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Via Email

Hon. Antoinette Gluszak Reed
Legislative Counsel
Orange County Legislature
15 Matthews Street, suite 203
Goshen, New York 10924

Re: Petition to Form the Town of North Monroe

Dear Ms. Reed:

On behalf of the agents for the town formation petitioners, please accept this letter for consideration by the County Legislature in support of the Town Law Article 5 petition for the division of the Town of Monroe to form the Town of Palm Tree. It comes in response to certain claims made by others during the public hearings that the Legislature's action in approving the Article 5 petition would somehow contravene the Establishment Clause of the U.S. Constitution. These often-repeated claims are part of a recurring and baseless attempt to denigrate and undermine the very existence of the Village of Kiryas Joel, and deny its residents and neighbors the same rights generally afforded all other New York State communities and residents.

Without exception, the numerous attempts (in both federal and state courts) to challenge the municipal functions of the Village on Establishment Clause grounds have failed; the most recent being the dismissal of the Article 78 proceeding challenging the 164-acre annexation. The Village was incorporated under the laws of the State of New York (Village Law Article 2) and is a secular municipality like any other; and its residents and neighbors are thus entitled to the same protections

and treatment under Town Law Article 5 as any other resident in any other municipality in the State.

The First Amendment's Establishment Clause prohibits the government from making any law respecting the establishment of religion. It also protects the free exercise of religion. The underlying principle of the Establishment Clause compels the State (and its agents, including the County Legislature) to pursue a course of neutrality toward religion, favoring neither one religion over others or religion over non-religion. Contrary to statements made during the public hearings, Courts have not viewed the formation of the Village or its implementation of general municipal functions as violating the Establishment Clause, and to imply, as some have, that certain judges are waiting to do so is disingenuous and plain wrong.

New York Town Law Article 5 is a law of general applicability, permitting formation of a Town pursuant to a petition meeting the requirements in the Town Law. Town formation has a secular purpose and is no different than the initial formation of the Village of Kiryas Joel, which has been repeatedly upheld against legal challenge.

For example, in *Kiryas Joel Alliance v. Vill. of Kiryas Joel*, 495 F. App'x 183, 190 (2d Cir. 2012) the U.S. Second Circuit Court of Appeals stated:

Plaintiffs urge that they have stated an Establishment Clause claim by alleging that the Village is unlawfully entangled with religion—principally in that all the Village officials are members of Congregation Yetev—and that the Village has selectively enforced its laws against dissidents. Although the Village's formation and constitution are undoubtedly unusual, and were reasonably questioned in the past, see generally Bd. of Educ. v. Grumet . . . we are not persuaded. As the district court determined, plaintiffs' current allegations about the overlapping leadership in the Village and Congregation Yetev, standing alone, are insufficient to state an Establishment Clause claim . . .

Moreover, the formation of the Town of Palm Tree is fundamentally different than the circumstance underlying the 1994 U.S. Supreme Court *Bd of Education v Grumet* case that struck down a special New York State statute that carved out a separate school district to serve exclusively a community of Satmars. The Court held in that case that the law violated the Establishment Clause because it singled out a particular religious sect for special treatment. In contrast to *Grumet*, here the Town

of Palm Tree petition was filed pursuant to a general State law, available to any eligible group on an equal basis who desires to create a municipality and complies with the petitioning requirements. In fact, Justice Kennedy in *Grumet* specifically contrasted the school district formation with the incorporation of the Village of Kiryas Joel itself, writing:

[T]he formation of the village appears to differ from the formation of the school district in one critical respect . . . the village was formed pursuant to a religion-neutral self-incorporation scheme.¹

The New York Court of Appeals also drew the same distinction in *Grumet v. Pataki*,² where it stated:

Any analogy between chapter 390 and Village Law § 2-200, under which Kiryas Joel incorporated, is misplaced Indeed, the Village Law provides a good example of a religion-neutral, generally applicable law that applies to a broad spectrum of beneficiaries, and a good contrast to chapter 390.

Similar Establishment Clause claims were most recently rejected by Judge Walsh of Orange County Supreme Court's Environmental Claims Part in challenges to the annexation petitions filed for expansion of the Village of Kiryas Joel. In expressly distinguishing the annexation proceeding from the state statute overturned in *Grumet*, Judge Walsh wrote that:

[N]o special legislation was passed by any governing entity on the state or local levels to facilitate the annexation process. The annexation petitions were processed under the [General Municipal Law], which is a law of general applicability. The same laws apply to any property owner in connection with their right to file a petition for annexation. The fact that a possible outcome may result in an increase in the population of a

¹ *Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 729 (1994) (Kennedy, J. concurring).

² 93 N.Y.2d 677, 696 n. 12, 720 N.E.2d 66, 77 (1999).

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*religious community within the annexation territory does not constitute an establishment of religion . . .*³

The formation of the Town of Palm Tree is no different than the formation of Kiryas Joel or the recent annexations.

Finally, to deny this Town formation on the alleged basis of Establishment Clause concerns would have the effect of denying residents of the proposed new town a statutory right on the basis of their religion. Simply put, the Establishment Clause cannot be used to discriminate against citizens *because of* their religion. As the U.S. Supreme Court said in *Grumet*, “**religious people (or groups of religious people) cannot be denied the opportunity to exercise the rights of citizens simply because of their religious affiliations or commitments.**”⁴

No Establishment Clause violation would be perpetrated by the County Legislature in voting yes to permit the Town of Palm Tree formation petition to be presented to the electors of the Town of Monroe; rather it is a straightforward application of a general New York State statute designed to guide formation of a municipality. Quite to the contrary, however, rejecting the petition based on purported Establishment Clause claims would indeed seem to violate the petitioners’ First Amendment Constitutional protections. Thank you for your consideration of this issue.

Respectfully yours,



Michael G. Sterthous

³ *Matter of Village of South Blooming Grove, et al. v. Village of Kiryas Joel, et al.*, Sup Ct, Orange County, Environmental Claims Part, Index No. 7410-2015 and *Preserve Hudson Valley, et al. v. Town Board of the Town of Monroe*, Sup Ct, Orange County, Environmental Claims Part, Index No. 8118-2015, Walsh, J., Oct. 11, 2016, at 88.

⁴ *Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687, 698 (1994).