

SUPREME COURT
COUNTY OF MONROE STATE OF NEW YORK

ROCHESTER SCHOOL DISTRICT,
and the BOARD OF EDUCATION OF THE
ROCHESTER CITY SCHOOL DISTRICT,

VERIFIED PETITION

Index No.: _____

Petitioners,

- against -

CITY OF ROCHESTER, LOVELY A. WARREN,
as Mayor of the City of Rochester, COUNCIL OF
THE CITY OF ROCHESTER, and the MONROE
COUNTY BOARD OF ELECTIONS,

Respondents.

Petitioners, Rochester City School District and the Board of Education of the Rochester City School District, by Karl W. Kristoff, General Counsel for the Rochester City School District, as and for its Verified Petition, respectfully alleges as follows:

JURISDICTION

1. The Court has jurisdiction to grant the relief requested under Article 78 of the CPLR.

VENUE

2. Pursuant to CPLR §§ 504 and 506, the venue of this proceeding is Monroe County, the county where the Petitioners and the Respondents are located and where the determination challenged by this proceeding was made.

PARTIES

3. Petitioner, Rochester City School District (hereinafter the “District”), is a city school district organized under and subject to the Laws of New York State, with its principal office located at 131 West Broad Street, Rochester, New York 14614.

4. Petitioner, Board of Education of the Rochester City School District (hereinafter the “Board”), is a body corporate organized under and subject to the Laws of New York State. The Board is the governing body of the District, located at the address of the District, above.

5. Respondent, City of Rochester (hereinafter the “City”), is a municipal corporation organized under and subject to the Laws of New York State, with its principal office located at City Hall, 30 Church Street, Rochester, New York 14614 (hereinafter “City Hall”).

6. Respondent, Lovely A. Warren, Mayor of the City of Rochester (hereinafter the “Mayor”), is a municipal officer elected under and subject to the Laws of New York State, with the Mayor’s principal office being located at City Hall.

7. Respondent, Council of the City of Rochester (hereinafter the “City Council”), is the governing body of the City, organized under and subject to the Laws of New York State, vested with all legislative power of the City, located at City Hall.

8. Respondent, Monroe County Board of Elections (hereinafter the “Board of Elections”) is a Department of Monroe County responsible for administering all aspects of elections in Monroe County, organized under and subject to the Laws of New York State, with its principal office located at 39 West Main Street, Rochester, New York 14614.

PETITIONERS' CLAIMS

9. By way of this Petition, Petitioners respectfully request that the Court issue an Order of Preliminary Injunction pursuant to CPLR § 6311, enjoining the Respondents, City of Rochester, Lovely A. Warren, as Mayor of the City of Rochester, Council of the City of Rochester, and the Monroe County Board of Elections, from placing the Referendum referred to in Local Law 4, entitled “Our Children, Our Future,” duly passed by the City Council, on June 18, 2019, approved by the Mayor, and adopted by the City on July 8, 2019 (hereinafter the “Referendum”), on the Ballot for the November 5, 2019 general election in the City of Rochester (hereinafter the “Ballot”); and enjoining the Respondents from further using public funds with regard to the Referendum; and waive any undertaking under CPLR § 6312 pursuant to CPLR § 2512(1).

10. Petitioners further respectfully request that the Court issue an Order and Judgment pursuant to CPLR Article 78, CPLR § 7801, *et seq.*, and for declaratory judgment, determining that the Referendum is an unauthorized advisory referendum; granting a Permanent Injunction, enjoining the Respondents from placing the Referendum on the on the Ballot, and/or removing the Referendum from the Ballot if already placed; and enjoining the Respondents from further using public funds with regard to the Referendum; along with such other and further relief as the Court deems just and equitable.

11. On May 23, 2019, the City published a news release promoting a possible plan for New York State to assume control of the District. In the release, the City also published a video of the Mayor urging residents to contact their senators and assembly members to support a State takeover.

12. On June 7, 2019, the City announced that it had submitted legislation to the City Council to put a referendum on the November ballot asking city residents to support a State takeover of the District.

13. The City thereafter submitted a letter to the City Council with a proposed Local Law, entitled “Our Children, Our Future.” The City advised the City Council that its intent was “to ask its citizens, by the affirmative vote of its electors, to determine if removal of the Board . . . to allow the State . . . to institute necessary processes and procedures would provide a better educational outcome for our City students.” The City also provided a statement of necessity for amending the City Charter “to allow the State Commissioner of Education to institute necessary processes and procedures that will provide a better educational outcome for our City students.”

14. The City Council discussed and considered the proposed Local Law, and approved the legislation and Referendum during its June 18, 2019 regular meeting.

