

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NIAGARA

Linda Hurley, and Rev. Rex Stewart, Duly Registered Voters in the State of New York; David Buchwald, Robert Carroll, Harvey Epstein, Robert Jackson, Walter Mosley and Phil Steck, Individually and as Qualified Candidates for Public Office Under the Laws of the State; Anita Thayer and Jonathan Westin, Individually and as Co-Chairs of the New York State Committee of the Working Families Party and Members of the Executive Board of the New York State Committee of the Working Families Party; The New York State Committee of the Working Families Party; and The Executive Board of the New York State Committee of the Working Families Party,

Plaintiffs

v.

The Public Campaign Financing and Election Commission; Mylan Denerstein, Jay Jacobs, DeNora Getachew, John Nonna, Rosanna Vargas, Crystal Rodriguez, Henry Berger, David Previte, and Kimberly Galvin, as Commissioners of the Public Campaign Financing and Election Commission; The State of New York; The Board of Elections of the State of New York; Peter S. Kosinski, Douglas A. Kellner, Andrew J. Spano, and Gregory P. Peterson, Commissioners of the Board of Elections of the State of New York; the Governor of the State of New York; the Assembly of the State of New York; the Speaker of the Assembly; the Minority Leader of the Assembly, the Senate of the State of New York; the Majority Leader of the Senate; and the Minority Leader of the Senate;

Defendants

Index No.

VERIFIED COMPLAINT

PLAINTIFFS, Linda Hurley, Rev. Rex Stewart, voters and electors of the State of New York; David Buchwald, Robert Carroll, Harvey Epstein, Robert Jackson, Walter Mosley and Phil Steck, individually and as qualified candidates for public office under the laws

of the State; Anita Thayer and Jonathan Westin, individually and as Co-Chairs of the New York State Committee of the Working Families Party and Members of the Executive Board of the New York State Committee of the Working Families Party; The New York State Committee of the Working Families Party; and The Executive Board of the New York State Committee of the Working Families Party, by way of a Complaint seeking a declaratory judgment against DEFENDANTS the Public Campaign Financing and Election Commission; Mylan Denerstein, Jay Jacobs, DeNora Getachew, John Nonna, Rosanna Vargas, Crystal Rodriguez, Henry Berger, David Previte, and Kimberly Galvin, Commissioners of the Public Campaign Financing and Election Commission; the State of New York; the Board of Elections of the State of New York; Peter S, Kosinski, Douglas A. Kellner, Andrew J, Spano, and Gregory P. Peterson, Commissioners of the Board of Elections of the State of New York; the Governor of the State of New York; the Assembly of the State of New York; the Speaker and Minority Leader of the Assembly of the State of New York; the Senate of the State of New York; the Majority Leader and Minority Leader of the Senate of the State of New York, do hereby allege and say:

PRELIMINARY STATEMENT

1. This is an action brought by Linda Hurley and Rev. Rex Stewart voters duly registered in the State of New York; David Buchwald, Robert Carroll, Harvey Epstein, Robert Jackson, Walter Mosley and Phil Steck, qualified candidates for public office under the laws of the State; Anita Thayer and Jonathan

Westin, as Co-Chairs of the New York State Committee of the Working Families Party and members of the Executive Board of the New York State Committee of the Working Families Party; the New York State Committee of the Working Families Party; and the Executive Board of the New York State Committee of the Working Families Party, (collectively the “Plaintiffs”) against the Public Campaign Financing and Election Commission. (the “PCFEC”); Mylan Denerstein, Jay Jacobs, DeNora Getachew, John Nonna, Rosanna Vargas, Crystal Rodriguez, Henry Berger, David Previte, and Kimberly Galvin, Commissioners of the Public Campaign Financing and Election Commission; the State of New York, the Board of Elections of the State of New York (the “Board”), Peter S. Kosinski, Douglas A. Kellner, Andrew J. Spano, and Gregory P. Peterson, Commissioners of the State of New York; the Governor of the State, the Assembly of the State and its designated leadership, the Senate of the State and its leadership (collectively the “Defendants”) for declaratory judgment against the Defendants.

2. The action seeks a declaration of the legal rights and relations of Plaintiffs and Defendants as a result of the ongoing violation of the Plaintiffs constitutional and legal rights by Defendants. These injuries arise from the creation and actions of the PCFEC. The creation, purposes and actions of the PCFEC violate the Constitution of the State of New York (the “Constitution”) and the rights of

citizens, electors, candidates, persons and political parties to fusion voting as secured by the Constitution and laws of the state.

