

VILLAGE BOARD OF THE VILLAGE OF KIRYAS JOEL  
TOWN BOARD OF THE TOWN OF MONROE

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IN RE PETITIONS TO ANNEX 507 ACRES AND  
164 ACRES OF LAND FROM THE TOWN OF  
MONROE INTO THE VILLAGE OF KIRYAS JOEL

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**MEMORANDUM RE THE PROPOSED ANNEXATIONS AND THE OVERALL  
PUBLIC INTEREST AND RESPONSES TO COMMENTS REGARDING ALLEGED  
ANNEXATION PETITION DEFECTS**

Steven Barshov  
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IN RE PETITIONS TO ANNEX 507 ACRES AND  
164 ACRES OF LAND FROM THE TOWN OF  
MONROE INTO THE VILLAGE OF KIRYAS JOEL

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**AFFIRMATION OF  
STEVEN BARSHOV**

The undersigned, STEVEN BARSHOV, an attorney duly admitted to practice before the Courts of the State of New York, hereby affirms under the penalties of perjury and pursuant to CPLR § 2106 that the following statements are true:

1. I am a principal and officer of the firm Sive, Paget & Riesel, P.C., attorneys for the parties that have submitted petitions (the "Petitioners") to annex approximately 507 and 164 acres (the "Annexation Petitions") from the Town of Monroe to the Village of Kiryas Joel.

2. In support of the Annexation Petitions, the Petitioners hereby submit the attached "Memorandum Re the Proposed Annexations and the Overall Public Interest and Responses to Comments Regarding Alleged Annexation Petition Defects" (the "Memorandum"), prepared by Sive, Paget & Riesel, dated September 3, 2015.

3. In connection with this Memorandum, the Petitioners additionally hereby additionally submit the following supporting documents referenced in the Memorandum:

- i. Affidavit of Simon Gelb
- ii. Affidavit of Yoel Mittelman
- iii. Affidavit of Moses Goldberger
- iv. Affidavit of Chavi B. Goldberger
- v. Affidavit of Joseph Strulovitch
- vi. Affidavit of Lillian Strulovitch

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- vii. Affidavit of Chaim Tager
- viii. Affidavit of Isidor Landue
- ix. Affidavit of Joel Brach
- x. Affidavit of Chana Weinstock
- xi. Affidavit of Helen Brach
- xii. Affidavit of Henry Weinstock
- xiii. Affidavit of Elozer Gruber
- xiv. Deed for S.B.L. 65-1-32
- xv. Deed for S.B.L. 1-2-32.12
- xvi. Deed for S.B.L. 43-1-12
- xvii. New York State Department of State Records for Atkins Brothers Associates, LLC
- xviii. New York State Department of State Records for Upscale Y Homes Corp.

4. To facilitate review of the Annexation Petitions, copies of the Annexation Petitions which have been previously submitted to the Village of Kiryas Joel and Town of Monroe are appended hereto and divided into tabbed sections for convenience of reference.

5. I have reviewed each of the above-mentioned documents, and their contents are true and correct to the best of my knowledge.

Dated: New York, New York  
September 3, 2015



Steven Barshov

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Direct Dial: (646) 378-7229  
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TO: VILLAGE BOARD OF THE VILLAGE OF KIRYAS JOEL  
TOWN BOARD OF THE TOWN OF MONROE  
FROM: STEVEN BARSHOV, COUNSEL FOR ANNEXATION PETITIONERS  
RE: PROPOSED ANNEXATIONS AND THE OVERALL PUBLIC INTEREST;  
RESPONSES TO COMMENTS REGARDING ALLEGED ANNEXATION  
PETITION DEFECTS  
DATE: SEPTEMBER 3, 2015

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**MEMORANDUM**

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**I. Background and Overview**

The proposed annexation petitions presently under consideration meet the criteria set forth in the Municipal Annexation Law and should be approved because they are in the overall public interest. The 507-acre annexation proposal as well as the smaller 164-acre proposed annexations are driven by the natural population growth by the inhabitants of the Village of Kiryas Joel (the "Village"). The families in the predominantly Hasidic Jewish community who live in the Village, like families in traditional Irish, Italian, and other ethnic groups, often have large numbers of children. As a result of this natural population growth, the Village is outstripping the currently available land. Annexation is proposed in order to make available Village services to these lands, which are needed in order to accommodate the Village's natural population growth.

The proposed annexations:

(a) are of territories in the Village's natural path for growth and in locations that have long been identified in regional plans as growth areas associated with the Village;

(b) promote "smart growth" instead of sprawl, as well as environmentally sensitive development;

(c) promote and enhance the unity of purpose between the territories proposed to be annexed and the Village; and

(d) optimize access to local government services and benefits which are best provided to the territories proposed for annexation by the Village, not the Town.

As of 2014, the population of the Village was 22,246 persons.<sup>1</sup> The Village's population has been growing rapidly. According to U.S. Census data, the population of the Village grew approximately 54% between 2000 and 2010, over 5% per year.<sup>2</sup> To put this into perspective, the overall population of Orange County grew only 9.2% between 2000 and 2010, or less than 1% per year.<sup>3</sup>

The Village's high rate of population growth is expected to continue because that growth is the result of the very long standing tradition in the Hasidic community of having large families. It is not the result of in-migration. Between the present and 2025, the Final Generic Environmental Impact Statement analyzing the potential environmental impacts of the proposed annexation (the "FGEIS") projects an annual population growth rate of 5.6%, leading to an estimated population increase of additional 19,663 persons.<sup>4</sup> This would constitute a near-doubling of the present population. Because this population growth is the result of the Village's well-documented birth rates, the population growth is not expected to be fueled by in-migration and would occur regardless of whether the proposed annexations are approved.<sup>5</sup>

Accordingly, the question is not whether the Village will grow in population, but rather whether the proposed annexations are in the overall public interest and a reasonable and rational response to the undeniable population growth which the Village will experience in the reasonably

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<sup>1</sup> See Final Generic Environmental Impact Statement ("FGEIS"), Appendix H1, "U.S. Census Information."

<sup>2</sup> FGEIS, 3.2-1.

<sup>3</sup> *Id.*

<sup>4</sup> FGEIS, Appendix E "Growth Projections Without and With Annexation," Table E-3.

<sup>5</sup> *Id.*

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foreseeable future. Extant patterns of development in the Village have resulted in pedestrian-friendly, public-transit oriented, multifamily housing within compact, walkable neighborhoods with wide safe sidewalks. This overall development approach comports with the “smart growth” principles adopted in the *Mid-Hudson Regional Sustainability Plan* (“*Regional Sustainability Plan*”) promulgated by the Hudson Valley Regional Council, which is co-chaired by Orange County.<sup>6</sup>

However, land available for further “smart growth” in the Village is scarce, and cannot be relied upon to accommodate the projected needs of its growing population. Assuming, for the purposes of analysis, maximum development of all remaining surface land in the Village, the FGEIS finds that only approximately 60% of the projected population growth to 2025 could theoretically be housed within the confines of the Village.<sup>7</sup> Yet there are numerous practical obstacles to such development, which render it highly unlikely. Some of the lands theoretically available for development are dominated by wetlands and steep slopes. Other lands theoretically developable are on the campus of a major Yeshiva and highly unlikely to be made available for development. Approximately 80% of the potentially developable vacant land within the Village is owned and controlled by a single property owner who, to date, has expressed no interest in developing that vacant land. Even if the privately owned vacant land is eventually developed, it would be far from sufficient to meet the housing demands that will arise from the projected population growth of the Village.

