

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
EMILY CONVERS, MICHAEL EGAN,
JULIE TANNER, ROSEMARY KNAPP,
ANDREW BUCK, ANNA BUCK,
DEREK DeFREITAS, MARGARET
KAZDAN, GRETCHEN POLLACK,

2014 007344

Petitioners,

VERIFIED PETITION

vs.

COUNTY OF ORANGE, ORANGE COUNTY
BOARD OF ELECTIONS,

Respondents.
-----X

By and through their counsel, Michael H. Sussman, petitioners allege as to
defendants:

1. The nine petitioners - EMILY CONVERS, MICHAEL EGAN, JULIE
TANNER, ROSEMARY KNAPP, ANDREW BUCK, ANNA BUCK, DEREK
DeFREITAS, MARGARET KAZDAN and GRETCHEN POLLACK - are all
adult residents of the County of Orange, State of New York. None of the
petitioners is a member of Satmar or a Hasidic or Orthodox Jew.

2. Petitioners all trained to be election inspectors for the 2014 primary and
general elections or otherwise qualified for that paid position by dint of their prior
training.

3. Petitioners all successfully completed the training offered to qualify as election inspectors.

4. With the exception of Knapp and Pollack, who were unavailable the day of the 2014 primary, but are available to serve as Election inspectors for the General Election on November 4, 2014, each petitioner was ready, willing and able to serve as an election inspector in the Village of Kiryas Joel, and each made their desire to do so known to respondents.

5. Respondents County of Orange and the Orange County Board of Elections are, respectively, a municipal corporation which may sue and be sued and a hybrid County Department mandated by State Election law and constituted and funded by the County of Orange. The County of Orange provides funding and legal counsel for the Orange County Board of Elections which is required to train and designate election inspectors for each election district for each primary and general election. The respondents employ election inspectors on a per diem basis and, as such, are employers within the meaning of section 292 of the Executive Law of the State of New York. The Orange County Board of Elections is the final policy-maker for the County of Orange with regard to decisions involving the employment and assignment of election inspectors and, accordingly, its decisions represent the County's.

6. As the actions of respondents are arbitrary, capricious and contrary to law, i.e., a violation of the First and Fourteenth Amendments to the United States Constitution and section 296(1) of the Executive Law of the State of New York, and as this Court may issue declaratory and injunctive relief to remedy the illegality complained of, this Court has jurisdiction over this matter pursuant to Articles 30 and 78 of the Civil Procedure Law.

STATEMENT OF FACTS

7. The Village of Kiryas Joel is part of the Town of Monroe and is exclusively comprised of between 28-30,000 Hasidic residents. For the 2014 primary held on September 9, 2014, the Village of Kiryas Joel was divided into 16 election districts [Town of Monroe districts 20-35] and its voters cast ballots at two locations.

8. Respondents employ election inspectors and assign them to each election district to assist voters and to ensure the conduct of fair and impartial elections.

9. In Kiryas Joel, respondent Board of Elections typically assigns four election inspectors to each election district.

10. Neither State law nor the practice of respondent Board of Elections requires that election inspectors reside in the Town, village or election district to which he/she is assigned. Indeed, respondent Board of Elections informed those

who registered for the inspector class that s/he could be assigned anywhere in Orange County.

11. In a conversation held on August 12 , 2014, Commissioner Susan Bahren (hereinafter "Bahren") of respondent Board of Elections acknowledged to petitioner Convers that the assignment of non-Hasidic election inspectors was a controversial matter about which she had already received a call from the Orange County Attorney. See, Exhibit 1 for certified transcript of this phone conversation.

12. During this conversation, Bahren conceded that, in recent years, the Board of Elections had not assigned non-Hasidic persons as election inspectors in Kiryas Joel. Id.

13. Petitioner Convers explained that this was discriminatory against non-Hasidic election inspectors and that the integrity of the elections depended on outside oversight. Id.

14. Before August 15, 2014, several petitioners, including petitioners Donald Andrew Buck and Anna Buck, had asked the Board of Elections to assign them to be election inspectors in the Village of Kiryas Joel.

15. On or about August 15, 2014, the Board of Elections issued assignments to election inspectors and did not assign any non-Hasidic inspectors.

16. On August 18, 2014, petitioner Buck contacted Bahren and questioned the Board of Election's rationale in denying the request of non-Hasidic persons to serve as election inspectors in the Village of Kiryas Joel.