3. Plaintiffs seek a declaratory judgement establishing that the right to fusion voting is guaranteed to the Plaintiffs by the Constitution and that the Defendants may not completely, partially, explicitly or effectively interfere with or abrogate that right.
4. Plaintiffs seek a declaratory judgment establishing that, insofar as the PCFEC is taking or will take any action interfering with the right to fusion voting, such actions are and would be unconstitutional and violate the Constitution's prohibition against delegating or granting legislative power to any entity or persons other than the Senate and Assembly.
5. Plaintiffs seek a declaratory judgment establishing that, insofar as the PCFEC takes any action interfering with the right to fusion voting, such action would be unconstitutional and violate the Constitution's prohibition against repeal or modification of an enactment by means inferior to or other than those used to create such enactment.

INTRODUCTION

6. On or about April 1, 2019 the Assembly and Senate of the State of New York (the “legislature”) enacted a series of bills comprising the budget of the State of New York for the fiscal year 2019-2020, pursuant to the budget process set forth in the Constitution, relevant statutes and relevant rules. That budget became effective pursuant to the same Constitutional provisions, statutes and rules. Included in these bills was language creating the PCFEC (the “budget statute”; See Appendix A for the text of the budget statute.) which was charged with creating laws for three distinct purposes, a) a “system of voluntary public campaign financing”, b) “political party qualifications” and c) “multiple party candidate nominations and/or designations” (also known as “fusion voting” and as more fully described below).

7. On July 3, 2019 the Governor announced the appointment of all nine of the Commissioners, including those appointed by legislative leaders.

FUSION VOTING

8. Fusion voting is a system in which a candidate may appear on the ballot lines of more than one political party. Fusion voting is voluntary and occurs when a candidate seeks to appear on the ballot lines of more than one party, and when those parties place such candidate on their ballot lines. Fusion voting includes the right of candidates to seek and run on the ballot lines of more than one party, the right of voters to choose among separate party ballot lines as they cast votes

for their chosen candidates, the right to have their votes counted on that line, the right to campaign and advocate for others to vote on that line, the right to seek, grant or withhold endorsements, designations and nominations of such fusion parties and the right to influence candidates and public officials on behalf of such fusion parties. Fusion voting includes that the tally of votes from separate ballot lines are aggregated on behalf of a single candidate. Votes are counted and made public for each ballot line. A candidate's final vote total is the sum of votes cast on each line on which he or she appears. Plaintiffs have all participated in and rely on the fusion voting system.

9. Fusion voting has been the common practice in New York elections since the earliest days of political parties, in spite of periodic and unsuccessful legislative efforts intended to abolish, abridge or diminish it. It has been central to continuing efforts to enhance citizen engagement, political reforms, limits on rule by party bosses, and the power of voters and citizens to influence and change the policies, laws and politics of governments.
10. Fusion voting has been a regular feature of elections in New York for well over a century, and applies to local, judicial, legislative and statewide elections, including elections for president and other federal offices.
11. Fusion voting has survived repeated legislative attempts to repeal or diminish its scope.

12. The right to fusion voting is enjoyed by voters, political parties, candidates and all who participate in elections, including the Plaintiffs. These rights, singularly and collectively, are fundamental to the full and robust exercise of the franchise in New York.

13. Fusion voting is protected and guaranteed by the State Constitution. The Court of Appeals has ruled unequivocally and repeatedly that fusion voting is constitutionally protected and may not suffer repeal or infringement by the Legislature, Governor or any other government entity. (See *In Re Callahan*, 200 N.Y. 59, 93 N.E. 262 (1910) “*the legislative provision is solely intended to prevent political combinations and fusions, and this is the very thing that...there is no right to prevent or hamper as long as our theory of government prevails, that the source of all power is the people....*”; *Hopper v Britt*. 203 N.Y. 144, 96 N.E.371, (1911) “*...the legislature could not constitutionally prevent the nomination of fusion or combination candidates*”; *Devane v. Touhy*, 33 N.Y. 2d 48 (1973), 304 N.E.2d 229, 34 N.Y.S.2d 361, “*What exclusion could be more arbitrary than that one party or organization should not be permitted to nominate the candidate of another.*” (See Appendix B for the texts of *Callahan*, *Hopper* and *Devane*.)