Thus, although development within the Village on vacant lands is theoretically possible, it is highly unlikely to occur at any time in the reasonably foreseeable future and would not meet the demands associated with the Village’s projected population growth. By contrast, the properties

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<sup>6</sup> Hudson Valley Regional Council, *Mid-Hudson Regional Sustainability Plan* (2013) <http://hudsonvalleyregionalcouncil.org/mid-hudson-regional-sustainability-plan/>.

<sup>7</sup> FGEIS, Appendix E, “Growth Projections Without and With Annexation.”

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proposed to be annexe into the Village are well suited for the type of “smart growth” developments that could include similar types of compact, walkable multi-family housing that is environmentally sensitive, affordable, and sufficient to meet the Village’s natural population growth.

## **II. The Proposed Annexations Promote Unity of Purpose**

The proposed annexations would allow for natural growth of Kiryas Joel in a way that protects and promotes community character and fosters a unity of purpose. Under New York law, the “unity of purpose” between the territory proposed for annexation and the municipality to which it is to be annexed, is a core factor in assessing the public benefit of the annexation.<sup>8</sup>

Simply put, the proposed annexations are the “poster child” for a complete and powerful unity of purpose. Virtually all of the property owners in the annexation territory have signed the annexation petition, and many assembled the land which they now own at great cost and over long time periods with the specific vision and hope of integrating it into the existing Village of Kiryas Joel.<sup>9</sup> As a whole, the annexation territories are adjacent to the Village. Thus, extending Village governance, infrastructure, and services to the annexation territory would be a simple matter. The Village has identified no obstacle to doing so.

Annexing territory into the Village as proposed would accommodate natural population growth in a manner that will be integrated with the patterns of development, community, culture, purpose, and lifestyle of those who currently reside in the Village. Given the high value attached to walkability by the Village’s extant community, it is critically important that population growth be accommodated on lands that are physically proximate to the existing Village. Annexation would bring with it the ability to extend the Village’s existing compact, walkable neighborhoods,

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<sup>8</sup> N.Y. Gen. Mun. Law § 712 N.Y. Gen. Mun. Law § 712; *Common Council of City of Gloversville v. Town Bd. of Town of Johnstown*, 32 N.Y.2d 1, 6 (1973).

<sup>9</sup> Chris McKenna, “Proposed Kiryas Joel Annexation Area Includes Mix of Properties, Landowners,” *The Times Herald-Record*, June 6, 2015 <http://www.recordonline.com/article/20150606/NEWS/150609576>. (“Some annexation properties were acquired at great expense years ago and left as they were, presum[ably] in anticipation of a future annexation effort.”).

with their sidewalks, street lighting, and enhanced access to Village public transit, all of which support and are harmonious with the Village's development patterns, way of life, and unity of purpose. Annexation would also enable the Village's suite of recreational amenities and vocational services, including an extensive children's park and a microenterprise grant program, to be extended into the annexation territory, further integrating residents of the annexation territory with Village life and enhancing unity of purpose.<sup>10</sup> By contrast, rejection of the proposed annexation would force future population growth out from the Village into other non-contiguous areas which would be fragmented, lack the walkable connection to the Village, lack the Village's public transit system, and would not further the unity of purpose that would be fostered by the proposed annexation.

The annexation territory has no "unity of purpose" with the other parts of the Town of Monroe. The annexation territory is located north of New York State Route 17, which separates it from the bulk of the Town of Monroe, where development is presently concentrated south of Route 17 in the Village of Monroe.<sup>11</sup> Indeed, as the Town of Monroe Zoning Board of Appeals recognized, in its comments on a request for a variance for approximately 37 of the 177 parcels now proposed for annexation, the land "really has no relationship with the territory of the Town, it is far removed from the center function of the Town and far more related to the Village [of Kiryas Joel]."

For these reasons, annexation would clearly enhance the community ties and quality of life for residents of the annexation territory and in the Village. More broadly, the Town of Monroe and Orange County would also benefit from a clear public policy in favor of the promotion of diverse, vibrant communities. Such an inclusive, community-friendly policy climate is of significant public benefit as compared to a policy which results in the needless fragmentation of communities and

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<sup>10</sup> FGEIS, Chart 2-4.

<sup>11</sup> FGEIS, Figure 2-2.

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division of families. This is why promoting and protecting a community's "unity of purpose" through annexation has been recognized as a public policy in the "over-all public interest" by New York's highest court.<sup>12</sup>

### **III. The Proposed Annexations Promote Environmental Protection**

The proposed annexations are also in the overall public interest because they would enable projected population growth to be accommodated in an environmentally-sensitive fashion consistent with principles of "smart growth." In light of the significant natural growth that is expected in the Village's population, the proposed annexation of territory directly adjacent to the Village is a green, "smart growth" solution. In contrast, forcing natural population growth to spread outwards further away from the Village risks a "checkerboard" pattern of sprawl, which is against the *Regional Sustainability Plan's* public policy of conserving open space and promoting compact residential communities.

Key "smart growth" principles recognized in the *Regional Sustainability Plan* include promoting walkability and public transit use, and the proposed annexations into the Village would foster such development characteristics. With respect to walkability, the *Regional Sustainability Plan* specifically identifies "upgrading sidewalks" as a high-priority sustainability initiative.<sup>13</sup> The Village is a regional leader in implementing infrastructure that promotes a pedestrian-friendly environment, including wide sidewalks and adequate lighting and snow removal infrastructure.

The *Regional Sustainability Plan* also identifies "transit-oriented development" and "expand[ing] and upgrad[ing] mass transit" as high-priority sustainability initiatives.<sup>14</sup> The annexations would also unlock these benefits for residents of the annexation territory. Joining the Village would bring integration with the municipal mass transit networks currently enjoyed by

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<sup>12</sup> *Common Council of City of Gloversville v. Town Bd. of Town of Johnstown*, 32 N.Y.2d 1, 6 (1973).

<sup>13</sup> *Regional Sustainability Plan*, 4-33.

<sup>14</sup> *Regional Sustainability Plan*, 4-28.

Village residents, including bus systems.<sup>15</sup> Indeed, the Village's public bus system provides efficient bus service to and from New York City, thereby eliminating thousands of vehicle trips each day.

One of the annexation petitioners is the owner of the Monroe Bus Company, which owns land within the annexation territory. Annexation would enable the Monroe Bus Company to locate a service garage for its buses within the expanded Village, thereby eliminating the need to transport buses to New York City for maintenance and service. This would further facilitate the efficient provision of mass transit in the Village.

More broadly, the Town of Monroe and Orange County would also benefit from the proposed annexation's environmentally-friendly orientation toward walkability and mass transit. As the FGEIS notes, traffic studies have found that the proposed annexations would be expected to result in significantly decreased traffic in the area, since members of the Village community would not need to drive through surrounding areas to reach the Village, as they would if the community was fragmented.<sup>16</sup>

Surrounding municipalities would also experience environmental benefits relating to groundwater. Presently, the annexation territory is reliant for its water needs on wells which tap into the local groundwater.<sup>17</sup> However, if the proposed annexations are approved, residents in the annexation territory would be assured access to water from the Village's upcoming connection to the Catskills Aqueduct, which is scheduled to come on-line in 2017.<sup>18</sup> Thus, as residential development occurs in the annexation territory, it would be linked-in to a water supply from upstate, rather than relying only on local groundwater. This would significantly reduce the use of groundwater when development occurs on the properties proposed for annexation.

