No. 23-5183

IN THE

SUPREME COURT OF THE UNITED STATES

Allen Hershkoff — PETITIONER
(Your Name)

vs.

NYC City Campaign Finance Board — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

2nd Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Allen Hershkoff
(Your Name)

1375 Coney Island Ave Unit 12
(Address)

Brooklyn NY 11230
(City, State, Zip Code)

347-725-6529
(Phone Number)

10

QUESTIONS PRESENTED

1) Whether Res Judicata precludes bringing the case?
2) Whether the defendant by enforcing its rules and regulations is violating plaintiff's free exercise of religion in the case?
3) Whether plaintiff's rights under the Religious Freedom Restoration Act been violated in this case?
4) Whether the defendant impermissibly violated plaintiff's Equal Protection rights in the case?
5) Whether plaintiff has a likelihood of success on the merits in this case?
6) Whether plaintiff was denied procedural due process and fairness-in a prior case 18 cv 4770 and by actions of other judges in the Eastern district court and 2nd circuit court of appeals

PARTIES TO THE CASE

The New York City Campaign Finance is the Only Defendant to the case

RELATED CASES

a) Citations of official and unofficial opinions in the case.
b) Herschaft v. NY City Campaign Finance Bd., No. 22-2822 (2nd Cir. April 04, 2023)
c) 2022 US Dist Lexis 240941 (E. District of NY Sept. 28, 2022)
d) Herschaft v. NY City Campaign Finance Bd. Cert. denied 534 US 888 (2001)
e) Herschaft v. NY City Campaign Finance bd.,10 Fed. Appx 21; 2001 WL 533590
f) Herschaft v. NY City Campaign Finance Bd 127 F.Supp. 2nd 164 E. D. NY 2000
g) Herschaft v. NY City Campaign Finance Bd 139F.Supp 2nd 282 ED NY 2001

Herschaft v. Bloomberg

a) Herschaft v. Bloomberg, 2002 US District Lexis 9562
b) Herschaft v. Bloomberg 70 Fed App'x 26 (US Court of Appeals)
c) Herschaft v. Bloomberg 540 US 1073 (cert. Denied)

Herschaft v. NY City Police Dept.

Herschaft v. NY City Police Dept. 2018 Westlaw 4861388

(E.D.NY Sept.28, 2018)

Herschaft v. NY Bd. Of Elections

a)Herschaft v. NY Bd. Of Elections,99 F. Supp. 2nd 258 E.D. 2000

b)Herschaft v. NY Bd. Of Elections 234 F. 3d 1262 (2nd Cir. Nov. 3, 2000)

c)Herschaft v. NY Bd. Of Elections, 2001US Dist. Ct. Lexis 11801

d)Herschaft v. NY Bd. Of Elections, 37 F. App'x 17

e)Herschaft v. NY Bd. Of Elections, 2002 WL 1225107 (2nd Cir. May 13,2002)

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITES

OPINIONS BELOW

The opinion of the US court of appeals of Herschaft 2 appears at Appendix A to the petition and is reported at google scholar No.22-2822 .

The opinion of the US district court for the eastern district of NY of Herschaft 2 appears at Appendix B to the petition and is reported at 2022 US Dist. Lexis 240941 .

The opinion of the US court of appeals of Herschaft 1 appears at Appendix C to the petition and is reported at 10 Fed appx. 21; 2001 WL 533590 .

The opinion of the US district court for the eastern district of NY of Herschaft 1-Reconsideraration appears at Appendix D to the petition and is reported at 139 F. Supp. 2nd 282 .

The opinion of the US district court for the eastern district of NY of Herschaft 1 appears at Appendix E to the petition and is reported at 127 F. Supp. 2nd 164.

The Complaint, Affirmation and Memo of Law for Herschaft II in the Eastern District Ct appears at Appendix F.

The decision in a related case Herschaft v. NY City Police Dept. appears in Appendix G and is reported at 2018 Westlaw 4861388

JURISDICTION

Freedom of Religion under US Constitution

CONSTITUTIONAL AND STATUTORY PROVISIONS INCLUDED

NY City Code and Charter-Secular laws and regulations implicated in the case.

