York  
February 14, 2020

Respectfully Submitted  
  
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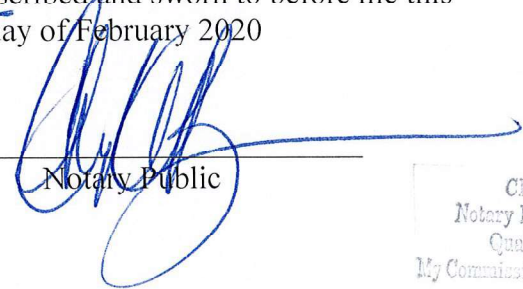
**VERIFICATION**

STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF ERIE        )

Paul Wolf, being duly sworn, deposes and says that he is the president and authorized representative of the New York Coalition for Open Government, Inc. F/K/A Buffalo Niagara Coalition for Open Government, Inc., Petitioner named in the above-captioned action; that he has read the foregoing Petition and knows the contents thereof; that the facts set forth above are true to his knowledge, except as to matters state therein to be alleged on information and belief, and as to those matters believes them to be true.

  
\_\_\_\_\_  
Paul Wolf

Subscribed and sworn to before me this  
13<sup>th</sup> day of February 2020

  
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Notary Public

CHERYL A. BERZER  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires February 07, 22