14. Notably, these decisions have struck down direct, total, indirect and partial infringements of the right to fusion voting.

15. Fusion voting, while constitutionally required, is not explicitly created by statute but is repeatedly referenced and authorized in the statutes of the State. Relevant statutory provisions include but are not limited to NY CLS Elec § 6-146 (providing, *inter alia*, procedures to be followed by a candidate accepting nominations of multiple parties) and NY CLS Elec § 7-104 (providing that “[w]hen the same person has been nominated for an office...by more than one party... his or her name shall appear in each row or column [of] any such party”). Any attempt to modify such laws must be consistent with the constitutional protections described herein.

16. Plaintiffs are engaged in political and electoral efforts with respect to the 2019, 2020 and 2021 primary and general elections. The creation and existence of the PCFEC have already caused damage and injury to such efforts in addition to injuries caused by any additional abridgement or interference with fusion voting. The enactment of the budget statute, and its language concerning modification and abridgment of the right to fusion voting has already had a profound negative chilling effect on the right to fusion voting in both the 2019 and 2020 election cycles. Plaintiffs and other candidates, political parties and all those participating in fusion voting have been hampered, faced difficulties and seen an erosion in political and material support due to the danger to fusion voting caused by the budget statute and the PCFEC, all in violation of the constitutional right to fusion voting.

17. The rights of citizens to full and free elective franchise are set forth in Article I, Section 1, as well as Article II, Section 1, of the Constitution, and by relevant sections of the Election Law.

18. Those provisions, and decisions by the Court of Appeals and other courts of the State, guarantee to the Plaintiffs the right to a full and effective system of fusion voting.

19. The words of subdivision b “political party qualifications” may or may not also refer to fusion voting. Such language is also subject to relevant constitutional provisions.

20. The PCFEC and/or the budget statute are unconstitutional insofar as either or both interferes with or infringes on the right to fusion voting.

21. No defendant may take any action that abridges or interferes with the right of Plaintiffs to fusion voting.

DELEGATION

22. The budget statute unconstitutionally delegates to the PCFEC the power to make laws which abridge the fundamental right to fusion voting. The budget statute directs the PCFEC to make such laws (“...shall also specifically determine and identify such elections laws....”).

23. The budget statute initially grants to the PCFEC the power and duty to “examine, evaluate and make recommendations for new laws” with respect to a “system of voluntary system of public campaign financing; b) “political party qualifications;” and c) “multiple party candidate nominations and/or designations;”. The words of subdivision c), “multiple party candidate nominations and/or designations”, mean fusion voting.

24. The budget statute goes on to revise and extend those powers and duties. “The commission's report is due at any time up to December 1, 2019 and **shall have the full effect of law** unless modified or abrogated by statute prior to December 22, 2019.” (emphasis added).

25. The budget statute also contains language further expanding and clarifying the putative law-making effect of PCFEC action: “Each recommendation made to implement a determination pursuant to this act shall have the force of law and shall supersede, where appropriate, inconsistent provisions of the election law unless modified or abrogated by statute prior to December 22, 2019.”

26. The PCFEC is thereby purportedly authorized to make, modify or repeal laws pertaining to fusion voting.

27. Article III Section 1 of the Constitution sets forth the power of the Legislature.

“The legislative power of the state shall be vested in the senate and assembly”.

28. Article III, Section 13 of the Constitution further states that “no law shall be enacted except by bill.”

29. Article III, Section 14 of the Constitution further states that “no bill shall be passed or become a law... except by the assent of a majority of the members elected to each branch of the legislature;”

30. These provisions of the Constitution forbid the Governor and Legislature from delegating the power and responsibility to make laws. The PCFEC’s putative power to make, amend or repeal duly enacted laws of the state regarding fusion voting are in violation of the Constitutional restrictions against delegated law-making.

31. Accordingly, the powers and duties delegated to the PCFEC over fusion voting are unconstitutional insofar as they are inconsistent with Article III, Sections 1, 13 and/or 14 of the Constitution.

EQUIVALENCY

32. The statutes which set forth the elements of fusion voting were duly enacted by the legislature and signed by the Governor. It is settled law in New York that an

enactment cannot be modified or repealed except by use of procedures equivalent to those used for the original enactment,

33. Accordingly, the attempt to repeal or modify the fusion statutes by use of the PCFEC are unconstitutional insofar as they are inconsistent with the constitutional requirement of equivalency.