Title 3- Section 3-703-Eligibility and Other Requirements

1. To be eligible for optional public financing under this chapter-a candidate for nomination for election must:

(a)meet all the requirements of law to have his or her name on the ballot.

(b)be a candidate....for a member of the city council in a primary or general election and meet the threshold for eligibility set forth in subdivision two of this section.

(c) choose to participate in the public funding provisions of this chapter.....and agree to comply with the terms and conditions for the provisions of such funds.

2(a). (3-703) continued

The threshold for eligibility for public funding for participating candidates in a primary or general election shall be in case of.....

(IV) Member of the City Council, not less than five thousand dollars in matchable contributions comprised of sums of up to $175 per contributor including at least 75 matchable contributions of $10 dollars or more from residents of the district in which the seat is to be filled.

Section 3-705- Optional Public Financing

2.(a)If the threshold for eligibility is met the principal committee of the candidate shall receive (1)$8 dollars for each one dollar of matchable contributions

Section 3-709 (5). NY Campaign Finance Fund-No moneys shall be paid to participating candidate in a primary or general election any earlier than December 15 of the year preceding the primary election.

Section 4-01- Records to be kept

(b)receipts

(i)Deposit slips-Candidates must retain copies of all deposit slips.

(ii)Contribution and loan records

(A)Generally-for each contribution received, all candidates must maintain records demonstrating the source and details of the contribution described herein.

(1)Cash contributions- for each contribution received for an individual contribution-in cash, the record must be in form of a contribution card.

(B)Contribution card-(1)Contribution card must contain the contributor's name and residential address, amount of contribution, authorized committees name.

Credit card contribution cards must also contain the credit card account type , account number expiration date and signature of contributor.

RELIGIOUS STATUTES IMPLICATED IN CASE

Kitzur Shulcan Aruch-Code of Jewish Law

Artscroll Series / The Kleinman Edition

Vol. 1- Simanim 1-34; Copyright 2008 by Mesorah Publications, Ltd.

Brooklyn, NY 718-921-9000

Simon Chapter 14-Laws of Pesukei D'Zimroh

The passages and verses of pro-se recited as part of the morning prayers, beginning from the passage of Hodu until after the Song of the Sea are referred to as Pesukei D'zimroh. The blessing of Baruch She'amar is the opening blessing of Pesukei D'zimroh and Yishtabach is the closing blessing (p.154).

From the time one" begins Baruch She'amar until after the completion of the Shemoneh Esrei prayer- it is forbidden to interrupt prayers with mundane speech even if spoken in Hebrew." (P. 155)

Simon Chapter 20- Laws of the Repitition of the Shemoneh Esrei prayer by the chazzan.

Each person must take care to be quiet during the repetition of the shemoneh Esrei to listen well and to concentrate on what the chazzan is saying ....It is even forbidden to study torah at the time the chazzan repeats the Shemoneh Esrei prayer. It goes without saying that one must be careful not to engage in idle chatter. (P.225).

Simon 34-The Laws of Charity

One should be careful to give the charity in secret as much as possible. Indeed, if it is possible for him to give it in such a manner that he himself does not know to whom he is giving it and the poor person too does not know to whom he received it from this is very good. (P.377).

STATEMENT OF CASE

Case was originally brought in 2001 and was heard by Judge Amon. It was a bench proceeding. Plaintiff sued under many causes of action, not just the free exercise of religion although this was the main one. Plaintiff argued unsuccessfully that he and his donor's rights were being violated by the rules and regulations of the campaign finance board. Plaintiff was, is a candidate for the Ny City Council. He was and is currently disabled under the ADA, but this does not deter him.

