

20-1668

IN THE
United States Court Of Appeals
FOR THE SECOND CIRCUIT

JULIO CLERVEAUX, CHEVON DOS REIS, ERIC GOODWIN, JOSE VITELIO GREGORIO,
DOROTHY MILLER, HILLARY MOREAU, NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE, SPRING VALLEY BRANCH,

Plaintiffs - Appellees,

WASHINGTON SANCHEZ,

Plaintiff,

v.

EAST RAMAPO CENTRAL SCHOOL DISTRICT,

Defendant - Appellant,

MARYELLEN ELIA, IN HER CAPACITY AS THE COMMISSIONER OF EDUCATION OF
THE STATE OF NEW YORK,

Defendant.

On Appeal from the United States District Court
for the Southern District of New York, No. 17-cv-8943 (Hon. Cathy Seibel)

**BRIEF OF AGUDATH ISRAEL OF AMERICA AS AMICUS CURIAE
SUPPORTING NEITHER PARTY**

NATHAN LEWIN
LEWIN & LEWIN, LLP
888 17th Street NW, 4th Floor
Washington, DC 20006
(202) 828-1000

Attorney for Amicus Curiae

CORPORATE DISCLOSURE STATEMENT

Agudath Israel of America is a 501(c)(3) nonprofit corporation that has no parent corporation and no publicly-held corporation.

TABLE OF CONTENTS

	Page
CORPORATE DISCLOSURE STATEMENT	i
TABLE OF AUTHORITIES	iii
INTEREST OF THE AMICI	1
INTRODUCTION AND SUMMARY OF ARGUMENT	1
ARGUMENT.....	4
I. THE BRIEF ALLEGES FALSELY THAT THERE IS A SECRET ORTHODOX JEWISH CABAL THAT CONTROLS LOCAL POLITICS FOR RACIST PURPOSES	4
II. ORTHODOX JEWS’ LAWFUL POLITICAL ACTIVITY IS DISPARAGED AND CONDEMNED	6
III. THE BRIEF’S MESSAGE IS ANTI-SEMITIC UNDER THE UNITED STATES’ DEFINITION OF ANTI-SEMITISM.....	7
CONCLUSION	8
CERTIFICATE OF COMPLIANCE.....	9
CERTIFICATE OF SERVICE.....	10

TABLE OF AUTHORITIES

	Page
Other Sources	
<i>Working Definition of Antisemitism</i> , International Holocaust Remembrance Alliance, https://www.holocaustremembrance.com/working-definition-antisemitism	7

INTEREST OF THE AMICUS¹

Agudath Israel of America, founded in 1922, is a national Orthodox Jewish organization. Among its other activities, Agudath Israel advocates on behalf of Orthodox Jewish individuals, institutions, and interests in courts, legislatures, and executive agencies at the federal, state, and local levels.

Sadly, an increasing measure of Agudath Israel's work in recent years has addressed the growing phenomenon of anti-Semitism directed specifically at Orthodox Jews. The concern we raise in this *amicus* brief is a particularly pernicious example of resort to odious anti-Semitic stereotypes of Orthodox Jews that is unacceptable in a judicial pleading.

INTRODUCTION AND SUMMARY OF ARGUMENT

This *amicus* brief is submitted to bring to the attention of the Court an aspect of the Brief for the Appellees that is not immediately apparent on a reading of that Brief but comes into focus once the Brief is carefully scrutinized.² This *amicus*

¹ Pursuant to Fed. R. App. P. 29(4)(E), the *amicus* certifies that no counsel for a party authored this brief in whole or in part. No person or party other than the *amicus* has made a monetary contribution to this brief's preparation or submission.

² This *amicus* brief is written by an attorney who has written and reviewed more than one thousand appellate briefs as a practicing attorney. Mr. Lewin has been a member of the Bar of this Court since August 1972, and was a law clerk to the Chief Judge of this Court (Hon. J. Edward Lumbard) in 1960-1961. He was also a law clerk to Associate Justice John M. Harlan of the United States Supreme Court in 1961-1962 and served in the Department of Justice between 1963 and 1967 as a Special Assistant to the Assistant Attorney General for the Criminal

submission takes no position on the applicability of Section 2 of the Voting Rights Act to the facts established by this record. The *amicus* supports neither the appellant nor the appellees in this appeal.