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<sup>15</sup> FGEIS, 3.4-9.

<sup>16</sup> FGEIS, Appendix F3, Table F3-9; FGEIS 3.4-22.

<sup>17</sup> FGEIS, 3.5-11.

<sup>18</sup> FGEIS, Appendix G3, *Amended Findings for the Catskill Aqueduct Connection*.

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United Monroe, in its comment letter, argues that past environmental violations within the Village preclude the proposed annexation as not in the public interest.<sup>19</sup> This makes no sense. Failure to comply with environmental laws carries penalties that are enumerated in the relevant state statutes. None of those statutes provides a penalty of disqualification for a future proposed annexation. Had the state legislature intended to disqualify a municipality from being able to annex territory in the event that environmental law violations occurred within its boundaries, the state legislature could have so provided. United Monroe can point to no such state statute because none exists. Moreover, fails to identify a single example of a municipality being denied the right to exercise an essential municipal function such as annexation due to past violations of environmental laws. Indeed, the proposed linkage makes no sense. There is no shortage of enforcement mechanisms by which the State of New York and its administrative and enforcement agencies can and do enforce the State's environmental laws and regulations.

United Monroe also speculates that the Village Board, as lead agency, will not adequately analyze the potential environmental impacts of the proposed annexation.<sup>20</sup> These speculative accusations were cast before the FGEIS was issued and reveal more about the prejudgment of the process by United Monroe than about any legitimate critique of the environmental review of the proposed annexation. Certainly United Monroe is entitled to comment on the Draft Generic Environmental Impact Statement ("DGEIS"), and (if it can establish standing to sue) would have the right to file suit if United Monroe believes the entire environmental review to be deficient. What United Monroe has no right to do is attempt to use its speculative concerns about the Village Board's environmental review of the proposed annexation under the New York State Environmental Quality Review Act ("SEQRA") to disqualify the Village from eligibility to annex

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<sup>19</sup> Daniel Richmond and Krista Yacovone, *Comment Letter on Behalf of United Monroe*, June 10, 2015, 7.  
<sup>20</sup> Daniel Richmond and Krista Yacovone, *Comment Letter on Behalf of United Monroe*, June 10, 2015, 8.

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territory generally and to block the proposed annexation in its entirety.<sup>21</sup> Tellingly, United Monroe's environmental "critique" is aimed more at disqualifying the Village from annexing any territory than to addressing the clear and obvious environmental benefits associated with the proposed annexation, as described here and in other comments.

In sum, the public interest that the residents of the annexation territory, the Village, and the surrounding municipalities have in environmental protection is well-served by the sensible, smart-growth policies that are supported by annexing territory bordering the Village in the natural for Village expansion and which minimize sprawl.

#### **IV. The Proposed Annexations Optimize Local Government Services and Benefits**

The proposed annexation offers a way of managing projected population growth in a manner that optimizes the access of residents of the annexation territory to local government services and benefits. For example, the Village provides very sophisticated emergency services. The Village Public Safety Department, Fire Department, and Emergency Medical Service ("EMS") will provide faster response times than the Town, because their area of responsibility is smaller and their stations are closer to the residents they serve. It is a testament to this efficiency and focus that the Village EMS has been reported to respond to calls for emergency assistance in as little as 90 seconds.

The provision of these emergency services are further enhanced because the Village provides its emergency services in both English and Yiddish, an important benefit because many community members, especially older ones, are primarily Yiddish-speaking. As the territory to be annexed is likely to have a significant Hasidic population, the ability to receive emergency

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<sup>21</sup> Some other commenters have expressed concerns about negative impacts to parklands in the area if the annexation is approved. These concerns are completely unsubstantiated, and are based entirely on speculation about future development plans which do not yet exist. Any alleged violation of laws protecting parklands can be adequately adjudicated when and if it arises. As such, these conjectures concerning hypothetical parklands impacts cannot be taken to rise to the level of blocking the annexation. Steven Neuhaus, *Comment Letter on Behalf of Orange County*, June 10, 2015, 5-6; Edward Goodell, *Comment Letter on Behalf of the New York-New Jersey Trail Conference*, June 12, 2015, 1-2.

services in both Yiddish and English is a very important benefit which would be unavailable absent annexation. The increased assurance of an ability to communicate during an emergency is an important benefit that cannot be discounted and further demonstrates the unity of purpose which undergirds the proposed annexation. Indeed, one across-the-board advantage of annexation is that the Village offers all of its services in both English and Yiddish, as opposed to the Town of Monroe, which offers services only in English.<sup>22</sup>

Some commenters have speculated that if the annexation is approved, the Village Fire Department will need to make more calls for “mutual aid” from neighboring fire departments,<sup>23</sup> but this concern is misplaced, and ignores the Department’s plans to expand if the annexation happens.<sup>24</sup>

The Village also has its own police department, a service which the Town of Monroe completely lacks. The Town depends on the State Police, who have many other statewide responsibilities.<sup>25</sup> Police services can be provided to the annexed territory by the Village far more efficiently than the Town or the State Police (under the auspices of the Town).

Additionally, integrating the annexation territory with the Village’s upgraded pedestrian infrastructure is not only environmentally-friendly, but also an important safety issue. The *Times Herald-Record* recently interviewed a resident of the annexation territory, Herman Wagschal, who attends services at a religious congregation in the annexation territory.<sup>26</sup> Wagschal noted that many congregants currently walk along the busy Seven Springs Road to reach the congregation. Having access to the “street lights and sidewalks” that are “everywhere” in the Village would improve their safety, he said.<sup>27</sup> This sentiment was echoed by Chaya Wieder, who also lives in the

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<sup>22</sup> FGEIS, 2-13.

<sup>23</sup> Steven Neuhaus, *Comment Letter on Behalf of Orange County*, June 10, 2015, 8.

<sup>24</sup> FGEIS, 3.3-15.

<sup>25</sup> FGEIS, 3.3-3.

<sup>26</sup> Chris McKenna, “Proposed Kiryas Joel Annexation Area Includes Mix of Properties, Landowners,” *The Times Herald-Record*, June 6, 2015 <http://www.recordonline.com/article/20150606/NEWS/150609576>.

<sup>27</sup> *Id.*

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annexation territory, in comments reported by the *The Photo News*.<sup>28</sup> Wieder stated that “she currently has no sidewalks where she lives, and the roads are dangerous.”<sup>29</sup> If the annexation territory were added to the Village, and the pedestrian infrastructure upgraded to Village standards, “her travel would be safer,” she said.<sup>30</sup>

Finally, although some have expressed concerns about a supposed drain on social services in connection with the annexation, this is a non-issue in respect of annexation. The need for increased social services will arise from population growth, independent of annexation. As the FGEIS finds, there is absolutely no indication that the annexations themselves would have any impact at all on social services.<sup>31</sup>

Some commenters have alleged that residents of Kiryas Joel commit Medicare fraud. Apparently, the belief is that because some residents of Kiryas Joel collect Medicare or Medicaid unlawfully, that property owners outside the Village should be deprived of the right afforded under State law to petition for annexation of their lands or that the Village should be precluded from annexing those lands. There is no logical link of any kind between alleged Medicare and Medicaid fraud and annexation. Rather, this is *ad hominem* an attack on the Hasidic community generally. No doubt there are some people in every ethnic group and community who illegally collect monies under some government program. However, there are criminal statutes and other enforcement mechanisms to address such illegal activity. Like the illogical linkage to environmental violations, alleged Medicare or Medicaid fraud has nothing to do with annexation. Nothing. The only reason for the linkage is because the annexation opponents do not want the Hasidic community to grow, plain and simple. That is the only explanation for the attempt to tar the proposed annexation with

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<sup>28</sup> Nathan Mayberg, “Annexation Ices Over,” *The Photo News*, March 5, 2015 <http://thephoto-news.com/apps/pbcs.dll/article?AID=/20150305/NEWS01/150309973/Annexation-ices-over>.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> FGEIS, 3.3-16.