He wants to fundraise in shuls, churches, mosques etc.. without interfering with the worshippers prayers. He also wants to get the 8-1 matching formula, but he cannot do this without getting the worshippers name, address, amount of contribution listed on a contribution card. For a credit card donation he would need the following: credit card account type, account number, expiration date and signature of the donor. To receive campaign financing in order to get the required information he would need to disturb his donor's prayers in a religious setting. The donations were expected to be small the majority of which is under $5.00. The case was decided against Plaintiff and was lost on appeal (2000-2001). In the case in the Second Circuit, Herschaft v. NY City Campaign Finance Board 10 Fed Appx 21 (Appx C) one of plaintiff's memorandum of law went missing as he was alerted by the court. Plaintiff argues the missing memo indicates a lack of procedural due process.

In 2022 plaintiff brought a new action based on the earlier one but with differences. Plaintiff brought proof from a well regarded source in Judaism the Kitzur Shulcan Aruch as part of the complaint- that during morning afternoon and evening services the prayers were to be silent basically no talking aloud. (See pgs.8-9 religious statutes; Appx F) There were added information that the donations were and should be given and taken in secrecy which plaintiff argues is a clash of values between the campaign finance board and orthodox Judaism. This issue was not litigated in 2001-2002 Case was dismissed and appealed and lost in 2022, and 2023 because the courts felt that the regulations met the compelling standard which plaintiff disagrees with, especially in the small donation case. Interestingly the Eastern district court and the second circuit court of appeals did not address the issue of secrecy in donating and felt that res judicata applied, even though this point was never argued.

Both the district court and the 2nd Circuit Court of Appeals held that there was res judicata in the case in 2022 and 2023. But plaintiff argues that issue of prohibiting raffles and lotteries for political campaigns for local office implicitly and plausibly makes it more difficult to finance campaigns in the run for public office(that this was the inference to be made even without specifically stating so)and that raffles and lotteries were utilized during the colonial period to successfully raise funds for the fledgling nation and for some of the major universities and therefore instead of outlawing raffles and lotteries- they should be allowed. Also not res judicata because it was never argued but was submitted as part of the complaint to the district court in 2022(see complaint in appx.F) and discussed in the plaintiff's brief to the second circuit

is kitzur shulcan aruch recommendation of privacy (secrecy) when giving and receiving money from a donor in a religious setting see (page 9 of this petition) laws of charity.

REASONS FOR GRANTING WRIT

h)Rule 10(i)- A US Court of Appeals has decided an important federal question in a way that conflicts with relevant decisions of the US Supreme Court.

During the Covid crisis, the executive branch was given great deference for the health, safety and welfare of the citizenry by the courts and the US Supreme Court, in particular. Even so, after about a year and a half with the virus, the Supreme Court made the following points: government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity more favorably than religious exercise. Tandon v. Newsom ,141 S. Ct. 1294, 1296 (2021). Employment Division v. Smith, , 494 US 872 (1990) was an aberration based on the fact that contraband was used in the Indian's religion. And even if the court should find in plaintiff's favor, a remedy can be tailored to the needs of plaintiff alone rather than offering the solution generally see Wisconsin v. Yoder 406 US 205 (1972).

In Plaintiff's case here, plaintiff pro-se is evidently being treated less favorably with his religious collection than the secular alternatives being offered by the Campaign Finance Board. First, they told plaintiff that it is unnecessary to get name addresses and credit card numbers in order to comply with the law. On the other-hand if plaintiff does not get this information he will not get the 8-1 matching formula which is being offered to the complying secular alternatives. Also, there is the problem of accepting donations in secret which is recommended or advised by the Kitzur Shulcan Aruch. (See Religious Statutes implicated in the case (Pgs.8-9) Simon 34-the laws of charity) (p.9). This point was asserted in the Second Circuit brief but was not acknowledged by the court. The material was included in the district court complaint. Instead, the 2nd circuit in their order mentioned disturbance of prayer without going into detail like I did the first time I brought the case in 2000-1. What the court should have done is acknowledge the religious material and acknowledge that there really is a conflict of values

between the campaign finance bd. rules and religious rules, and values as articulated by the Shulcan Aruch.