Page 8 of Appellees' Brief asserts that "influential religious leaders in the white community" created and participate in "an organization that secretly vets and slates candidates for [the] Board." It notes (Brief, pp. 8-9, n. 1) that this allegation of secret meetings of the "organization," including "religious leaders," was "strenuously denied." But the Brief repeatedly asserts that meetings were convened "secretly" for no purpose other than to scheme how to dilute the votes of Black and Latino voters.

Although the Brief does not explicitly declare that the "organization that runs a 'slating process'" and "secretly" devises racist schemes is a group of Orthodox Jews, including community rabbis, the unspoken message is unmistakable. The leadership of the Orthodox Jewish residents of East Ramapo

Division and as Assistant to Solicitor Generals Archibald Cox and Thurgood Marshall. After serving as Deputy Administrator of the Bureau of Security and Consular Affairs in the Department of State in 1967-1968, he was Deputy Assistant Attorney General of the Civil Rights Division of the Department of Justice in 1968-1969. He has presented oral argument before the United States Supreme Court in 28 cases and has frequently argued orally in this Court. He is a Member of the Bar of all the Circuit Courts of Appeals and has argued orally in all of them. The author of the brief has also taught at the following law schools: Columbia Law School, Georgetown Law School, University of Chicago Law School, Harvard Law School, and George Washington University Law School.

allegedly meets “secretly” and regularly to implement racially nefarious agendas directed at Blacks and Latinos.

There are unfortunate historic precedents for such allegations. Their premises are the same as those of the infamous “Protocols of the Elders of Zion.” The *Britannica Online Encyclopedia* describes the “Protocols” as a “fraudulent document that served as a pretext and rationale for anti-Semitism mainly in the early 20th century.” It “purported to be a report of a series of 24 (in other versions, 27) meetings held at Basel, Switzerland, in 1897” where “Jews and Freemasons were said to have made plans to disrupt Christian civilization and erect a world state under their joint rule.”

The “Protocols” have been thoroughly discredited, but the document is still being used to stir up anti-Semitic hatred. Henry Ford’s *Dearborn Independent* published an American version in 1920 in a series called “The International Jew: the World’s Foremost Problem.” Hitler invoked the “Protocols” to justify anti-Semitism in Germany. Anti-Semites around the globe still actively circulate the “Protocols” as evidence of a “Jewish conspiracy to dominate the world.”

The conclusion that the reader of Appellees’ Brief is asked to draw mirrors that of the “Protocols.” Leaders of the Orthodox Jews of East Ramapo and their rabbis purportedly convened secretly in a “white slating organization” to devise racist election tactics to dominate the Black and Latino residents of East Ramapo.

Appellees' Brief does not explicitly identify Orthodox Jews as the culprits. It camouflages the religious and ethnic identity of the offending group by calling it a "white slating organization."

Appellees' Brief also condemns the Orthodox Jewish residents of East Ramapo for their efforts to maximize their political influence and achieve legitimate goals while extolling similar Black and Latino drives to maximize Black and Latino legislative objectives. This double standard is a classic anti-Semitic trope.

It is frightening that the New York Civil Liberties Union and appellees' counsel sign on to this classic anti-Semitic trope to prevail in this litigation.

ARGUMENT

I.

THE BRIEF ALLEGES FALSELY THAT THERE IS A SECRET ORTHODOX JEWISH CABAL THAT CONTROLS LOCAL POLITICS FOR RACIST PURPOSES

Appellees' Brief asserts (pp. 2, 8) that the "prime" reason for affirmance is that "[Orthodox] voting in the District is coordinated" by "an organization" of Orthodox rabbis and elected officials "that secretly vets and slates candidates for the Board." The "secret" Orthodox cabal is, according to the Brief, so powerful that it controls "the internal operations of the Board" and "engineers" election results. Appellees' Brief, p. 10.

The existence of this conspiracy is the essence of appellees' case. The Brief asserts that "[a]t the heart of the district court's findings is the understanding . . . [that] politics in the District . . . [are] tightly controlled by a *white slating organization* that is backed by a white voting bloc." The "*white slating organization* is real, . . . conscious of its power to control elections, . . . is closed to black and Latino voters, and . . . is indifferent and unresponsive to the interests of black and Latino voters." Brief, p. 32 (emphasis added). What is the "white slating organization" that the Appellees' Brief blames for this racist objective? Although the words "Orthodox Jew" do not appear in this portion of the brief, the camouflage is transparent. The Brief says that the Board "is effectively run by a slating organization that is 'tightly controlled by a few white individuals.'" Brief, p. 32. "Orthodox Jewish individuals" (including leading rabbis) is what the Brief means when it points a finger at "white individuals."

