

STATE OF NEW YORK
SUPREME COURT : ERIE COUNTY

KENNETH YOUNG,

Plaintiff,

v.

Index No.: 803989/2024

TOWN OF CHEEKTOWAGA,

Hon. Paul Wojtaszek, J.S.C.

Defendant.

**SPITZER AFFIRMATION IN FURTHER SUPPORT
OF THE TOWN'S MOTION TO STRIKE**

Daniel A. Spitzer, Esq., under the penalties of perjury and pursuant to CPLR 2106, hereby affirms that the following is true and correct:

1. I am a partner of Hodgson Russ LLP and have served as counsel to Defendant the Town of Cheektowaga (the "Town") at all times relevant to this proceeding. I am fully familiar with the facts and circumstances herein.
2. This affirmation is submitted in further support of the Town's Motion to Strike.
3. On May 20, 2024, Plaintiff filed a pre-discovery Motion for Partial Summary Judgment ("Plaintiff's Motion"). Doc. Nos. 30-36.
4. On June 12, 2024, the Town filed its Opposition to Plaintiff's Motion and Cross-Motion for Summary Judgment (the "Town's Original Opposition/Cross-Motion"). Doc. Nos. 38-50.

5. In opposition to Plaintiff's Motion, the Town argued, among other things, that Plaintiff's claim was not ripe because (1) the State had implemented one of the remedies in the law—biennial elections—to encourage greater voter turnout and no election has occurred since the change, and (2) the Town was proceeding with the implementation of Plaintiff's requested remedy—wards. *See* Doc. No. 68, pp. 13-15.

6. On or about August 2024, the Town elected not to proceed with a referendum to adopt wards within the Town in the fall of 2024.

7. As a result of that choice, the Town requested a Court conference with all parties to discuss this update.

8. Specifically, because the Town relied upon the Town's prior intention to proceed with a ward referendum in the fall of 2024 in opposition to Plaintiff's Motion, the Town needed to discuss amending its Original Opposition/Cross-Motion accordingly.

9. The Court held the requested conference on August 12, 2024.

10. Plaintiff's counsel attended the conference.

11. During the conference, I informed the Court that the Town was not going forward with a ward referendum in the fall of 2024. I further stated that since the Town's ripeness defense partially relied upon the Town proceeding with that referendum, the Town had an ethical obligation to amend its papers to abandon that part of its defense.

12. As such, I requested leave to amend the Town's Original Opposition/Cross-Motion filings.

13. The Court granted the Town's request and issued an updated briefing schedule. A true and accurate copy of the Court's email correspondence reflecting this updated briefing schedule is attached as **Exhibit A**.

14. On September 3, 2024, the Town filed its Amended Opposition to Plaintiff's Motion and Cross-Motion for Summary Judgment ("Town's Amended Opposition/Cross-Motion").

15. Plaintiff argues that he submitted the additional information the Town seeks to strike not to plug the obvious holes in his argument, but because the Town and its attorneys tried to conceal these facts from the Court. Plaintiff does not explain how information on a 1953 referendum informs the Court of a delay in a 2024 referendum, nor does it address the main failure of his case—the failure to demonstrate a pattern of racially polarized voting. That was reason was the Town's motion—the information was extraneous to the Court's consideration of the Plaintiff's Motion and the Town's Cross-Motion.

16. Since this Court participated in the conference and issued the Order allowing amendment of the filings on this very ground, the history of this case disproves Plaintiff's attempt to justify Plaintiff's new evidence and arguments regarding ward efforts in 1953 and 2024. Such evidence and argument remain irrelevant, prejudicial, and improper.

WHEREFORE, for all the reasons set forth above, the Town respectfully requests that the Court grant its motion to strike; and grant such other and further relief that the Court deems just and proper.

Dated: June 11, 2025


Daniel A. Spitzer

Word Count Certification

I hereby certify, pursuant to 22 NYCRR 202.8-b, that the total number of words in the foregoing affirmation, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of authorities, signature block, or any authorized addendum containing statutes, rules and regulations is 600. In making this certification, I relied on Microsoft Word's "Word Count" tool.

Dated: June 11, 2025



Daniel A. Spitzer

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