With regards to compelling scrutiny or justification the campaign finance board comes up short it is my firm belief. First, plaintiff has argued all along that with regards to small dollar donations their justifications really don't apply-transparency, openness, against corruption, against quid pro quos and also other justifications offered were bookkeeping or knowing who the donors are and in what amounts they contributed to the campaign thus basically knowing who, where, and when the candidate got their donors support but this doesn't really apply so strongly, and therefore not compelling at the small dollar donations level.

The Board's justifications seem to be running in a circular manner. Their justification-transparency and against corruption are important qualities but at the small dollar level really doesn't apply so they will counter knowing who and where the candidate receives his support is compelling and I will argue that is not so at the small dollar level. They will counter that transparency and resisting corruption are compelling justifications and I will argue not so at the small donation level and so the arguments go round and around.

In McCreary County v. American Civil Liberties Union of Ky, 545 US 844 it was stated that the touchstone for our analysis is the principle that the "First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion." *Epperson* v. *Arkansas*, 393 U. S. 97, 104 (1968)

In the American Legion, et al. v. American Humanist Association et al. 139 S.Ct. 2067 (2019), it was asserted that familiarity itself can become a reason for preservation....When time's passage imbues a religiously expressive .....practice with this kind of familiarity and historical significance removing it may no longer appear neutral

especially to the local community. The passage of time thus gives rise to a strong presumption of (validity and) constitutionality. Id., p.2069. This applies to prayer, its been going on since the colonial period and really since time immemorial, you can't just interrupt prayers and prayer services.

In Espinoza v. Montana Dept. Of Revenue 140 S. Ct. 2246 (2020), it was asserted that the Montana Legislature established a program that grants tax credits to those who donate to organizations that award scholarships for private school tuition. To reconcile the program with a provision of the Montana Constitution that bars government aid to any school "controlled in whole or in part by any church, sect or denomination", the Montana Dept. of Revenue promulgated 'Rule 1' which prohibited families from using scholarships at religious schools. Three mothers who were blocked by rule 1 from using scholarship funds for tuition at a Christian school sued the dept. of revenue. It was held that the application of the no-aid provision discriminated against religious schools and the families whose children attend or hope to attend those schools in violation of the free exercise clause of the Federal Constitution. Id. At 2249.

The Court averred that the Free Exercise Clause protects religious participants against unequal treatment and against laws that impose special disabilities on the basis of religious status. Id. Citing Trinity Lutheran Church of Columbia, Inc, v. Corner 137 S. Ct. 2012. In Trinity Lutheran, the Court held that disqualifying otherwise eligible recipients from a public benefit solely because of their religious character imposes a penalty on the free exercise of religion that triggers the most exacting scrutiny. Id. 137 S. Ct. at 2021. Like my case, Herschaft v. Campaign Finance Bd. No.22-2822(2nd Cir April 04 2023)(appendix A)-should.

It was noted the Departments policy expressly discriminated against otherwise eligible recipients by disqualifying them from a public benefit solely because of their religious character. Like the disqualification statute in *McDaniel v.Paty, 435 US 618, 98 S.Ct 1322,* the Department's policy puts Trinity Lutheran to a choice: It may participate in an otherwise available benefit program or remain a religious institution. When the State conditions a benefit in this way, *McDaniel* says plainly that the State has imposed a penalty on the free exercise of religion that must withstand the most exacting scrutiny. 435 U.S., at 628, 98 S.Ct. 1322. Like what has happened in this case.

The Department contends that simply declining to allocate to Trinity Lutheran a subsidy the State had no obligation to provide does not meaningfully burden the Church's free exercise rights. Absent any such burden, the argument continues, the Department is free to follow the State's antiestablishment objection to providing funds directly to a church. But, as even the Department acknowledges, the Free Exercise Clause protects against "indirect coercion or penalties on the free exercise of religion, not just outright prohibitions." *Lyng,* 485 U.S., at 450, 108 S.Ct. 1319. In plaintiff's case he has suffered, penalties as a result of the Campaign Finance Board's rules, for exercising his rights under the free exercise of religion in the constitution having to interfere with people's prayers in order to get matching funds. Trinity Lutheran is not claiming any entitlement to a subsidy. It is asserting a right to participate in a government benefit program without having to disavow its religious character. The express discrimination against religious exercise here is not the denial of a grant, but rather the refusal to allow the Church — solely because it is a church — to compete with secular organizations for a grant. Pp. 2021-2022.