15. The Local Law was duly passed by the City Council on June 18, 2019, approved by the Mayor, and was duly adopted on July 8, 2019. The Local Law, as it was passed, proposed the amendment of the City Charter, as follows:

- a. The Local Law proposed the removal of the phrase “the Commissioners of Schools” from the provision of the City Charter governing the ability of City residents to elect municipal officers.
- b. The Local Law proposed the removal of the phrase “and the term of office of Commissioners of Schools is four years” from the provision of the City Charter governing the terms of office of municipal officers.
- c. The Local Law proposed the deletion of the provision of the City Charter governing the salaries of the Commissioners of the Board of Education.

- d. The Local Law proposed that the amendment to the City Charter remain in effect for a period of not less than five years.

16. The City, Mayor, and City Council, determined that the Local Law should be submitted to voters through the Referendum, “and shall take effect only if and when it is certified as having been approved by the affirmative vote of a majority of the qualified electors voting on said proposition and the enactment of appropriate enabling amendments to the Education Law.”

17. On July 12, 2019, the Mayor sent a letter to Rochester residents urging residents to vote on the Referendum. The letter appeared to convey approval for the Referendum.

18. On July 19, 2019, the Democrat and Chronicle published an article revealing that the Mayor’s letter was sent to 30,000 addresses, at an expense to the public of approximately \$10,000.

19. On July 23, 2019, Thomas F. Ferrarese, Commissioner of the Board of Elections, advised that the City has indicated to the Board of Elections that it will be submitting a referendum. The City’s referendum must be submitted by August 5, 2019 if it is to be included on the Ballot pursuant to Election Law § 4-108(1)(b). Board of Elections programming ordinarily begins within a week thereafter, and printing of ballots begins in September. The issue of whether a referendum is to be included on the Ballot must be resolved by August 5, 2019.

20. As detailed in the accompanying memorandum of law and the affirmation of Alison K.L. Moyer, the Referendum proposed by the City is an unauthorized advisory referendum.

21. The Referendum is improper and invalid, and should not be placed on the Ballot.

22. The allocation of public resources to support an advisory referendum is an improper use of public funds. The City and the Mayor should not be using public funds to place the Referendum on the Ballot. The City and the Mayor also should not be using public funds to persuade the public on the merits of the Referendum, or otherwise convey favoritism, partiality, or approval of the Referendum.

23. An immediate preliminary injunction is necessary in this action to enjoin the Respondents from placing the Referendum on the Ballot by the August 5, 2019 deadline, and to enjoin the Respondents from using further public funds with regard to the Referendum.

24. The immediate need for the preliminary injunction is demonstrated by the fact that the City, the Mayor and the City Council have moved forward with the improper and invalid Referendum, and have spent in excess of \$10,000 to date advocating for and/or promoting the improper and invalid Referendum.

25. Once the Referendum is accepted by the Board of Elections, it will be extremely difficult to alter the Board of Elections' programming and printing of the Ballot.

26. Furthermore, the Referendum, if it were passed, would amend the City Charter, in an attempt to nullify the results of the duly conducted elections by which the current Commissioners of the Board of Education were placed in office, as well as operate to preclude the voters from popularly electing individuals to represent them in governing the affairs of the District, in violation of the legal rights of the District and the Board, and the residents of Rochester.

WHEREFORE, Petitioners respectfully request that this Court issue an Order and Judgment, for the following relief:

1. An Order of Preliminary Injunction pursuant to CPLR § 6311, enjoining the Respondents,

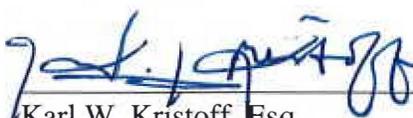
City of Rochester, Lovely A. Warren, as Mayor of the City of Rochester, Council of the City of Rochester, and the Monroe County Board of Elections, from placing the Referendum referred to in Local Law 4, entitled "Our Children, Our Future," duly passed by the City Council, on June 18, 2019, approved by the Mayor, and adopted by the City on July 8, 2019 (hereinafter the "Referendum"), on the Ballot for the November 5, 2019 general election in the City of Rochester (hereinafter the "Ballot"); and enjoining the Respondents from further using public funds with regard to the Referendum; and waiving any undertaking under CPLR § 6312 pursuant to CPLR § 2512(1); and

2. An Order and Judgment pursuant to CPLR Article 78, CPLR § 7801, *et seq.*, and for declaratory judgment, that the Referendum is an unauthorized advisory referendum, and for an Order and Judgment granting a Permanent Injunction, enjoining the Respondents from placing the Referendum on the on the Ballot, and/or removing the Referendum from the Ballot if already placed; and enjoining the Respondents from further using public funds with regard to the Referendum; along with such other and further relief as the Court deems just and equitable.

DATED: July 26, 2019
Rochester, New York

ROCHESTER CITY SCHOOL DISTRICT
DEPARTMENT OF LAW
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BY:



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