

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

DANIEL T. WARREN,

Plaintiff,

vs.

JOEL GIAMBRA, as County Executive of the  
County of Erie, New York; and

JOSEPH PASSAFIUME as Director of the Erie  
County Division of Budget, Management &  
Finance, and

NANCY NAPLES, as Comptroller of the County  
of Erie, New York; and

DAVID J. SWARTS, as Clerk of the County of  
Erie, New York; and

COUNTY LEGISLATURE, COUNTY OF  
ERIE, NEW YORK; and

KEVIN M. KELLEY, as Clerk of the Legislature  
of the County of Erie, New York; and

COUNTY OF ERIE, NEW YORK

Defendants

SUMMONS WITH VERIFIED COMPLAINT

Index No.: I 2004-12768

Plaintiff designates Erie County as the place of  
trial

*The basis of venue is:*  
The County of Erie is the location of the  
plaintiff's residence (CPLR § 503)

The County of Erie is a defendant in this action  
(CPLR § 504)

Plaintiff's address:

*To the above named Defendants:*

**YOU ARE HEREBY SUMMONED** to serve an Answer on the *Plaintiff* within twenty (20)  
days after the service of this summons, exclusive of the day of service (or within thirty (30) days after  
the service is complete if this summons is not personally delivered to you within the State of New  
York); and in case of your failure to appear, judgment will be taken against you by default for the relief  
demanded in the notice set forth below.

DATED: December 15, 2004  
Buffalo, New York

\_\_\_\_\_  
Daniel T. Warren  
Plaintiff, Pro Se

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF ERIE

3 DANIEL T. WARREN, )

4 Plaintiff, )

5 vs. )

6 JOEL GIAMBRA, as County Executive of the )  
7 County of Erie, New York; and )

8 JOSEPH PASSAFIUME as Director of the Erie )  
9 County Division of Budget, Management & )  
10 Finance, and )

11 NANCY NAPLES, as Comptroller of the County )  
12 of Erie, New York; and )

13 DAVID J. SWARTS, as Clerk of the County of )  
14 Erie, New York; and )

15 COUNTY LEGISLATURE, COUNTY OF )  
16 ERIE, NEW YORK; and )

17 KEVIN M. KELLEY, as Clerk of the Legislature )  
18 of the County of Erie, New York; and )

19 COUNTY OF ERIE, NEW YORK )

20 Defendants )  
21 )  
22 )  
23 )  
24 )  
25 )

VERIFIED COMPLAINT

Index No.: I 2004-12768

16 Plaintiff, Daniel T. Warren, as and for his complaint for declaratory and injunctive relief  
17 pursuant to General Municipal Law § 51 and CPLR § 3001 against the defendants herein allege:  
18

- 19 1. Plaintiff, Daniel T. Warren is a resident of the Town of West Seneca, County of Erie and  
20 State of New York.
- 21 2. Plaintiff owns property in the County of Erie, State of New York and pays New York State  
22 Income Taxes, Town and County property taxes on property with an assessed value of more  
23 than \$1,000.00 and sales taxes on all purchases made within the State of New York.
- 24 3. Plaintiff is a duly registered voter in the County of Erie and State of New York.
- 25 4. That in accordance with the County Charter and County Code the County Executive  
submitted a budget to the County Legislature on or about November 5, 2004. A copy of this

1 budget is can be viewed on the internet at <http://www.erie.gov/pdf/Grants.pdf> and  
2 <http://www.erie.gov/pdf/book1A.pdf>.

- 3 5. That on or about Wednesday the 8<sup>th</sup> day of December, 2004 the Erie County Legislature  
4 passed legislation and issued a message of necessity requesting that the State Legislature  
5 increase the sales an use tax in this county to be increase by 1%.
- 6 6. Upon information and belief legislators met in an office in the Liberty Building with County  
7 Executive Giambra. Attached hereto and marked as Exhibit “A” is a copy of a Buffalo News  
8 Article by Robert J. McCarthy entitled “At the end, a lot of blinking” which appeared in the  
9 December 9, 2004 issue.
- 10 7. Upon information and belief this meeting of 8 to 10 legislators consisted of a quorum and  
11 was not open to the public and in fact was done in this manner to avoid public viewing.  
12 Shortly after the meeting at the Liberty Building ended the 10 legislators present at that  
13 meeting voted in favor of the tax increase agreed to vote in favor of it in exchange for certain  
14 concessions on the part of the County Executive. Attached hereto and marked as Exhibit “B”  
15 is a copy of a Buffalo News article by Mathew Spina entitled “County budget process  
16 anything but pretty” which appeared in the December 13, 2004 issue.
- 17 8. This meeting and the subsequent vote was had in violation of Article 7 of the Public Officers  
18 Law.
- 19 9. That on or about Wednesday the 8<sup>th</sup> day of December, 2004 the Erie County Legislature  
20 purportedly adopted with amendments to the budget submitted by the County Executive.
- 21 1. Article XVIII § 1803(B) of the County Charter provides “If the budget is passed by the  
22 county legislature with no additions or increases, such budget shall be deemed to have been  
23 adopted without any further action by the county executive; if, however, the budget as passed  
24 by the county legislature contains any such additions or increases, the same shall be  
25 presented by the clerk of the legislature to the county executive not later than the Wednesday