The following principles dictated the outcome in the Covid case Tandon v. Newsome, 141 S.Ct. 1294,1297,. First, California treats some comparable secular activities

more favorably than at-home religious exercise, permitting hair salons, retail stores, personal care services, movie theaters, private suites at sporting events and concerts, and indoor restaurants to bring together more than three households at a time. Id.at 1297 Second, the Ninth Circuit did not conclude that those activities pose a lesser risk of transmission than applicants' proposed religious exercise at home. The Ninth Circuit erroneously rejected these comparators simply because this Court's previous decisions involved public buildings as opposed to private buildings. Id. At 1297. Third, instead of requiring the State to explain why it could not safely permit at-home worshipers to gather in larger numbers while using precautions used in secular activities, the Ninth Circuit erroneously declared that such measures might not "translate readily" to the home. *Id.,* at 926-27. The State cannot "assume the worst when people go to worship but assume the best when people go to work." Id. at 1297.

It was stated that the applicants are likely to succeed on the merits of their free exercise claim; they are irreparably harmed by the loss of free exercise rights "for even minimal periods of time"; and the State has not shown that "public health would be imperiled" by employing less restrictive measures Id. at 1297.Accordingly, applicants are entitled to an injunction pending appeal. In plaintiff's case, the Campaign Finance Board has not claimed that election funding would be imperiled by using less restrictive measures than it currently employs in the case of small donations.

The case above was from California; In New York during the Covid crisis the Roman Catholic Diocese of Brooklyn and the Agudath Israel of America brought suit against the Governor of NY 141 S.Ct. 63 (2020). The applications sought relief from an Executive Order issued by the Governor of New York that imposes very severe restrictions on attendance at religious services in areas classified as "red" or "orange" zones. Id. at 65,66. In red zones, no more than 10

persons may attend each religious service, and in orange zones, attendance is capped at 25. The two applications, one filed by the Roman Catholic Diocese of Brooklyn and the other by Agudath Israel of America and affiliated entities, contended that these restrictions violate the Free Exercise Clause of the First Amendment, and they asked the Supreme Court to enjoin enforcement of the restrictions while they pursue appellate review. Citing a variety of remarks made by the Governor, Agudath Israel argues that the Governor specifically targeted the Orthodox Jewish community and gerrymandered the boundaries of red and orange zones to ensure that heavily Orthodox areas were included. Both the Diocese and Agudath Israel maintained that the regulations treated houses of worship much more harshly than comparable secular facilities. And they alerted the Court without contradiction that they have complied with all public health guidance, have implemented additional precautionary measures, and have operated at 25% or 33% capacity for months without a single outbreak. Id. It was apparent that the governor made comments that seemed to target the orthodox Jewish community. Id. At 66. It is asserted that even if those comments were put aside, the regulations cannot be viewed as neutral because they single out houses of worship for especially harsh treatment. Id.

What were some examples of the disparate and varied treatment-well in a red zone, while a synagogue or church may not admit more than 10 persons, businesses categorized as "essential" may admit as many people as they wish. Id. At 67. And the list of "essential" businesses included things such as acupuncture facilities, camp grounds, garages, as well as many whose services are not limited to those that can be regarded as essential, such as all plants manufacturing chemicals and microelectronics and all transportation facilities. Id. The disparate treatment is even more striking in an orange zone. While attendance at houses of worship is limited to 25 persons, even non-essential businesses may decide for themselves how many persons to admit.