THE PARTIES

34. Plaintiff Linda Hurley is a registered voter and elector of the State of New York who resides in Niagara County. Plaintiff Hurley has exercised her right to fusion voting, including but not limited to supporting, advocating for and voting for candidates of her choice and plans to do so again.

35. Plaintiff Rev. Rex Stewart is a registered voter and elector of the State of New York who resides in Niagara County. Plaintiff Stewart has exercised his right to fusion voting, including but not limited to supporting, advocating for and voting for candidates of his choice and plans to do so again.

36. Plaintiff David Buchwald is a registered voter and elector of the State of New York legally qualified to seek elective office, and a Member of the State Assembly. David Buchwald has sought and received the nomination of more than one party pursuant to his right to fusion voting and is now actively preparing

for the elections of 2020 including the nomination of more than one party pursuant to his right to participate in fusion voting. He has also fully exercised the elements of his right to fusion voting as a voter and elector.

37. Plaintiff Robert Carroll is a registered voter and elector of the State of New York legally qualified to seek elective office, and a Member of the State Assembly. Robert Carroll has sought and received the nomination of more than one party pursuant to his right to fusion voting and is now actively preparing for the elections of 2020 including the nomination of more than one party pursuant to his right to participate in fusion voting. He has also fully exercised the elements of his right to fusion voting as a voter and elector.

38. Plaintiff Harvey Epstein is a registered voter and elector of the State of New York legally qualified to seek elective office, and a Member of the State Assembly. Harvey Epstein has sought and received the nomination of more than one party pursuant to his right to fusion voting and is now actively preparing for the elections of 2020 including the nomination of more than one party pursuant to his right to participate in fusion voting. He has also fully exercised the elements of his right to fusion voting as a voter and elector.

39. Plaintiff Robert Jackson is a registered voter and elector of the State of New York legally qualified to seek elective office, and a Member of the State Senate. Robert Jackson has sought and received the nomination of more than one party pursuant to his right to fusion voting and is now actively preparing for the elections of 2020 including the nomination of more than one party pursuant to his

right to participate in fusion voting. voting. He has also fully exercised all elements of his right to fusion voting as a voter and elector.

40. Plaintiff Walter Mosley is a registered voter and elector of the State of New York legally qualified to seek elective office, and a Member of the State Assembly. Walter Mosley has sought and received the nomination of more than one party pursuant to his right to fusion voting and is now actively preparing for the elections of 2020 including the nomination of more than one party pursuant to his right to participate in fusion voting. voting. He has also fully exercised all elements of his right to fusion voting as a voter and elector.

41. Plaintiff Phil Steck is a registered voter and elector of the State of New York legally qualified to seek elective office and a Member of the State Assembly. Phil Steck has sought and received the nomination of more than one party pursuant to his right to fusion voting and is now actively preparing for the elections of 2020 including the nomination of more than one party pursuant to his right to participate in fusion voting. He has also fully exercised all elements of his right to fusion voting as a voter and elector.

42. Plaintiff Anita Thayer is a registered voter and elector of the State of New York. Plaintiff Thayer is a Member of, Co-Chair of, and a Member of the Executive Board of, the New York State Committee of the Working Families Party. In these capacities she has supervised and guided efforts by the Working Families Party

to exercise its rights to fusion voting, including supporting, advocating for, voting on the designation, nomination and authorization of fusion candidates and otherwise fully participating in the work of the Working Families Party, and plans to do so again in the future. She has also fully exercised all elements of her right to fusion voting as a voter and elector.

43. Plaintiff Jonathan Westin is a registered voter and elector of the State of New York. Plaintiff Westin is a Member of, Co-Chair of, and a Member of the Executive Board of, the New York State Committee of the Working Families Party. In these capacities he has supervised and guided efforts by the Working Families Party to exercise its rights to fusion voting, including supporting, advocating for, voting on the designation, nomination and authorization of fusion candidates and otherwise fully participating in the work of the Working Families Party, and plans to do so again in the future. He has also fully exercised all elements of his right to fusion voting as a voter and elector.