17. During this conversation, Bahren stated that "We're just going ahead and placing people from Kiryas Joel in the Kiryas Joel districts. That's a decision based on the commissioners, both us have made that decision, and that's what we're going to do, Mr. Buck." See, Exhibit 2 for a certified transcript of this conversation.

18. On August 24, 2014, petitioner Convers, who is the Chairperson of United Monroe, a community organization committed, *inter alia*, to the conduct of fair elections in the Town of Monroe, including the Village of Kiryas Joel, made a formal written request to respondent Orange County Board of Elections that non-Hasidic persons be permitted to serve as election inspectors in the Village of Kiryas Joel. See, Exhibit 3.

19. Petitioner Convers' request noted the chaotic and arguably fraudulent conduct which characterized the 2013 general election and explained that having election inspectors who are not part of same voting bloc was one antidote to this perversion of the electoral process. Id.

20. Thereafter, on August 28, 2014, Bahren and David Green, the Republican election commissioner, signed a letter approving the assignment of one

non-Hasidic person as an election inspector at each table or district and so informed petitioners Convers and Donald Andrew Buck, who also had complained about the “segregation” of election inspectors. See, Exhibit 4 & 5.

21. Thereafter, Bahren notified petitioners (via a letter received 9/3), excepting petitioners Knapp and DeFreitas, that s/he had been assigned to be an election inspector for the 2014 primary in Kiryas Joel. See, Exhibit 6 for such letters.

22. Upon receipt on September 3, 2014, petitioners Egan, Andrew Buck and Anna Buck faxed their acceptance of assignment back to the Board of Elections.

23. Before she could fax her acceptance back, Petitioner Convers was advised that the Board of Elections had rescinded her appointment to serve as an election inspector in Kiryas Joel.

24. On September 5, 2014, four days before the primary election, petitioners Buck, Buck, Convers, Egan & Kazdan each received a letter expressly rescinding their appointment without explanation or re-assignment. See, Exhibit 7 for such letters.

25. Election Law sect. 3-416 does not allow such rescission other than for good cause.

26. Petitioners’ conduct did not provide good cause for the rescission of their assignments.

27. Upon learning of this rescission, but before receipt of the letter rescinding her appointment, petitioner Convers spoke with both election commissioners Green and Bahren.

28. Commissioner Bahren expressly explained that "cultural" factors, as well as "history," caused the Board of Election to change its position and rescind the assignment of non-Hasidic election inspectors to Kiryas Joel electoral districts. See, Exhibit 8 is the certified transcript of this conversation.

29. Commissioner Bahren eventually admitted that the Board of Elections had adopted a policy of disallowing non-Hasidic persons from serving as election inspectors because of opposition to their placement by leaders of the Village of Kiryas Joel, pressure from the Orange County Attorneys' Office and the desire to protect the purported "right" of the people of Kiryas Joel to have election inspectors from their own group. Id.

30. None of these reasons supports the religiously-based discrimination which this decision entails; nor is the action supported by any compelling justification or narrowly tailored to meet the dictates of strict scrutiny.

31. After rescinding their assignment to the Village of Kiryas Joel polling sites, respondent Board of Elections did not re-assign petitioners to serve as election inspectors for the 2014 primary and thereby deprived petitioners of the per diem salary provided to election inspectors.

32. After learning that other non-Hasids assigned as election inspectors had been advised that they would not be so assigned, petitioner DeFreitas called the Board of Election to check and see whether he would still be so assigned, as had been suggested in prior phone calls he had with the Board of Elections.

33. Petitioner DeFreitas so called the Board of Elections because he had never received a letter of assignment [though he had received several calls from Board of Elections agents inquiring whether he wanted to work in Kiryas Joel].

34. After he called to check on his assignment, petitioner DeFreitas received no confirmation that, as previously discussed, he would be allowed to work as an election inspector in Kiryas Joel.

35. Instead, an agent of the Board of Elections asked whether he would work as a voting machine operator in Kiryas Joel.

36. Petitioner DeFreitas declined and responded that he wanted to work as a table election inspector, but, thereafter, he received no such assignment for the 2014 primary.

37. Respondents' decision to disallow petitioners from serving as election inspectors as assigned was based upon their religions and thereby violated the Executive Law of the State of New York, section 296.

38. Respondents' decision to disallow petitioners to serve as election inspectors as assigned was arbitrary, capricious and contrary to law.

39. Respondent's decision is likely to be repeated since Commissioner Bahren has admitted that the same logic as eventually controlled here has long caused respondent Board of Elections not to assign non-Hasidic election inspectors in every election but one when, she explained, a federal court had requested the Board of Elections to assign non-Hasidic election inspectors in Kiryas Joel.