These categorizations led to troubling results. Id. At the hearing in the lower court, a health department official testified about a large store in Brooklyn that could "literally have hundreds of people shopping there on any given day." Id. Yet a nearby church or synagogue would be prohibited

from allowing more than 10 or 25 people inside for a worship service. And the Governor has stated that factories and schools have contributed to the spread of COVID-19, Id., but they are treated less harshly than the Diocese's churches and Agudath Israel's synagogues, which have it was argued "admirable" safety records.

In the Roman Catholic Diocese v. Cuomo case, 141 S.Ct.63 (2020) the concurring opinion by Justice Gorsuch, asserts that Gov. Cuomo considered essential-hardware stores, acupuncturists and liquor stores. And also considered essential were bicycle repair shops, signage companies and insurance agencies.

Finally, in a case just decided by the Supreme Court in Groff v. Dejoy, in Google Scholar pg. 1 decided June 29, 2023), it was learned that Groff was an evangelical Christian who needed to rest on his Sundays. Under Title VII of the Civil Rights Act of 1964 he sued the USPS. It was held that Title VII requires an employer denying an accommodation show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business. (Groff, id.)

In the case at hand, the court never addressed the issue to the Campaign finance board, which is a quasi-employer, because we never got that far. The courts granted dismissal of the case on motions based on failure to state a claim and or res judicata.

In another recent case just decided by the US Supreme Court on June 30th, 2023 303 Creative LLC, et al., v. Aubrey Elenis, et al. No. 21-476 (Google scholar) it was held that the First Amendment prohibits Colorado from forcing a website designer to create design messages with which the designer disagrees. Pg.1. Since, Colorado seeks to compel speech Ms. Smith does not wish to provide.

It was asserted that "generally...the government may not compel a person to speak its own preferred messages." Id. p.2. It was also stated that "the First Amendment protections belong to all"

and that Colorado seeks to force an individual to speak in ways that align with its views but defy her conscience about a matter of major importance. Id. p.3.

In the case at hand with the Campaign Finance Bd.; Since my preferred method of collecting is at places of worship while people are praying what the board is asking me to do to get the 8-1 bonus is to ask intrusive disturbing questions while the people are absorbed in prayer. Maybe the Court can demand a lesser standard because as noted in prior court papers (see for example appendix F of this petition) most of the money raised in places of worship will be small donations (less than $5) and the bd's justifications for having plaintiff ask such questions doesn't really apply to small donations-bookkeeping, transparency, no quid pro quo, openness, anti-corruption.

(10)(a) A US Court of Appeals has sanctioned the departure from the accepted and usual course of judicial proceedings by a lower court as to call for an exercise by the US Supreme Court.

My journey in the Eastern District of NY federal court begins around the year 2000, when plaintiff pro se brought his first case against the NY Board of Elections, Herschaft v. NY Board of Elections, 234 F. 3d 1262, 2000 WL 1655036 affirming dismissal of first Amendment challenge). Herschaft v. NY Bd. Of Elections, 37 F. App'x 17, 2002 WL 1225107. After one hearing and a submission of documents the case was dismissed by judge Jack Weinstein. The case was reversed by the Second Circuit. After this reversal, Judge Weinstein removed himself from this case and any others I was about to bring or would bring in the future. This was unfortunate for plaintiff, because of judge Weinstein's broad knowledge, experience and academic excellence. Compared to what the plaintiff would soon be exposed to with the other judges in the Eastern District, Judge Weinstein was like day and the other judges night.

In this case, at the Court of Appeals level the case was made or at least brought to the attention of the court that in 2018 when I last brought a case in federal court, Herschaft v. NY City Police Department.2018 WL 4861388 The judge, Judge Kuntz of the federal district court for the Eastern district of NY relied on submission of documents and did not hold any hearing not at its

outset, when a preliminary or permanent injunction was at issue, nor during the course of proceedings which plaintiff argues was necessary to determine which defendants plaintiff had legitimate and strong cases against so that the case could have properly proceeded. Instead what the judge did was to claim that plaintiff's arguments were "clearly baseless" fanciful, fantastic and delusional and dismissed the whole case. Judge Kuntz did not ask for answers from the defendants to the complaints against them.