Trial witnesses consistently testified that there is no organization in East Ramapo's Orthodox Jewish community that slates candidates. The Brief acknowledges – albeit by pejoratively describing their testimony and asserting that they "went to extraordinary lengths to frustrate inquiry into its operations" – that all purported "members of this slating organization . . . strenuously denied" the existence of such an organization. Brief, pp. 8-9, n.1. That overwhelming testimony should have erased the allegation. But Appellees' Brief revitalizes this

conspiracy myth charging Orthodox Jews with holding secret pernicious conclaves, just as the “Protocols” and similar historic anti-Semitic fabrications have, over the centuries, been disseminated publicly to provoke anti-Semitism.

II.

ORTHODOX JEWS’ LAWFUL POLITICAL ACTIVITY IS DISPARAGED AND CONDEMNED

Appellees’ Brief asserts (p. 31) that “race plays a prevailing role in district politics,” thereby ignoring the other policy considerations involving taxes, education policy, and school budgets that influence Orthodox Jewish voters in East Ramapo. This is an anti-Semitic trope that presumes that Jews have utterly no interest other than the most parochial Jewish concerns. It implies that Blacks and Latinos may organize to further their unique interests because their goals are presumed to be virtuous, but Orthodox Jews must be punished and condemned if they do the same. This cannot be the objective of a civil-rights law designed to eliminate racial bias in voting.

The Appellees’ Brief also declares (p. 10) that “white members of the Board share information and coordinate among themselves to the exclusion of minority Board members.” The “white members of the Board” are the Orthodox Jewish members of the “private school slate.” The “minority Board members” are the candidates who ran on the “public school slate.” These are partisan affiliations like Republicans and Democrats. Just as Republicans would, in the ordinary elected

representative process, regularly “coordinate among themselves” and exclude Democrats, the members who the Brief characterizes as “white members of the Board” may not “coordinate” with those the Brief calls “minority Board members.”

Appellees’ Brief also condemns (p. 10) the “slating organizers” (*i.e.*, the Orthodox Jewish leaders) for “arrang[ing] the candidacies of minorities whom [sic] they ‘believed would not stand in the way of what they wanted.’” Is this not the essence of representative democracy? Every voter wants a representative who will “not stand in the way” of what he wants.

By nullifying and disparaging legitimate political activity of East Ramapo’s Orthodox Jewish residents, Appellee’s Brief converts proper lawful conduct into alleged villainous conduct. This, too, is a traditional anti-Semitic trope.

III.

THE BRIEF’S MESSAGE IS ANTI-SEMITIC UNDER THE UNITED STATES’ DEFINITION OF ANTI-SEMITISM

The “working definition of anti-semitism” utilized by the United States is the definition adopted by the International Holocaust Remembrance Alliance (“IHRA”) on May 26, 2016. *See* “Defining Anti-Semitism,” Office of International Religious Freedom, Office of the Special Envoy To Monitor and Combat Anti-Semitism. That definition was very recently adopted by Spain.

The second of the “contemporary examples of antisemitism in public life” enumerated in the IHRA definition is: “Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective – such as, especially but not exclusively, the myth about a world Jewish conspiracy *or of Jews controlling the media, economy, government or other societal institutions.*” (Emphasis added.) Appellees’ Brief does precisely that.

CONCLUSION

The Court should recognize the anti-Semitic tropes of the Appellees’ Brief.

Respectfully submitted,

/s/ Nathan Lewin

July 31, 2020

NATHAN LEWIN
LEWIN & LEWIN, LLP
888 17th Street NW, 4th Floor
Washington, DC 20006
(202) 828-1000
nat@lewinlewin.com

Attorney for Amicus Curiae

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(g) of the Federal Rules of Appellate Procedure, I hereby certify that this brief complies with the Court's type-volume limitation. According to the word-processing program used (Microsoft Word), the relevant portions of the brief contain 1,720 words written in Times New Roman 14-point font.

s/Nathan Lewin

Nathan Lewin

Dated: July 31, 2020

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of July 2020, the foregoing brief was served upon all parties or their counsel of record through the Court's ECF system.

s/Nathan Lewin

Nathan Lewin