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alleged Medicare and Medicaid fraud by unnamed and unspecified members of the Hasidic community. The answer to the opponents' concerns are for them to identify those who they believe are committing fraud and report them to the proper authorities for investigation and prosecution if a violation of law is occurring. The answer is not to stigmatize the annexation petitioners and disqualify them from the ability to propose annexation under the New York State Municipal Annexation Law for purported unlawful acts that are neither germane to annexation and that none of the petitioners are even alleged to have committed.

The comments submitted by County Executive Steven Neuhaus on behalf of Orange County, which suggest that the annexations are not in the public interest of Orange County due to their impact on "social services costs," are unavailing.<sup>32</sup> In fact, the County Executive's own comment letter undercuts this claim. Nowhere does the County Executive identify any impacts of the annexation itself on social services costs. Rather, the County Executive simply makes the observation that as population grows, so too might social services expenditures.<sup>33</sup> This self-evident statement is hardly a revelation. As confirmed in the FGEIS, population is projected to increase regardless of whether the annexation is approved.<sup>34</sup> Like the arguments of the annexation opponents referenced above, the argument is not against annexation but against the Hasidic community having children and their community growing within Orange County. Every community has the right to have children and grow. One can only imagine the reaction that would be engendered if people had the temerity to suggest that the African American community should not be allowed to grow and expand because of a disproportionate demand on certain social services that it receives.

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<sup>32</sup> Steven Neuhaus, *Comment Letter on Behalf of Orange County*, June 10, 2015, 2.

<sup>33</sup> Steven Neuhaus, *Comment Letter on Behalf of Orange County*, June 10, 2015, 6-7.

<sup>34</sup> FGEIS, 3.2-3.

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Even putting aside the inappropriate nature of the social services “concern,” the County Executive’s submission confirms that even as the Village population grows, there will be no significant impact on social services spending by Orange County. The County Executive’s submission considers three types of social services, Medicaid, the Supplemental Nutrition Assistance Program (“SNAP”), and Department of Mental Health services, and concludes that there will be little to no cost increases for any of the three because the funding sources are not local.<sup>35</sup> Whatever the motivation behind the County Executive’s specious claims regarding the annexation’s impacts on social services spending, his own report conclusively demonstrates their falsity.

Others have suggested that a problem will arise if the annexation is approved because an annexation would not necessarily change the boundaries of the Kiryas Joel and Monroe-Woodbury Central School Districts. The apparent fear is that the Monroe-Woodbury Central School District, would contain an increasing number of Hasidic voters who would send their children to private religious schools and would elect school board members who would cut the Monroe-Woodbury Central School District budget in order to reduce taxes. These concerns apparently arise from the situation in East Ramapo. However, the circumstances are not analogous. Unlike East Ramapo, Kiryas Joel has its own school district, which by law is required to be coincident with the boundaries of the Village. Thus, following annexation, in order to comply with the law, the boundaries of Kiryas Joel School District and the Monroe-Woodbury Central School District would be adjusted so that the lands to be annexed would be within the Kiryas Joel School District.

Indeed, no one has spoken against such a school district boundary adjustment. The annexation opponents certainly want it as does the Monroe-Woodbury Central School District. Most importantly, the Superintendent of the Kiryas Joel Public School and the Kiryas Joel School

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<sup>35</sup> Steven Neuhaus, *Comment Letter on Behalf of Orange County*, June 10, 2015, 7.

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Board have all expressed clear, written support for amending the school district boundary if the annexation is approved.<sup>36</sup>

#### **V. The Annexation Opponents' Procedural Objections are Meritless**

Additionally, the annexation opponents' claims of procedural infirmities in the annexation petitions are unavailing. As a starting point, some commenters have questioned whether the correct assessed values were used for the 507-acre annexation petition.<sup>37</sup> However, the Town Assessor of the Town of Monroe has certified that the correct assessed values were used.<sup>38</sup>

Additionally, some commenters have questioned whether the petition adequately describes the territory proposed for annexation in the 507-acre annexation petition.<sup>39</sup> These complaints are unavailing. To start, Exhibit A sets forth a legal metes-and-bounds description of the territory to be annexed, which itself wholly adequate.<sup>40</sup> In addition,, Exhibit B, which includes almost 300 pages, provides an additional level of detail which far exceeds that required under the Municipal Annexation Law.<sup>41</sup> Exhibit B has two principal components: 1) a map depicting every single parcel proposed for annexation, and identifying them by S.B.L. number; and 2) Property Description Reports, retrieved from official Orange County records, for every single parcel proposed for annexation. The Property Description Reports provide significant additional information, including the street address of the property, its owners, and the S.B.L. (listed as "Tax Map ID #").<sup>42</sup>

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<sup>36</sup> FGEIS, Appendix I, "Resolution Adopted by the Board of Education of the Kiryas Joel Union Free School District," May 13, 2014; Joel Petlin, *Comment Letter on Behalf of the Kiryas Joel Union Free School District*, June 17, 2015.

<sup>37</sup> John W. Furst, *Comment Letter on Behalf of the Town of Woodbury*, June 10, 2015, 7.

<sup>38</sup> Exhibit C to the Petition for Annexation of 507 Acres from the Town of Woodbury to the Village of Kiryas Joel.

<sup>39</sup> Daniel Richmond and Krista Yacovone, *Comment Letter on Behalf of United Monroe*, June 10, 2015, 2-4.

<sup>40</sup> Exhibit A to the Petition for Annexation of 507 Acres from the Town of Woodbury to the Village of Kiryas Joel.

<sup>41</sup> Exhibit B to the Petition for Annexation of 507 Acres from the Town of Woodbury to the Village of Kiryas Joel.

<sup>42</sup> *Id.*

The Monroe-Woodbury Central School District ("MWCSO") raised several other miscellaneous issues. First, MWCSO claims that the hand-written alterations to the petition "undermine" the veracity of the petition and such that the petition must be "invalidated."<sup>43</sup> This claim is baseless, as there is no rule against amending a petition by hand, and, in any event, a witness authenticated the veracity of every single signature on the petition. MWCSO also notes that on pages 10 and 19 of the signatures section for the 507-acre petition, there is a clerical error in which the number of signatures which appear on the page is misdescribed at the bottom of the page.<sup>44</sup> This error is plainly harmless because it does not affect the calculation of real estate values or whether the signatures are authentic, and the actual number of signatures is plainly visible on the very page itself. The number of signatures on any given page of the petition is without any legal meaning, and was recorded only for ministerial purposes in compiling the petition. MWCSO cannot and does not claim that this means that any of the witnessed signatures are inauthentic, but merely claims, without basis, that this harmless error means that every single valid, witnessed signature on those two pages should be struck.