If judge Kuntz wanted to pierce the veil of my complaint Denton v. Hernandez, 504 US 25,32 (1992)he could have checked with the NY Board of Elections to see if my campaign committee was registered with the Board, and it was. He did not do so, as it is obvious. Judge Kuntz mentions the allegations with Senator Schumuer and I once did have an actual interaction with him and interactions at other places aside from the Catskills mountains. My mother was a journalist when she was alive and she did have many interactions with him. So he knew my family.

Judge Kuntz asserts that plaintiff's complaint And Memorandum of law do not present any cognizable claims against defendants. This is not true-for example, against the US Supreme Court I appealed a few cases to them- they denied certiorari but in considering my cases for review could conceivably have been aware of police or FBI surveillance of myself or belongings when involved in a political election which would have made that election possibly unfree and unfair.

The case consisted of numerous defendants: numerous courts, agencies, and politicians. Courts- consisted of the US Supreme Court; 2nd Circuit court en banc; US District- Southern and Eastern districts of NY State Supreme courts NY and Brooklyn. Agencies consisted of the Dept. of Homeland Security, NY City Police Department; NY City Campaign Finance Board and NY Board of Elections;NY City Council; NY City Council Legal Division. Politicians included then governor Andrew Cuomo; then Mayor Bill De Blasio; the Majority leader Chuck Schumer; former Congressman Anthony Weiner and various lawyers at the NY corporation counsel.

Plaintiff pro se remembers bringing the case against the court defendants on the grounds that they each and every one individually should have notified plaintiff that he was on the terrorist watch list compiled by the Dept. of Homeland Security and or under surveillance by the police dept. and that since plaintiff was standing as a candidate in a city council or state assembly election the investigation by defendant police dept. or dept. of homeland security might have led to an unfree and unfair election. The same thing was true of the other defendants- agencies and politicians- by not telling Plaintiff that he was on the terrorist watchlist or under surveillance might have led to an unfree or unfair election.

Now it was not right for the judge to characterize plaintiff pro-se arguments as baseless fanciful, fantastic and delusional. If the judge thought that the illness was at play here he should have at least ordered a hearing. He could have alerted plaintiff that he was about to drop the case and that plaintiff should be prepared to hire legal counsel or face dismissal of the case He could also have ordered an examination by psychiatrists but he did none of those things. Instead, he ditched the entire case against all defendants collectively no matter how strong plaintiff's case was against them individually. Plaintiff avers that this was not justice, and lacked procedural due process.

Lacking due process also was the statement by the judge's decision, judge Kuntz (that early version) now there is a different version) that I shouldn't appeal his decision to the 2nd circuit; that I shouldn't complain about the case on appeal; that I was going informa pauperis and he had the power of the purse; he wouldn't allow an appeal. Also he asserted that I shouldn't seek a motion for reconsideration under frcp 59e or frcp rule 60 relief from judgment.

Plaintiff remembers in law school that he learned to include all possible defendants who might be liable to him as this was taken as being done for a position of strength for plaintiff. Instead this judge took this listing as being done for a position of weakness on the part of plaintiff maybe part

and parcel of plaintiff's mental illness so that he should release or dismiss the case against the defendants.

Judge Carol Amon served as Judge for two of plaintiff's cases in 2000, 2001; Herschaft v. NY Campaign Finance Bd ,127 F, Supp. 2nd 164 139 F.Supp 2nd 282 Reconsideration motion denied and Herschaft v. NY Board of Elections. 234 F. 3d 1262, 2000 WL 1655036 (affirming dismissal of first Amendment challenge). Herschaft v. NY Bd. Of Elections, 37 F. App'x 17, 2002 WL 1225107. In both these cases plaintiff experienced problems so much so that plaintiff in 2001 penned a complaint about judge Ammon to her superiors according to the federal rules of civil procedure or the federal rules of appellate procedure plaintiff does not remember under which one. This section may have since been abrogated. In the case, Herschaft v. NY City Campaign Finance Bd. 10 Fed. Appx 21; 2001 WL 533590 On appeal in the 2nd Cir. At oral argument, Plaintiff was alerted of missing submissions of documents or papers by the Circuit judges back in 2001.