1 following the first Tuesday in December, for his consideration of such additions or increases.  
2 If the county executive approves all additions and increases, he shall affix his signature to a  
3 statement thereof and return the budget and such statement to the clerk of the legislature. The  
4 budget, including the additions and increases as part thereof, shall then be deemed adopted.”

- 5 2. These budget amendments were proposed after the tabling of the budget committee report,  
6 and less than 48 hours prior to the annual meeting of the County Legislature.
- 7 3. Upon information and belief these amendments totaled approximately 165 pages of  
8 amendments to the budget. Attached hereto and marked as Exhibit “C” is a copy of a Buffalo  
9 News Article by Mathew Spina entitled “Naples questions legality of how budget was  
10 passed” which appeared in the December 11, 2004 issue.
- 11 4. Within these 165 pages of amendments were an increase in the E-911 fee and possibly other  
12 fee increases.
- 13 5. The increase of any fee or taxes must be approved by two thirds of the legislature or by a  
14 vote of at least 10 for and 5 against.
- 15 6. The budget and amendments that have purportedly been passed was on a vote of 8 for and 7  
16 against which is less than the necessary votes to increase any fee pursuant to Article XVIII §  
17 1812 of the County Charter.
- 18 7. The County Legislature suspended its rules of operation in order to vote on the budget  
19 amendments.
- 20 8. Approval of all budget amendments were done by a single vote and were not considered and  
21 voted on separately.
- 22 9. This vote of the County Legislature was in violation of Article XVIII § 1803 of the County  
23 Charter which provides that “Budget amendments proposed subsequent to the tabling of the  
24 budget committee report, and less than forty-eight hours prior to the annual meeting, shall be  
25 considered separately and voted on individually on the floor of the legislature.”

1 10. Since the budget adopted as amended by the County Legislature on Wednesday, December 8,  
2 2004 did not comply with the County Charter the tentative budget as submitted by the  
3 County Executive on or about November 5, 2004 is the budget that is in full force and effect.

4 11. Article XVIII § 1803(E) provides that if a budget is not adopted as provided in § 1803 by the  
5 second Tuesday in December the tentative budget shall be the budget for the ensuing year.

6 12. Upon information and belief at the time of the vote not all legislators had copies of the  
7 proposed amendments and therefore could not properly consider them.

8 13. This conduct violates plaintiff's due process rights as guaranteed by the State and U.S.  
9 Constitutions and the concomitant right to a republican form of government.

10 14. Plaintiff has no adequate remedy at law.

11  
12 Wherefore, Plaintiff prays for a judgment of this court:

13 A. Declaring the adoption of a budget with amendments, not separately considered and  
14 voted upon, on December 8, 2004 violated Article XVIII §§ 1803, 1812 of the Erie  
15 County Charter;

16 B. Declaring that no budget was adopted on or before the second Tuesday of December  
17 as required by Article XVIII § 1803(E) of the County Charter;

18 C. Declaring the tentative budget submitted by the County Executive as the budget that  
19 is in full force and effect;

20 D. Declaring that the tentative budget as proposed by the County Executive is balanced  
21 as submitted;

22 E. Declaring that there is no necessity to request an increase of sales tax based on the  
23 tentative budget as submitted;

24 F. Declaring the vote and passage of the sales tax increase was in violation of Article 7  
25 of the Public Officers Law;

G. Declaring the vote and passage of the sales tax increase as null and void;

1 H. Enjoining defendants from making any changes in appropriation to the tentative  
2 budget except in accordance with Article XVIII §§ 1805, 1806 of the County Charter;

3 I. Enjoining the defendants from presenting the home rule message of necessity passed  
4 on December 8, 2004 requesting any sales tax increase from being presented to the  
5 State Legislature;

6 J. Together with costs and disbursements of this action together with such other further,  
7 and different relief as the court deems just and proper.  
8

9 DATED: December 15, 2004  
10 Buffalo, New York

11 \_\_\_\_\_  
Daniel T. Warren  
Plaintiff, Pro Se

12 State of New York )  
13 County of Erie ) ss:  
14 City of Buffalo )

15 I Daniel T. Warren, am the Plaintiff in the within action. I have read the foregoing  
16 complaint and know the contents thereof. The contents are true to my own knowledge except as  
17 to matters therein stated to be alleged upon information and belief, and as to those matters I  
18 believe them to be true.