In spite of such complaints, the law in New York is clear that mere clerical errors or minor technical irregularities will not suffice to invalidate an annexation petition.<sup>45</sup> MWCSO's intemperate and unsupported demand must be rejected. Critically, despite MWCSO's protestations, the central legal requirement concerning the petition is that it must include an authenticated signature for a majority of the assessed real-estate value represented by the parcels

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<sup>43</sup> Judith Crelin Mayle, *Comment Letter on Behalf of the Monroe-Woodbury Central School District*, June 22, 2015, 2.

<sup>44</sup> Judith Crelin Mayle, *Comment Letter on Behalf of the Monroe-Woodbury Central School District*, June 22, 2015, 5-6.

<sup>45</sup> See N.Y. Gen. Mun. Law § 705 (McKinney) (providing that boards reviewing an annexation petition must assess whether the petition "substantially compl[ies] in form or content with the provisions of this article.") (emphasis added); *Skidmore Coll. v. Cline*, 58 Misc. 2d 582, 585 (N.Y. Sup. Ct.) *aff'd*, 32 A.D.2d 985 (N.Y. App. Div. 1969) (ordering town board to find that annexation "substantially complies with the provisions of Article 17 of the General Municipal Law" despite minor technical irregularities); *Mitrus v. Nichols*, 171 Misc. 869, 870 (N.Y. Sup. Ct. 1939) ("The mistake [in the annexation petition] was not fatal. It was at most a technical irregularity. That it may be disregarded is clear.").

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proposed for annexation. The petition clearly meets this standard, and MWCSO's attempt to "flyspeak" the petition and manufacture controversy out of a handful of purported scrivener's errors is without merit.

Some commenters have also questioned whether valid signatures have been obtained for certain parcels proposed for annexation in the annexation petitions or raised certain other parcel-specific questions. As demonstrated in the tables below, in each instance, these claims manifestly lack merit, and the signature recorded for each parcel is indeed a qualified and valid signature for that parcel. See "Table I. The 507-Acre Petition," and "Table II. The 164-Acre Petition."

**Table I. The 507-Acre Petition**

S.B.L.	Comment	Commenter	Response
1-1-24	As reflected in Orange County records, the first name of the parcel owner is "Goldie," while the first name of the parcel owner is typed out on the petition as "Goldy."	Furst Letter, Exhibit A. <sup>46</sup>	As shown on the Property Description Report for S.B.L. 1-1-24 (found in Annex. Pet., Ex. B, Annexation Map Report (1)), the correct first name of the property owner is Goldie. The signature on the Annexation Petition matches the name of property owner exactly, "Goldie Friedman." The typed name on the Annexation Petition of "Goldy" is a minor typographical scrivener's error and does not affect the validity of the signature.
1-1-26.1	As reflected in Orange County records, the owner of the parcel is Emes 1 LLC, while the parcel owner is identified as "Isidor Landau" on the petition.	Furst Letter, Exhibit A.	As shown on the Property Description Report for S.B.L. 1-1-26.1 (found in Annex. Pet., Ex. B, Annexation Map Report (1)), the owner of the property is Emes 1 LLC. Due to a clerical error, the signer of the Annexation Petition was listed as the owner instead of the entity on whose behalf he was signing.  As set forth in Paragraph 5 of the Annexation Petition, Isidor Landau affirmed that by signing the Annexation Petition, he was authorized to sign on behalf of the corporate property owner. In the accompanying Affidavit of Isidor Landau, he affirms that he was signing the Annexation Petition on behalf of the corporate property owner, that he was authorized to do so, and that the corporate property owner Emes 1 LLC has and does petition

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<sup>46</sup> John W. Furst, *Comment Letter on Behalf of the Town of Woodbury*, June 10, 2015.

			for annexation of its property into the Village of Kiryas Joel. <sup>47</sup>
1-1-39	As reflected in Orange County records, the owner of the parcel is "Port Orange Holdings LLC," while the parcel owner is identified as "Port Orange Holdings" in the petition.	Furst Letter, Exhibit A.	As shown on the Property Description Report for S.B.L. 1-1-39 (found in Annex. Pet., Ex. B, Annexation Map Report (1)), the owner of the parcel is Port Orange Holdings LLC. Due to a clerical scrivener's error, "LLC" was left off the typed name of the property owner.  As set forth in Paragraph 5 of the Annexation Petition, Isidor Landau affirmed that by signing the Annexation Petition, he was authorized to sign on behalf of the corporate property owner. In the accompanying Affidavit of Isidor Landau, he affirms that he was signing the Annexation Petition on behalf of the corporate property owner, that he was authorized to do so, and that the property owner Port Orange Holdings LLC has and does petition for annexation of its property into the Village of Kiryas Joel.
1-1-52	There is no assessed value listed for this parcel nor does it appear in Exhibit C.	Mayle Letter, 4.	This comment is erroneous. This parcel does have an assessed value and does appear on the list of assessed values certified by the Town of Monroe Tax Assessor in Exhibit C to the Annexation Petition.
1-2-8.222	The owner of record for this parcel is identified on the petition as "Beth Freund," but the signatory is identified as "Leopold Freund."	Furst Letter, Exhibit A.	The commenter appears to assume that "Beth Freund" is a natural person. That is erroneous as Beth Freund is a religious congregation. As set forth in Paragraph 5 of the Annexation Petition, the signatory, Leopold Freund, affirms that he is authorized to sign on behalf of the religious organization which is the property owner.
1-2-8.11	As reflected in Orange County records, the owners of the parcel are "Pincus J. Strulovitch," and "Lillian Strulovitch," while the petition shows "Joseph Strulovitch" as a signer.	Furst Letter, Exhibit A;	For this parcel, the Annexation Petition contains the signature of the property owner without a typed identification of the signer. The property owner signed the Annexation Petition. The accompanying Affidavit of Joseph Strulovitch confirms that he is also known as Pincus J. Strulovitch and is an owner of the property.
1-2-8.11	As reflected in Orange County records, the owners of the parcel are	Mayle Letter, 3.	The person signing the Annexation Petition was authorized to sign on behalf of all owners. See Affidavit of Joseph Strulovitch. The non-signing co-owner has confirmed that

<sup>47</sup> Under New York law, it is well-settled that a corporation may, by means of an authorized representative, sign an annexation petition. *Skidmore Coll. v. Cline*, 58 Misc. 2d 582, 584 (N.Y. Sup. Ct.) *aff'd*, 32 A.D.2d 985 (N.Y. App. Div. 1969) (rejecting challenge to annexation petition signatures where authorized representatives signed petition on behalf of a corporation).