44. Plaintiff State Committee and Plaintiff Executive Board, are herein collectively described as the "WFP".

45. Plaintiff the New York State Committee of the Working Families Party (the "State Committee") is the body duly empowered by the election law and party rules to exercise the elements of the WFP's right to fusion voting including but not limited to advocacy, the recruitment, nomination and designation of candidates, and campaign finance. Plaintiff State Committee has in fact so exercised its right to

fusion voting and is actively engaged in so doing for the elections to be held in 2019, 2020 and 2021.

46. Plaintiff Executive Board of the New York State Committee of the Working Families Party (the “Executive Board”) is the body duly vested with certain powers and responsibilities of the State Committee including but not limited to advocacy, the recruitment, designation and nomination of candidates and campaign finance between meetings of the State Committee. Plaintiff Executive Board has in fact so exercised the WFP’s right to fusion voting and is actively engaged in so doing for the elections to be held in 2019, 2020 and 2021.

47. Defendant PCFEC is an entity of the State of New York created by the budget statute and denominated a “commission”. It is purportedly empowered to create new laws or to change duly enacted laws of the state governing fusion voting.

48. Defendants Commissioners are persons appointed to the PCFEC by Defendants Governor, Assembly Speaker, Assembly Minority Leader, Senate Majority Leader and Senate Minority Leader. The Commissioners are granted the putative power to enact, repeal or modify laws of the state, including fusion laws.

49. Defendant State of New York is the government entity created and bound by the Constitution, including but not limited to the Governor, Legislature, Board of Elections and PCFEC.

50. Defendant Board of Elections is an agency of the State empowered to conduct and supervise elections, including the power to approve or disapprove candidate petitions on factual or on legal grounds

51. Defendant Peter S. Kosinski is a Commissioner of the Board.

52. Defendant Douglas A. Kellner is a Commissioner of the Board.

53. Defendant Andrew J. Spano is a Commissioner of the Board.

54. Defendant Gregory P. Peterson is a Commissioner of the Board.

55. Defendant Governor of the State of New York is the chief executive and head of the executive branch of state government with powers and duties set forth in the Constitution. The Governor supported and helped create the budget statute and the PCFEC and has exercised his power to appoint commissioners thereto.

56. Defendant Assembly is a house of the Legislature empowered under the Constitution to exercise the legislative function. The Assembly adopted the budget statute.

57. Defendants Assembly Speaker and Assembly Minority Leader are officers of the Assembly and have exercised their statutory powers to appoint commissioners to the PCFEC.

58. Defendant Senate is a house of the Legislature empowered under the Constitution to exercise the legislative function. The Senate adopted the budget statute.

59. Defendants Senate Majority Leader and Senate Minority Leader are officers of the Senate and have exercised their statutory powers to appoint Commissioners to the PCFEC.

JURISDICTION AND VENUE

60. The Court has jurisdiction over the parties and the substantive issues and claims set forth in this action pursuant to Article 3 of the New York Civil Practice Law and Rules ("CPLR").

61. Plaintiffs Hurley and Stewart are voters and electors who reside in Niagara County. They have already suffered actual injury including the chilling effect resulting from creation of the PCFEC, and would be severely impacted by any additional abridgement of their right to fusion voting.

62. Plaintiffs Buchwald, Carroll, Epstein, Jackson, Mosley and Steck are persons qualified to seek elective office as well as voters and electors, who already suffer actual injury including the chilling effect resulting from creation of the PCFEC and

who would be severely impacted by any additional abridgement of their right to fusion voting

63. Plaintiffs Thayer and Westin are both persons active in the WFP's exercise of its right to fusion voting and voters and electors, who already suffer actual injury including the chilling effect resulting from creation of the PCFEC and who would be severely impacted by any additional abridgement of their right to fusion voting

64. WFP is a political party of the state whose ballot status was achieved by multiple elections in which its candidate for Governor received over 50,000 votes on its own ballot line. WFP has exercised its right to fusion voting in statewide, legislative and local elections and has become an important and influential force across the state. It runs candidates who appear on multiple party lines; it runs candidates solely on its own line. It is effective in electing candidates using both methods. Its ballot line has often provided the numerical difference guaranteeing electoral victory for its chosen candidates, which has in turn enhanced its ability to influence political and public policy matters. WFP is already engaged in political and electoral efforts with respect to the 2020 primary and general elections. The creation and existence of the PECFC has already caused damage and injury to such efforts, including a chilling effect, in addition to additional injuries that would be caused by any abridgement or interference with fusion voting.