19 \_\_\_\_\_  
Daniel T. Warren

20 Sworn to before me this  
21 \_\_\_ day of December, 2004

22 \_\_\_\_\_  
Notary Public  
23  
24  
25

# Exhibit A

## At the end, a lot of blinking

### Giambra and legislators stretched fight to limit

By ROBERT J. McCARTHY  
*News Political Reporter*  
12/9/2004

For days, Erie County's legislative and executive branches glared at each other in a stare fight laden with devastating consequences for almost 1 million Erie County residents.

Neither side will say who went first, but at the almost absolute last-minute deadline of 11 p.m., a whole lot of blinking on both sides resulted in a tentative budget agreement that while not totally "green," features some very strong verdant shades.

It raises the sales tax to 9.25 percent but still implements some of the most significant cuts in the county work force in years. And most importantly, it allows for a compromise figure of what appeared late Wednesday to be \$12.5 million in cash to be used by the city and other municipal entities.

But the agreement stemmed from a grinding process that took every minute of the long day that will be recorded as Wednesday, Dec. 8. After only two Republican legislators were brought on board - Legislator Charles M. Swanick of Kenmore, and Legislator Jeanne Z. Chase of Evans - the standoff broke enough for the Legislature to swing into action and formally adopt the agreement just before the legal deadline of midnight. Two Democrats,

Majority Leader Lynn M. Marinelli, D-Town of Tonawanda, and Albert DeBenedetti, D-Buffalo, voted against the budget but with the 10 legislators who approved the sales tax hike.

Some of the most significant movement in the monthlong budget standoff occurred Tuesday, when Giambra first backed off his hard stand of no cash for the City of Buffalo and other municipalities. He had maintained as recently as Monday that he would consider a revenue

sharing agreement only if it meant assuming Buffalo services and not if it involved cash.

"Joel Giambra's not giving cash to anybody while he's in this office," he said even more adamantly on Nov. 23.

But that changed when he signaled on Tuesday his willingness to change his stand, setting in motion a process that morphed from deep philosophical differences to one involving finding a mutually acceptable cash figure. Most sources said that while the city and other municipalities sought \$15 million from the new cash proceeds, Giambra moved from nothing in his initial stand to \$6.5 million on Tuesday.

"I agreed to provide cash, and then was told it would be 15 million (dollars) more," he said at 5 p.m. Wednesday. "There is not \$15 million to share."

Finally, at the deadline, both sides agreed to a \$12.5 million pot to be split evenly between the city and the rest of the county's municipalities. It proved to be the central aspect of long and grueling negotiations.

And what initially complicated matters, he acknowledged, was the absolute refusal of Republican legislators such as Elise M. Cusack of Amherst and Denise E. Marshall of Lancaster to consider any form of tax hike.

"There are a number of legislators on the Republican side, unfortunately, who decided to take themselves out of the process," he said.

Indeed, a process that by all accounts would require five Democrats and five Republicans to equally shoulder the political weight of the tax hike never materialized. Only two Republicans signed on.

But even as Giambra considered the revenue sharing demand in order to reach a compromise, he was saying as late as his 5 p.m. news conference that he still faced

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# THE BUFFALO NEWS

## At the end, a lot of blinking

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a \$20 million hole even with the new \$109 million generated by the new sales tax.

"You add another \$15 million, and now you've got a \$35 million hole," he complained, adding that at that point, he expected the disaster "red budget" that gutted county services and laid off 3,000 county workers to take effect.

According to sources familiar with the process, however, significant progress began to be noted at about 6:45 p.m., when Giambra and Legislature Chairman George A. Holt Jr. separately and secretly left the Rath County Office Building to negotiate at what one source said was the office of attorney Anthony J. Colucci.

When they returned at about 9:30 p.m., the same sources said the county executive began meeting with his top staff and key Republican legislators in an effort to tighten up last-minute details before eventually reaching a final agreement with Holt, his Democrats and what appeared late last night to be two Republicans.