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	"Pincus J. Strulovitch," and "Lillian Strulovitch," but the petition shows only one signature, and both co-owners are required to sign.		authorization and ratified the inclusion of the property in the Annexation Petition. <i>See</i> Affidavit of Lilian Strulovitch.
1-2-13	The petition contains no signature associated with this parcel.	Furst Letter, Exhibit A.	Under the Municipal Annexation Law, a signature is not required for every parcel proposed to be annexed.
1-2-30.1	As reflected in Orange County records, the owners of the parcel are "Moses Goldberger," and "Briendel Chavi Goldberger," but the petition shows only a signature by "Moses Goldberger," and both co-owners are required to sign.	Mayle Letter, 4.	The person signing the Annexation Petition was authorized to sign on behalf of all owners. <i>See</i> Affidavit of Moses Goldberger. The non-signing co-owner has confirmed that authorization and ratified the inclusion of the property in the Annexation Petition. <i>See</i> Affidavit of Briendel Chavi Goldberger.
1-2-30.7	As reflected in Orange County records, the owner of the parcel is "Koznitz Estates, LLC," while the parcel owner is identified as "Konitz Estates, LLC" in the petition.	Richmond Letter, 2.	As shown on the Property Description Report for S.B.L. 1-2-30.7 (found in Annex. Pet., Ex. B, Annexation Map Report (2)), the owner of the parcel is Koznitz Estates, LLC. Due to a clerical scrivener's error, the "z" in Koznitz was omitted from the typed name of the property owner. Although this clerical error is inconsequential and does not invalidate the signature, the accompanying Affidavit of Chaim Tager, affirms that he was signing the Annexation Petition on behalf of the property owner, Koznitz Estates, LLC, that he was authorized to do so, and that the property owner Koznitz Estates, LLC has and does petition for annexation of its property into the Village of Kiryas Joel.
1-2-32.12	The record owner of this parcel is "Yisorel Cong Bais," not "Bais Yisroel Cong." as listed on the petition.	Mayle Letter, 5.	This comment is erroneous. The property owner is Bais Yisroel Congregation, as shown in the deed for the property submitted herewith.
1-2-32.12	"Bias Yisroel Congregation," listed as owner of the parcel, is allegedly not an active or inactive corporation or	Richmond Letter, 2	Under the Municipal Annexation Law, the owner of a parcel need not be demonstrated to be an active or inactive corporation or business entity in New York State, but only to be the actual owner of the parcel. There is no dispute as to ownership.

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	business entity in New York State.		
1-3-12	The signatures for SBL 1-3-12 and SBL 1-2-8.11 appear to be the same. However, the owner of record for each parcel is different.	Furst Letter, Exhibit A; Mayle Letter, 3.	The two signatures are from the same person and that person was authorized to sign on behalf of the record owners for each parcel. As stated in Paragraph 5 of the Annexation Petition, Joseph Strulovitch, has affirmed that he is authorized to sign on behalf of Joseph Stulovitch 1, LLC, which is correctly listed in the Annexation Petition as the owner of the parcel.
1-3-14.21	"Elozer Gruber" is listed as the signatory for this parcel. However, two corporations (Amazon Rlty Assoc Inc and Burdock Rlty Assoc Inc) are listed as owners of record for this parcel, and it is not clear which Elozer Gruber is signing on behalf of.	Furst Letter, Exhibit A; Richmond Letter, 2; Mayle Letter, 5.	As stated in Paragraph 5 of the Annexation Petition, Elozer Gruber affirms that he is authorized to sign on behalf of the corporate property owners, Amazon Rlty Assoc Inc and Burdock Rlty Assoc Inc., both of whom are listed on the Annexation Petition as the owners of the property in question.
1-3-15	"Elozer Gruber" is listed as the signatory for this parcel. However, two corporations (Amazon Rlty Assoc Inc and Burdock Rlty Assoc Inc) are listed as owners of record for this parcel, and it is not clear which Elozer Gruber is signing on behalf of.	Furst Letter, Exhibit A; Richmond Letter, 2; Mayle Letter, 5.	Same as prior response.
1-3-40	"Elozer Gruber" is listed as the signatory for this parcel. However, two corporations (Amazon Rlty Assoc Inc and Burdock Rlty Assoc Inc) are listed as owners of record for this parcel, and it is not clear which Elozer Gruber is signing on behalf of.	Furst Letter, Exhibit A; Richmond Letter, 2.	Same as prior response.

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43-1-11	Whether this parcel is included in the annexation petition. This parcel is included in Exhibit A, but not in Exhibit B or Exhibit C.	Richmond Letter, 4.	This parcel is not and was never included in the Annexation Petition itself and is erroneously included in Exhibit B.
43-1-12	The listed owner of record is "Atkins Brothers Inc." is allegedly not an active or inactive business entity in New York State.	Richmond Letter, 2.	The name of the property owner on the deed is Atkins Bros LLC, a copy of which is submitted herewith. However, as confirmed in Affidavit of Elozer Gruber, the correct name of the property owner is Atkins Brothers Associates, LLC. Attached is confirmation from the records of the New York State Department of State, Division of Corporations that Atkins Brothers Associates LLC is an active business corporation.
43-1-15	Whether this parcel is included in the annexation petition. This parcel is listed in Exhibit B and C, but not identified by SBL in Exhibit A.	Richmond Letter, 3.	This parcel is included in the Annexation Petition. It is listed in Exhibits B and C to the Annexation Petition. Due to a clerical error it was not identified by section, block and lot in Exhibit A to the Annexation Petition. Nevertheless, it is within the area proposed to be annexed as it is within the metes-and-bounds legal description of Area VIII(D) as set forth in the Annexation Territory Description included within Exhibit A of the Annexation Petition.
43-3-1	Whether parcel by this SBL number was subsequently subdivided and whether this affects assessed value; Whether it matters that former co-owners' signatures are included on the petition	Mayle Letter, 6.	This parcel was subdivided into 59-2-1.1, 59-2-1.2, and 59-2-1.3 after the most recent annual town tax roll release. This subdivision is noted in Exhibit B. Subdivision of the parcel does not affect its assessed value, and the assessor certified that the value as listed on the Annexation Petition. Additional signatures by former co-owners do not render the Annexation Petition defective in any way.
43-3-3	Orange County records list one of the co-owners as "Ester Arnstein," but the petition lists a signature for this parcel which is labelled as the signature of "Esther Arnstein"	Furst Letter, Exhibit A.	The inclusion of an extra "h" in the first name of the property owner is an inconsequential clerical scrivener's error which has no effect on the legal sufficiency of the Annexation Petition in respect of the parcel in question.  RECEIVED SEP 04 2015  Town of Monroe Town Clerk's Office
43-5-3.2	Orange County records list the owners of this parcel as Henry Weinstock and Chana Weinstock, but only the	Furst Letter, Exhibit A; Mayle Letter, 2.	The person signing the Annexation Petition was authorized to sign on behalf of all owners. <i>See</i> Affidavit of Henry Weinstock. The non-signing co-owner has confirmed that authorization and ratified the inclusion of the property in the Annexation Petition. <i>See</i> Affidavit of Chana Weinstock.