65. WFP was organized to assure that candidates committed to principles of equality and social and economic justice were on the ballot and were elected. It has had repeated success in changing public policy as a result of awarding or denying its ballot line based on candidate adherence to principles of equality and social and economic justice. It has had acknowledged and significant effect on issues as diverse as state minimum wage, landlord-tenant and paid family leave laws, and environmental policy.

66. The continuing availability of a full and free system of fusion voting is crucial to WFP's function and success and to the interests of all plaintiffs.

67. Plaintiffs are currently engaged in political activities in preparation for the elections of 2019, 2020 and 2021. These include but are not limited to proceeding on endorsements and nominations, community and political organizing, fundraising, issue development, candidate recruitment in both primaries and the general election. All of these activities are contingent on exercise of their constitutional right to a full and robust system of fusion voting. The creation and existence of the PCFEC has already caused uncertainty and actual injury with respect to these activities.

68. For the foregoing reasons Plaintiffs have suffered and will continue to suffer severe, actual and irreparable injury in fact, or if their constitutional right to fusion voting is actually or effectively impaired by actions of Defendants, or by any

ongoing actions of the PCFEC undermining or threatening their right to fusion voting. This constitutes an actual and justiciable controversy.

69. The declaratory judgment action is brought pursuant to N.Y. CPLR § 3001. For the reasons set forth herein an actual justiciable controversy exists among and between Plaintiffs and Defendants within the meaning of N.Y. CPLR § 3001.

70. Pursuant to CPLR § 503 venue in Niagara County is based on the place of residence of plaintiffs.

AS AND FOR A FIRST CAUSE OF ACTION

71. Plaintiffs repeat and reallege paragraphs 1 through 70 of this complaint as if fully set forth herein.

72. Plaintiffs seek a judgment of this Court declaring that the Constitution and laws of the State guarantee the right of fusion voting, and that insofar as the budget statute or any action by the PCFEC explicitly or effectively interferes with that right they are unconstitutional and null and void.

73. Plaintiffs seek a judgment of this Court declaring that no Defendant may take any action abridging or interfering with the Plaintiffs right to fusion voting.

AS AND FOR A SECOND CAUSE OF ACTION

74. Plaintiffs repeat and reallege paragraphs 1 through 73 of this complaint as if fully set forth herein.

75. Plaintiffs seek a judgment of this Court declaring that the Constitution and laws of the State do not permit the creation of an entity for the purpose of making laws other than the Senate and Assembly, nor may such entity including the PCFEC take any actions which actually or effectively create law; nor will any such action be of legal force and effect.

AS AND FOR A THIRD CAUSE OF ACTION

76. Plaintiffs repeat and reallege paragraphs 1 through 75 of this complaint as if fully set forth herein.

77. Plaintiffs seek a judgment of this Court declaring that the Constitution and laws of the State do not permit the modification or repeal of an enactment except by means equivalent to those used to create such enactment.

WHEREFORE, Plaintiff demands judgment on the aforementioned causes of action along with damages, costs of the action and reasonable counsel fees. Plaintiffs ask this Court for an order and declaratory judgment in favor of Plaintiffs and against Defendants:

- (a) declaring the budget statute unconstitutional to the extent it authorizes the Commission to enact laws that explicitly or effectively interfere with the constitutionally protected right to fusion voting;
- (b) declaring that the defendants may not abridge or interfere with Plaintiffs right to fusion voting;
- (c) declaring the budget statute unconstitutional to the extent it improperly delegates the Legislature's lawmaking power to the PCFEC;
- (d) declaring the budget statute unconstitutional to the extent it authorizes the modification or repeal of laws related to fusion voting by means other than equivalent to those used to create them,
- (e) for such other and further relief as the Court deems just and proper.

Dated: White Plains, New York

July 22, 2019

/s/ Richard Brodsky
ATTORNEY FOR PLAINTIFFS

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VERIFICATION

STATE OF NEW YORK)

) ss.:

COUNTY OF ALBANY)

ANITA THAYER, being duly sworn, hereby deposes and says:

I am a plaintiff in Hurley v. PCFEC. I have read the foregoing Complaint and know the contents thereof; that the same is true to my knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters I believe them to be true.

/s/ Anita Thayer

ANITA THAYER

Sworn to before me this 22nd day of
July, 2019

/s/ Mark S. Mishler

Mark S. Mishler

Lic. No. 4758176

NOTARY PUBLIC