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# Exhibit B

# THE BUFFALO NEWS

BEHIND THE HEADLINES

## County budget process anything but pretty

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**The 2005 spending package has been described as ugly, not only for the sales tax hike but because it failed to reduce patronage or pork.**

By MATTHEW SPINA  
News Staff Reporter  
12/13/2004

There are reasons why sausage and a government budget as gristly as Erie County's new package are produced out of public view.

The sight is no treat for consumers or taxpayers.

Legislators late Wednesday brushed aside New York State's Open Meetings Law so they could find an out-of-the-way corner with County Executive Joel A. Giambra. There, both sides were free to argue blatant political positions.

Although they haggled over the "Medicaid penny" that will be added to the sales tax, the politicians saved some of the very things taxpayers at public hearings said they didn't want saved: patronage and pork.

"This budget process was terrible," Giambra said later, "and I hope to never have to experience something like this again because the taxpayers were not the winners here."

So what went on? Sources on both sides painted scenes of a pivotal meeting, waged between 8 and 9 p.m. Wednesday.

With a midnight deadline approaching, lawmakers and Giambra needed privacy. Reporters and union leaders were pacing the fourth floor of Old County Hall, so the eight Democrats and two of seven Republicans met at the Liberty Building office of Anthony J. Colucci III, the lawyer to the Erie County Medical Center and a Giambra friend.

Democrats that afternoon had forced a test vote to show all eight were willing to raise the sales tax. Giambra had only two votes among his Republican caucus.

If the new sales tax was to attract the 10 votes needed, Democrats would drive the decisions.

Giambra had to cave on the amount of new sales tax money he was willing to share with other local governments - \$15 million and not a penny less, he was told.

Then there were jobs to protect. Not all jobs. Just the right jobs.

Giambra wanted to save the 200 workers the Democrats had targeted days earlier, calling them his patronage. A committee they controlled had deleted those positions, and while some Democrats insisted the jobs remain deleted, others would use them to bargain.

Democrats worried about their patronage, too. They control roughly half of the 95 staff jobs that serve the Legislature, a ratio of six full-time workers for every part-time lawmaker. The Democratic and Republican parties also split the 72 jobs at the Board of Elections.

The budget Giambra had proposed weeks earlier laid off dozens of those workers, making them his chits in bargaining for a better budget.

Inside Colucci's office, Giambra and the 10 legislators went round and round. If \$15 million of the \$108.4 million in new sales tax money was to be shared with other localities, how would the Democrats find the savings in county operations?

Both sides wanted to choose the options, and both sides complained the other was keeping the specifics to itself for as long as possible.

At one point, Democratic negotiators said they would talk about restoring Giambra's 200 patronage jobs after Jan. 1.

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# THE BUFFALO NEWS

BEHIND THE HEADLINES

## County budget process anything but pretty

Giambra, according to one lawmaker, said he didn't think he could trust that to happen.

That's when Mark J.F. Schroeder, a Democrat from South Buffalo, stiffened. He rose from his chair at the opposite end of the table and rounded the corner toward Giambra, arguing that it wasn't the Democrats who couldn't be trusted.

Some people in the room feared the worst, but to quell the confrontation, the meeting broke apart. "There were a lot of emotional highs and lows through the whole thing," Schroeder said Saturday. "It's not something I would prefer to talk about."

Said Giambra: "There was a lot of frustration."

At some point, Giambra and Legislature Chairman George A. Holt Jr., D-Buffalo, started talking again. About 9 p.m. they found common ground. The county would share \$12.5 million with other local governments, including about \$6 million with the City of Buffalo.

There were other provisions:

- Giambra's 200 jobs were restored.
- The Legislature would lose no staff members.
- Giambra would keep most of the 25 jobs authorized for his top-floor suite, though he said he'll reassign his patronage czar to another office.
- Legislators still have pork spending to bestow in their districts, about \$150,000 per member. And \$400,000 - perhaps eight to 10 jobs - was cut at the Board of Elections.

As for the taxpayers, they suffer a 12 percent increase in the sales tax, as it goes up a penny to 9.25 cents on the dollar.

At a series of public hearings, several taxpayers said they were willing to pay more for crucial services if the

county operated at a leaner level and shed the pork and patronage.

It didn't.

County departments are spared the suffering in Giambra's "scorched earth" package, which he drafted as an argument for a higher sales tax. But top officials are still assessing how much they can spend next year. They're also assessing the ranks, because about 400 county workers will be let go. Giambra calls it the largest onetime staff reduction in county history.

The budget process was roundly described as ugly. Some lawmakers doubt the budget would survive a legal challenge. They called it business as usual in Erie County.