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	signature of Henry Weinstock appears on the petition		Town of Monroe Town Clerk's Office
43-5-6	Orange County records reflect that "257 Mountainville Trust" is the owner of this parcel, but the petition lists "257 Mountainville Trust/Erwin Landau Tr." as the owners, and Erwin Landau is listed as the signatory	Furst Letter, Exhibit A.	This comment is mistaken. The Annexation Petition is correct and matches the Property Description Report for this parcel (found in Annex. Pet., Ex. B., Annexation Map Report (5)). As set forth in Paragraph 5 of the Annexation Petition, Erwin Landau affirms that he is authorized to sign on behalf of the entities which own the property in question.
56-1-1.1	Whether the signature of the owner for this parcel is authentic; The signatory and the witness are listed as the same person, Simon Gelb.	Mayle Letter, 4.	Simon Gelb's signature for this parcel as owner is authentic and was witnessed by notary public Yoel Mittelman. See Affidavit of Simon Gelb and Affidavit of Yoel Mittelman.
63-1-1.2	Orange County records list "Hannah Perlstein" as owner of this parcel, but the petition lists "Hana Perlstein" as the signatory for the parcel.	Furst Letter, Exhibit A.	The signature on the Annexation Petition is correct and exactly matches the name of the owner of the property as listed in the Orange County Records (found in Annex. Pet., Ex. B., Annexation Map Report ( )). The clerical error in typing the first name of the signatory does not affect the legality or sufficiency of the Annexation Petition as to this property or the fact that the signature exactly matches the property owner's name.
65-1-25	Orange County records reflect that the parcel is owned by "Joel Brach" and "Helen Brach," but the petition bears only the signature of "Joel Brach" and lists only "Joel Brach" as owner	Furst Letter, Exhibit A; Mayle Letter, 3.	The person signing the Annexation Petition was authorized to sign on behalf of all owners. See Affidavit of Joel Brach. The non-signing co-owner has confirmed that authorization and ratified the inclusion of the property in the Annexation Petition. See Affidavit of Helen Brach.
66-1-1.-1	Orange County records reflect that "282 Mountainville Drive, LLC" as the owner of this parcel. However, the petition lists "Joel Reisman" as owner, and	Furst Letter, Exhibit A.	This comment is erroneous. The Annexation Petition lists 282 Mountainville Drive, LLC as owner, and Paula Reisman as signatory on behalf of the corporate owner. As stated in Paragraph 5 of the Annexation Petition, Paula Reisman affirms that she is authorized to sign on behalf of the corporate property owner, 282 Mountainville Drive, LLC.



	"Paula Reisman" as signatory		
66-1-1.-2	Orange County records reflect that "282 Mountainville Trust" is the owner of this parcel, however on the petition, "Joel Reisman" is listed as the owner and signatory.	Furst Letter, Exhibit A.	This comment is erroneous. As indicated in the Property Description Report for this parcel (found in Annex. Pet., Ex. B, Property Map Report (11)), Joel Reisman is listed as the owner of this parcel.

**Table II. The 164-Acre Petition**

S.B.L.	Purported Issue	Commenter	Response
1-2-1	This parcel is included in Exhibit A, but not in Exhibit C. Is this parcel included in the annexation petition?	Richmond Letter, 5.	The comment is mistaken as to whether this parcel is included in Exhibit C - it is included under both the old 1-2-1 SBL for the parcel as well as new 65-1-32 SBL. As indicated on the map appearing at the beginning of Exhibit B, this parcel has been re-designated as 65-1-32. A Property Description Report for this parcel is also included in Exhibit B (bearing the former SBL, 1-2-1, as Orange County records have not been fully updated).
1-3-14.21	"Elozer Gruber" is listed as the signatory for this parcel. However, two corporations (Amazon Rlty Assoc Inc and Burdock Rlty Assoc Inc) are listed as owners of record for this parcel, and it is not clear which Elozer Gruber is signing on behalf of.	Furst Letter, Exhibit D; Richmond Letter, 4.	See response above for this same parcel number.
1-3-15	"Elozer Gruber" is listed as the signatory for this parcel. However, two corporations (Amazon Rlty Assoc Inc and Burdock Rlty Assoc Inc) are listed as owners of record for this parcel, and it is not clear which	Furst Letter, Exhibit D; Richmond Letter, 4.	See response above for this same parcel number.

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	Elozer Gruber is signing on behalf of.		Town of Monroe Town Clerk's Office
1-3-40	"Elozer Gruber" is listed as the signatory for this parcel. However, two corporations (Amazon Rlty Assoc Inc and Burdock Rlty Assoc Inc) are listed as owners of record for this parcel, and it is not clear which Elozer Gruber is signing on behalf of.	Furst Letter, Exhibit D; Richmond Letter, 4.	See response above for this same parcel number.
1-2-8.11	As reflected in Orange County records, the owners of the parcel are "Pincus J. Strulovitch," and "Lillian Strulovitch," but the petition shows only one signature, and both co-owners are required to sign.	Furst Letter, Exhibit D.	See response above for this same parcel number.
1-3-1.3	Orange County records reflect four owners, while the petition only bears the signatures of three owners	Furst Letter, Exhibit D; Richmond Letter, 4; Mayle Letter, 7.	As stated in Paragraph 5 of the Annexation Petition, Elimelech Schwartz affirms that he is authorized to sign on behalf of the corporate property owner, the AES 11-07 Trust.
1-2-8.222	The owner of record for this parcel is identified on the petition as "Beth Freund," but the signatory is identified as "Leopold Freund."	Furst Letter, Exhibit D.	See response above for this same parcel number.
65-1-32	The owner of record listed on the petition, "Upscale 4 Homes Corp." is allegedly not an active or inactive business entity in New York State.	Richmond Letter, 4.	The name of the property owner is listed incorrectly due to a clerical error in the records of Orange County. The correct property owner name as Upscale Y Homes Corp., as shown on the deed for the property which is submitted herewith. Upscale Y Homes Corp. is an active domestic business corporation according to records of the New York State Department of State, Division of Corporations which is submitted herewith.

65-1-32	Whether parcel with this SBL exists in Orange County	Mayle Letter, 7	At the time the Annexation Petition was filed, SBL 65-1-32 was an existing lot. Since the filing of the Annexation Petition, SBL was divided into two lots, SBL 65-1-32.1 and 65-1-32.2, owned by Upscale Y Homes Corp.
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## VI. The Annexation Opponents' Substantive Objections are Meritless

Opponents of the annexation have also raised a variety of substantive objections, all of which are unavailing. To start, a comment letter submitted on behalf of United Monroe claims that the annexation is not in the public interest because it “would cause an unconstitutional result” by violating the Establishment Clause of the U.S. Constitution, which forbids government establishment of a religion.<sup>48</sup> In order to prove that a facially-neutral government action violates the Establishment Clause, one “must be able to show the absence of a neutral, secular basis” for the action.<sup>49</sup> However, the annexation proposed here is clearly based on secular objectives, such as facilitating the provision of local government services.

United Monroe seeks to support its baseless constitutional claim with a U.S. Supreme Court case that held unconstitutional a state statute creating a separate school district for the Village of Kiryas Joel.<sup>50</sup> This case is inapplicable for several reasons. To start, it involved a special act of the legislature in creating a school district that “ran uniquely counter to state practice” in both its form and its tension with the general trend of consolidating rather than segmenting school districts,<sup>51</sup> whereas the petition for annexation involves the routine use of a widely available and neutral

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<sup>48</sup> Daniel Richmond and Krista Yacovone, *Comment Letter on Behalf of United Monroe*, June 10, 2015, 6.

<sup>49</sup> *Gillette v. United States*, 401 U.S. 437, 452 (1971); see *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971) (establishing that government actions constitutional if they (1) have a secular purpose, (2) “have a principal or primary effect . . . that neither advances nor inhibits religion,” and (3) do not foster “an excessive government entanglement with religion.”) (citation omitted).