Herschaft v. NY Campaign Finance Board No.22-2822 (2nd Cir. April 04, 2023)(google scholar)(appx-A) this case on appeal to the 2nd circuit decided early April 2023 it is evident that there were numerous errors of fact. This includes fact that on the last page of the decision in the footnote it is asserted that plaintiff pro se tried but was denied to amend the complaint in 2022. This is not true I did not try ever to amend the complaint in 2022 or 2023 on the district or appellate level. Also mistakenly the district court opinion stated that plaintiff tried to amend the complaint in 2022 this is not true. Thus the religious restoration act and equal protection claim was included in my brief accompanying the complaint in District court-there was no trying to amend the complaint for these subjects. The defamation claim came to the second circuit was not presented in the district court. In addition on page 2 of the appellate decision it stated that I was denied leave to amend the complaint I never tried to amend the complaint in 2022 or 2023 as I stated before. For some reason the appellate court in 2023 did not address the clash of values between the campaign finance Bd. And religious values as articulated by the kitzur shulcan Aruch see p.4-5 of this petition.

According to the Oxford Companion procedural due process is concerned solely with the manner in which government acts. The US Supreme Court has held in Grannis v. Ordean, 234 US 385 (1914) that the fundamental requisite of due process of law is the opportunity to be heard. Id. At 394.

Procedural due process or lack of it was considered in the case Mathews v. Eldrige, 424 US 319(1976). It was stated that procedural due process imposes constraints on governmental decisions which deprive individuals of "liberty" or "property" interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment. Id. At 332. The US Supreme Court consistently has held that some form of hearing is required before an individual is finally deprived of a property interest . *Wolff* v. *McDonnell*, 418 U. S. 539, 557-558 (1974). See, *e. g.*, *Phillips* v. *Commissioner*, 283 U. S. 589, 596-597 (1931). Plaintiff pro-se was deprived of this property interest when his case was dismissed as some defendants conceivably could have been liable to plaintiff.

The US Supreme Court consistently has held that some form of hearing is required before an individual is finally deprived of a property interest. *Wolff* v. *McDonnell*, 418 U. S. 539, 557-558 (1974). See, *e. g.*, *Phillips* v. *Commissioner*, 283 U. S. 589, 596-597 (1931). See also *Dent* v. *West Virginia*, 129 U. S. 114, 124-125 (1889) Id. at 333. The "right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society."Id at 333. *Joint Anti-Fascist Comm.* v. *McGrath*, 341 U. S. 123, 168 (1951) (Frankfurter, J., concurring). The fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner."Id. *Armstrong* v. *Manzo*, 380 U. S. 545, 552 (1965).

In Goldberg v. Kelly, 397 US 254, 271 it was averred that the decisionmaker's conclusion as to a recipient's eligibility must rest solely on the legal rules and evidence adduced at the hearing. *Ohio Bell Tel. Co.* v. *PUC*, 301 U. S. 292 (1937); *United States* v. *Abilene & S. R. Co.*, 265 U. S. 274, 288-289 (1924). To demonstrate compliance with this elementary requirement, the decision maker should state the reasons for his determination and indicate the evidence he relied on, cf. *Wichita R. & Light*

Co. v. *PUC*, 260 U. S. 48, 57-59 (1922), though his statement need not amount to a full opinion or even formal findings of fact and conclusions of law. And, of course, an impartial decision maker is essential. Goldberg at 271. Plaintiff pro-se argues that my Judge, judge Kuntz was neither fair nor impartial in 2018 in summation.

I declare that the foregoing is true and accurate, everything included.

In Conclusion, Plaintiff should be granted his Writ.

Plaintiff pro se-Allen Herschaft

Allen Schaft 7/11/23