Included in the new budget are a smattering of higher fees, which require 10 votes and received eight when Democrats Al DeBenedetti of Buffalo and Lynn M. Marinelli of the Town of Tonawanda broke from their caucus, enraged that pork and patronage were protected.

Giambra, who later accused them of hypocrisy, said he will have to veto some budget items "for corrections."

The Legislature has a meeting set for 2 p.m. Tuesday to take up remaining budget matters.

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# Exhibit C

## Naples questions legality of how budget was passed

By MATTHEW SPINA  
News Staff Reporter  
12/11/2004



File photo County Comptroller Nancy A. Naples is looking into the legality of the county budget.

Erie County Comptroller Nancy A. Naples is among the people wondering if the county's new budget is a legal document, considering the Legislature's shortcuts.

She is seeking an opinion from County Attorney Frederick A. Wolf, who watched late Wednesday as the Legislature approved \$1.1 billion in spending, with only minutes to examine the package before them.

Pages of data were still being compiled Friday, two days later, and department heads were searching for details on how much to spend in 2005.

The plan requires laying off about 400 employees, raises the sales tax and establishes a new motor-vehicle use tax that requires \$5 more when registering a passenger vehicle and \$10 for vehicles weighing more than 3,500 pounds. There is also a new 35-cent charge on cellular telephone bills to enhance the 911 system.

Some legislators, too, have questioned whether members followed their own rules and the County Charter, particularly when voting on amendments negotiated in secret. Legislators said the rules required them to approve amendments one by one, not in a bundle as was done.

"The budget was chaotically adopted. It may have looked a little crazy, but we think the budget was properly adopted," Wolf said Friday, adding that he won't provide a written opinion for Naples until the entire process plays out.

County Executive Joel A. Giambra has until Monday to veto spending added by the Legislature, which appears unlikely because he negotiated many of its additions. The Legislature would have until Tuesday to override a veto, with at least 10 votes from its 15 members.

The budget passed 8-7 in a vote that crossed party lines. At least three of the legislators who opposed it - Republican Barry Weinstein of Williamsville and Democrats Albert DeBenedetti of Buffalo and Lynn M. Marinelli of the Town of Tonawanda - say the process was flawed and probably illegal.

DeBenedetti says he is considering court action, and if he prevails it would pitch the government into a new battle. The "scorched earth" budget that Giambra proposed, but did not want adopted, would swing into effect Jan. 1.

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# THE BUFFALO NEWS

## Naples questions legality of how budget was passed

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Lawmakers and Giambra would then have to haggle over how to add the \$108.4 million in new money provided by the sales tax increase that was authorized 10-5.

Erie County now needs Albany's approval to raise the sales tax to 9.25 cents on each dollar of goods purchased after March 1.

Assembly Majority Leader Paul A. Tokasz, D-Cheektowaga, said he has questions for Erie County officials that should be answered before the bill can be introduced in January.

"There's certainly going to be a lot of discussion," he said.

State Sen. Dale Volker, R-Depew, predicts the State Legislature will go along.

"We'll do what we have to do," Volker said. "We're not going to let the county go down."

The Pataki administration would not say Friday if the governor would sign the legislation. But Andrew Rush, a Budget Division spokesman, said the governor "understands the need for localities to make their own decisions about their own local finances."

Naples also asked Wolf whether the Legislature had met its deadline to approve a budget. A deadline of 11:59 p.m. Tuesday was missed when closed-door negotiations broke down, but Wolf said that wasn't a formal deadline.

The Legislature's rules required lawmakers to meet Tuesday but didn't require that work be completed that day. The County Charter, he said, required that lawmakers deliver a budget the next day to the county executive. If they didn't, his so-called "red budget" would be adopted by default. The Legislature's budget was delivered by midnight Wednesday.

"In the charter, the final budget has to be delivered by the clerk no later than the end of the day on

Wednesday," said Wolf, adding that the requirement was met. He called that issue a dead horse that needs to be put to rest.

Days before their vote, Naples had urged the Legislature to approve a "sound fiscal plan which will last long after the ink has dried on the paper."

She said in a letter that they shouldn't embrace the "green budget" that Giambra drafted but did not propose, to show how services could be saved with a higher sales tax.

"There are no simple answers," Naples wrote, "and the green budget, with its temporary sales tax, motor vehicle tax, wireless surcharges and piecemeal cuts, while continuing the borrow-and-spend philosophy of the last four years, is not the answer."

News staff reporter Tom Precious contributed to this report.

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