<sup>50</sup> Daniel Richmond and Krista Yacovone, *Comment Letter on Behalf of United Monroe*, June 10, 2015, 5-6, citing *Bd. of Educ. of Kiryas Joel Vill. Sch. Dist. v. Grumet*, 512 U.S. 687 (1994).

<sup>51</sup> *Id.* at 702 (plurality opinion).

municipal planning process.<sup>52</sup> Additionally, the Supreme Court was clear that only the school districting (and not the existence of the Village) was under consideration in the case.<sup>53</sup> As Justice Anthony Kennedy observed, “We do not confront the constitutionality of the Kiryas Joel village itself, and the formation of the village appears to differ from the formation of the school district [because] the village was formed pursuant to a religion-neutral self-incorporation scheme.”<sup>54</sup> The annexation, similarly, is provided for under a “religion-neutral” procedure of municipal law, and as such, does not and cannot raise Establishment Clause issues.

Next, United Monroe’s claim that the annexation would cause “voluntary segregation” is equally meritless.<sup>55</sup> United Monroe observes that the Town Code of the Town of Monroe prohibits members of the Town Board from “discrimin[ating] or caus[ing] voluntary segregation.”<sup>56</sup> This may be true, but United Monroe’s letter is, puzzlingly, completely bare of any actual argument or evidence for why the annexation would constitute “voluntary segregation.” United Monroe seems to prefer to simply repeat the phrase “voluntary segregation” like an incantation, without any actual evidence to support this specious contention. Moreover, it bears emphasizing that the right to “associate freely with others” is a fundamental right protected by the U.S. Constitution,<sup>57</sup> and thus to establish that there is unlawful activity occurring United Monroe must go beyond simply pointing to the fact that Kiryas Joel is a tight-knit community whose members wish to live in proximity to each other. United Monroe presents no evidence of any kind of segregation at all or any preclusion of anyone who wants to from living in Kiryas Joel. Annexation itself does not

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<sup>52</sup> See *id.* at 714, 717 (O’Connor, J. concurring in part and concurring in the judgment) (emphasizing Village residents’ “right—a right shared with all other communities, religious or not, throughout New York—incorporate themselves as a village. . . . There is nothing improper about a legislative intention to accommodate a religious group, so long as it is implemented through generally applicable legislation.”).

<sup>53</sup> *Id.* at 729-30 (Kennedy, J. concurring in the judgment).

<sup>54</sup> *Id.*

<sup>55</sup> Daniel Richmond and Krista Yacovone, *Comment Letter on Behalf of United Monroe*, June 10, 2015, 6.

<sup>56</sup> Daniel Richmond and Krista Yacovone, *Comment Letter on Behalf of United Monroe*, June 10, 2015, 6, citing Monroe Town Code § 4-4(J)(1).

<sup>57</sup> *Nat’l Ass’n for Advancement of Colored People v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 461 (1958).

preclude anyone from living within Kiryas Joel or the territory which is proposed for annexation. Thus, United Monroe's "voluntary segregation" claim is meritless and should be disregarded.

To the extent that other commenters have raised the specter of potential future housing discrimination,<sup>58</sup> this claim is entirely speculative, as no housing development proposals in the annexation territory are currently under consideration. If there is ever any claim of a violation of housing laws because a person wishes to move in, and is denied the opportunity to do so, there would be a variety of legal means for redress. This hypothetical and speculative concern is not a basis for denying an entire annexation petition, and there is no precedent for doing so on such grounds.

Additionally, United Monroe claims that the shape of the annexation territory is not in the public interest, because it has purportedly "baroque boundaries."<sup>59</sup> This contention is unavailing. The boundaries of the annexation territory excluded those properties whose owners did not want to be annexed to the Village. If at any time those property owners decide they would like to petition to be annexed to the Village of Kiryas Joel, they are free to do so. Nonetheless, it is important to note that there are several examples of cases where a New York court has taken note of the "irregular" boundaries of a proposed annexation, but nonetheless found that annexation to be in the overall public interest.<sup>60</sup>

United Monroe also argues that the annexation's "goal is to rezone the subject land," which means that the annexation is "not in the public interest."<sup>61</sup> This assertion fails. To start, the primary purpose of the annexation, as discussed in this letter and in many of the comments submitted at the hearing on June 10 2015, is to gain access to Village services. As noted *supra* at 9-10, annexing

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<sup>58</sup> Susan Shapiro, *Comment Letter on Behalf of Preserve Hudson Valley*, June 10, 2015, 2.

<sup>59</sup> Daniel Richmond and Krista Yacovone, *Comment Letter on Behalf of United Monroe*, June 10, 2015, 7.

<sup>60</sup> *Bd. of Trustees of Inc. Vill. of Warwick, Orange Cnty. v. Town Bd. of Town of Warwick, Orange Cnty.*, 56 A.D.2d 928, 928, 393 N.Y.S.2d 47, 47-48 (N.Y. App. Div., 2d. Dept. 1977); *Common Council of City of Middletown v. Town Bd. of Town of Wallkill*, 29 A.D.2d 561, 286 N.Y.S.2d 369 (N.Y. App. Div., 2d. Dept. 1967).

<sup>61</sup> Daniel Richmond and Krista Yacovone, *Comment Letter on Behalf of United Monroe*, June 10, 2015, 36.

the territory to the Village will mean integration with Village infrastructure such as sidewalks and street lighting, which will dramatically improve pedestrian safety. The Village's emergency services can respond quicker to the annexation territory, and can offer service in both English and Yiddish, whereas the Town of Monroe does not even have its own police department.

United Monroe's claims regarding rezoning and high-density development are completely speculative, as there is no proposed rezoning or development project pending. However, to the extent that multifamily housing may be the preferred future development pattern in order to provide more affordable housing, New York courts have recognized this a "public interest" supporting approval of an annexation.<sup>62</sup>

As demonstrated above, the annexation opponents' "kitchen sink" approach to opposition collapses under scrutiny. The opponents cannot rebut the significant public benefits the annexation is projected to provide, and they cannot substantiate the miscellaneous speculative objections which they assert.

## **VII. Conclusion**

The proposed annexations are in the overall public interest. Annexation would enable the Village to grow in a rational direction, along its existing boundaries, and would accommodate the natural population growth of the Village into contiguous lands where smart growth, integration into the Village's sidewalks and public transit system, and use of upstate water would all be in the overall public interest.

The proposed annexations would also promote the community's unity of purpose, protect the environment, and optimize access to local government services. These benefits redound to

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<sup>62</sup> *Bd. of Trustees of Vill. of Spring Valley v. Town of Clarkstown*, 292 A.D.2d 450, 451 (N.Y. App. Div., 2d. Dept. 2002) ("[T]he opportunity provided by the proposed annexation to develop the property with affordable multifamily houses would satisfy the needs of a growing segment of the population in the community. Although the property could be developed under existing Town zoning laws, the permissible construction would not satisfy such community needs."); *See also Vill. of Harriman v. Town of Monroe*, 42 A.D.3d 463, 465 (N.Y. App. Div., 2d. Dept. 2007).

stakeholders at the Village, Town, and County levels, and it is indisputable that all benefit from a diverse, inclusive society, from sustainable communities, and from efficient government services. The choice here is not between population growth and no population growth, because population growth is a natural force and a fact of life, but rather between effective and less effective ways of managing that growth. The proposed annexations are in the overall public interest and fosters the kind of unity of purpose which is contemplated by the Municipal Annexation Law. The proposed annexations should be approved.

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