40. Petitioners remain willing and able to serve as election inspectors in the general election of 2014 in the Village of Kiryas Joel.

41. The rationale for assigning at least one non-Hasidic election inspector to each election district for the 2014 general election remains unchanged from that set forth in petitioner Convers' letter dated August 24, 2014.

42. Both to insure the integrity of the general election and to disallow blatant discrimination on the basis of religion, this Court should order respondent to adhere to the assignments rescinded by its letters of September 5, 2014 to petitioners.

CAUSES OF ACTION

AS AND FOR A FIRST CAUSE OF ACTION

43. Petitioners re-allege each paragraph pleaded heretofore as if fully restated herein.

44. Respondents' policy and practice of assigning election inspectors on the basis of religion are repugnant to and violate the right of each petition to equal protection as guaranteed by the 14th Amendment to the United States Constitution.

45. Accordingly, respondents' challenged conduct is arbitrary, capricious manner and contrary to law and must be enjoined by this Court.

AS AND FOR A SECOND CAUSE OF ACTION

46. Petitioners re-allege each paragraph pleaded heretofore as if fully restated herein.

47. Respondents' policy and practice of assigning election inspectors on the basis of religion are repugnant to and violate the First Amendment to the United States Constitution as tend to establish and recognize a state religion in Kiryas Joel and assign state-sanctioned employees to fill state-mandated positions on the basis of their religious affiliation.

48. Accordingly, respondents' challenged conduct is arbitrary, capricious manner and contrary to law and must be enjoined by this Court.

AS AND FOR A THIRD CAUSE OF ACTION

49. Petitioners re-allege each paragraph pleaded heretofore as if fully restated herein.

50. Respondents' policy and practice of assigning election inspectors on the basis of religion are repugnant to and violate section 296(1) of the Executive Law of the State of New York which prohibits discrimination, defined as segregation and separation, of employees on the basis of creed.

51. Accordingly, respondents' challenged conduct is arbitrary, capricious manner and contrary to law and must be enjoined by this Court.

AS AND FOR A FOURTH CAUSE OF ACTION

52. Petitioners re-allege each paragraph pleaded heretofore as if fully restated herein.

53. As respondents' conduct violates federal and state law, petitioners pray that the Court declare that the practice of assigning election inspectors on the basis of religion is illegal and enjoin the same in the 2014 General Election to be held on November 4, 2014.

PRAYER FOR RELIEF

WHEREFORE, petitioners pray that this Honorable Court [a] accept jurisdiction over this matter, [b] declare the respondents' policy and practice of assigning election inspectors to polling places in the Village of Kiryas Joel illegal and unconstitutional, temporarily, preliminarily, [c] permanently enjoin

respondents from assigning election inspector, or any other election workers, on the basis of their religions or any proxy therefore, including, for example, residency in the Village of Kiryas Joel, [d] order the Board of Elections to assign election inspectors in a non-discriminatory manner; [e] award to respondents the sums they were denied by the violation of their constitutional and statutory rights, [f] enter any other relief required by law and equity and [g] award petitioners the costs and disbursements incurred in this matter as permitted by law.

Yours, etc.


MICHAEL H. SUSSMAN

SUSSMAN & WATKINS
PO BOX 1005
GOSHEN, NEW YORK 10924
(845)-294-3991

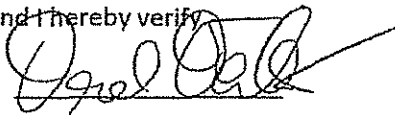
Counsel for Petitioners

Dated: September 22, 2014

VERIFICATION

STATE OF NEW YORK)
) ss:s.
COUNTY OF ORANGE)

I, DEREK DE FREITAS, am one of the petitioners in this action. I am a resident of the Town of
. I have reviewed the annexed Verified Petition and the allegations which relate to me are
known to me to be true and accurate and I hereby verify.



Signed and sworn to before me this 22 day of September 2014.

Marcia Borkowsky
NOTARY PUBLIC

My commission expires:

MARCIA BORKOWSKY
Notary Public, State of New York
Qualified in Orange County
Registration No. 01BO6170618
Commission Expires July 9, 20 15

VERIFICATION

STATE OF NEW YORK)

) ss:s.

COUNTY OF ORANGE)

I, *Rosemary Knapp*
Monroe am one of the petitioners in this action. I am a resident of the Town of
I have reviewed the annexed Verified Petition and the allegations which relate to me are
known to me to be true and accurate and I hereby verify.

Rosemary Knapp

Signed and sworn to before me this 22 day of September 2014.

Marie Coimbra

NOTARY PUBLIC

My commission expires:

MARIE COIMBRA
Notary Public, State of New York
Registration No. 01CO624496T
Qualified in Orange County
Commission Expires July 18, 20 15

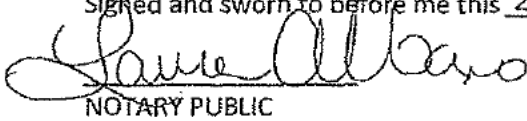
VERIFICATION

STATE OF NEW YORK)
) ss:s.
COUNTY OF ORANGE)

I, Michael Egan, am one of the petitioners in this action. I am a resident of the Town of ~~Monte~~ Monte. I have reviewed the annexed Verified Petition and the allegations which relate to me are known to me to be true and accurate and I hereby verify.



Signed and sworn to before me this 22 day of September 2014.



NOTARY PUBLIC

My commission expires: 4/4/2015

Lauren Albano
Notary Public - State of New York
Reg. # 01AL6238253
Qualified in Orange County
Comm. Exp. 04/04/2015

VERIFICATION

STATE OF NEW YORK)
) ss:s.
COUNTY OF ORANGE)

I, MARGARET KAZDAR am one of the petitioners in this action. I am a resident of the Town of Monroe. I have reviewed the annexed Verified Petition and the allegations which relate to me are known to me to be true and accurate and I hereby verify.

Margaret Kazdar

Signed and sworn to before me this 22nd day of September 2014.

Amy Eng
NOTARY PUBLIC

My commission expires:

AMY ENG
NOTARY PUBLIC - STATE OF NEW YORK
QUALIFIED IN ORANGE COUNTY
REG. NO 01EN6160866
COMMISSION EXPIRES FEB. 12, 20 15

VERIFICATION

STATE OF NEW YORK)
) ss:s.
COUNTY OF ORANGE)

I, Julie Tanner, am one of the petitioners in this action. I am a resident of the Town of Monroe, NY. I have reviewed the annexed Verified Petition and the allegations which relate to me are known to me to be true and accurate and I hereby verify.

Julie Tanner

Signed and sworn to before me this 22 day of September 2014.

[Signature]
NOTARY PUBLIC

MANA SIMS
Notary Public, State of New York
Qualified in Orange County
No. 01SI6264236
My Commission Expires 06-25-2016

My commission expires: 06/25/2016

VERIFICATION

STATE OF NEW YORK)
) ss:s.
COUNTY OF ORANGE)

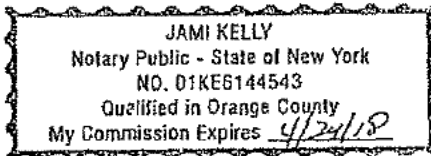
I, Emily Conners, am one of the petitioners in this action. I am a resident of the Town of Monroe. I have reviewed the annexed Verified Petition and the allegations which relate to me are known to me to be true and accurate and I hereby verify.

Emily Conners

Signed and sworn to before me this 22nd day of September 2014.

Jami Kelly
NOTARY PUBLIC

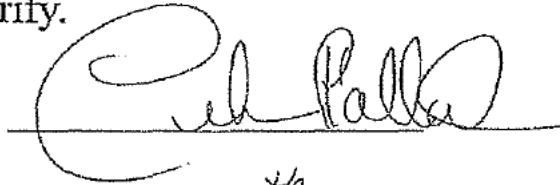
My commission expires: 4/24/18



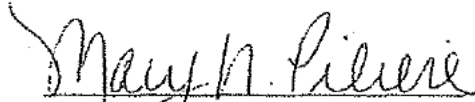
VERIFICATION

STATE OF NEW YORK)
) ss:s.
COUNTY OF ORANGE)

I, *Gretchen Pollack*, am one of the petitioners in this action. I am a resident of the Town of *Monroe, N.Y.*
. I have reviewed the annexed Verified Petition and the allegations which relate to me are known to me to be true and accurate and I hereby verify.



Signed and sworn to before me this 20th day of September 2014.



NOTARY PUBLIC

MARY N. PILIERE
Notary Public, State of New York
No. 01PI6017549
Qualified in Orange County
Commission Expires December 14, 2014

My commission expires: *12/14/2014*