

# THE ADVOCATE

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## POMONA YESHIVA CASE MOVES FORWARD IN COURT

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*Judge allows case to proceed, facial challenges, constitutional claims to ensue*

America is famous for its wide open spaces and for the constitutional right to religious freedom. In fact it is the sole purpose Orthodox Jewish families and yeshivas have moved here from the city, or around the world.

Sometimes municipalities, neighbors, or environmental circumstances can make it difficult for those realities of space and freedom to overlap. In New York, the Village of Pomona allegedly does not have enough space for another Yeshiva.

According to the case filed in United States District Court, Southern District of New York by Yeshiva



**Judge Robert Karas**  
Federal Judge

of Tartikov against Village of Pomona, the municipality. a) does not have enough space for a yeshiva, and/or b) can not tolerate the zoning change needed to house the intended community of families. The plot rests on 130 acres of land purchased almost a decade ago by Tartikov Yeshiva and several entities. The plot rests on the **cont. Page 11**

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The plot owned by Tartikov Yeshiva sits on 130 acres



northern tip of Routes 306 near Route 202. The land was purchased from Yeshiva of Spring Valley for roughly twelve million dollars.

While the lawsuit discusses a history of discrimination against the community in Rockland, it argues that objections to this project in particular violate Tartikov Yeshiva's religious rights.

Paul Savad, a seasoned litigator, is the lead attorney in this case. He has been practicing law since the late 1960's. Savad has served as lead counsel in multiple high profile cases where he has managed teams of attorneys to litigate specialized complex litigation. He is working alongside RLUIPA legal experts John G. Stepanovich of Virginia Beach and Roman P. Storz from Washington DC.

Savad is thrilled about the decision reversed by Judge Karas's Court on January 4. He told the Advocate in an interview, "This is a huge victory. The fact is that we [Tartikov] do not have to apply for a text amendment is a success in itself. This case is moving forward with a facial challenge."

In U.S. constitutional law, a facial challenge is a challenge to a statute in which the plaintiff alleges that the legislation is always unconstitutional, therefore void. "Every single claim survives, including free exercise, free speech, freedom of association, equal protection, and RLUIPA," explains Savad.

"Plaintiffs have sufficiently alleged that the multi-family dormitories that they seek to build are intended to facilitate religious exercise, thus bringing this accessory use within RLUIPA's protections," notes page 86 of Judge Karas's report. Judge Karas implied that the Tartikov yeshiva and its multi-family residential housing is protected religious exercise.

### The Religious Land Use and Institutionalized Persons Act.

As a general rule RLUIPA implies that no government shall impose a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution. There are exceptions, for instance if the government can demonstrate that imposition of the burden on that person, assembly or institution.

The suit against the Village of Pomona is not a regular zoning challenge. Tartikov yeshiva is an educational facility to train dayanim (rabbinical judges). The school would be tuition-free, and only train the best, most suitable students. Rabbi Babad is a descendant of the popular book 'Mishchas Chanuch' a legal commentary. It was written by Yosef Babad in the 1800s. He was the head of the court of Temepil Babad, is an acronym for 'Son of The Court'.



Stamp of Beth Din Tzedek of Tartikov Khal Michas Chanuch Rabbi Naftali Babad

A large part of the argument is that prior to World War II, dayanim were trained in rabbinical colleges throughout Europe, and every large Jewish community had a beth din. These dayanim were almost eliminated in World War II and only a small fraction of the rabbis survived in Europe after the war, and very few rabbinical courts continued to exist.

The plan is to facilitate 250 students and to house families' of the students. Unlike other neighborhoods, this plot would have multiple shuls, Bati Dinim (Court houses for Jewish law) and many Bati Medrashim (libraries). The objective is to have trained dayanim (religious judges). Training typically would take up to 15 years, and include various bar-type exams.

Currently, there are only a few Bati Dinim in America staffed with properly certified rabbinical judges who are competent to rule on all four volumes of the Shulchan Aruch (Jewish law). These courts are extremely overburdened, thus creating the urgent need for the Yeshiva. As the Orthodox Jewish population continues to grow, the need for dayanim will only increase.

CONTINUED FROM PAGE 1

Savad and his counsel also point out that the Congregation's property in Pomona is uniquely suited to meet the needs of rabbinical students and their families. The Orthodox Jewish community within the Town of Ramapo and its villages, including Pomona, has the infrastructure necessary to maintain the practices prescribed by their religious beliefs, including synagogues, kosher food stores, yeshivas and high schools for boys and girls. The majority of rabbinical students that will be educated at the Rabbinical College will come from Rockland County.

No alternative properties exist in the village or its surrounding communities that can practically accommodate a serious yeshiva as this Pomona was chosen as a suitable location for Tartikov since, "This type of Yeshiva needs to be surrounded by a community of Orthodox for pragmatic purposes such as kosher meat and access to mikvahs." Infrastructure-wise, notes Savad, "The Rabbinical College has engaged all the necessary professionals, including architects, engineers, and traffic experts, and has determined the impact on the surrounding community and environment to be minimal. They deserve the same consideration that any other development would enjoy under village planning code."

"There is a history of discrimination against the Hasidic community here," said Savad. "Over the past several years, the Village of Pomona and its Board of Trustees have repeatedly used legislative and administrative means to prevent a variety of Jewish-affiliated institutions from developing this property for religious use."

A similar sentiment was expressed in Airmont just south of Pomona down Route 306. In 2005, The New York Times reporter Peter Applebome observed,

"If anyone is looking for a simple script, they should probably look elsewhere. Airmont has been slapped around enough by the courts to be something other than a virginal player in any discrimination case. But you can get a pretty good course in knotty legal, religious and land-use issues playing out all over the place, and with particular ferocity in Rockland County, by tuning into the collision between Congregation Mischkenos Lavier Yakov and the residents of Hillside Avenue..... Soon after, the federal government stepped in. Its lawsuit said Airmont violated the Religious Land Use and Institutionalized Persons Act and the Fair Housing Act by maintaining a zoning code that prohibits religious boarding schools."

What that really meant, the government said in its suit, was no Hasidic boarding schools."

John O. Stepanovich, a member of Savad's legal team, was successful in the Airmont case as he represented Mischkenos Lavier Yakov.

According to Storz, another attorney working with Savad, this is an extreme case. "One that brings to mind the civil rights conflicts of the 1960s. We need

to stop the Village of Pomona, and municipalities across the country, from using their zoning power as a tool to control unpopular religious groups. RLUIPA supersedes local zoning codes in cases such as this by allowing municipalities to consider plans for the development of religious uses that may otherwise be prohibited outright, like this Yeshiva. By denying the Rabbinical College the right to even apply for the necessary permits, while secular colleges or colleges of other religious traditions would be permitted, and even refusing to meet with Congregation representatives, the village has violated the letter and the spirit of the First Amendment and RLUIPA."

The Judge's decision concludes: "Defendants (Pomona's) Motion is granted in part and denied in part. The remaining Plaintiff's as-applied challenges under the Free Speech, Free Exercise, and Free Association Clauses of the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, and RLUIPA, as well as their as-applied claims under the New York Constitution and New York state law, are dismissed without prejudice as unripe."

Page 100 of Judge's Karas' decision states:

"The Court concludes that Plaintiffs have stated a claim based on their facial challenge under the Exclusions and Limits Provision. As noted, Plaintiffs have pled that the challenged ordinances prevent them, as a matter of law, from building the rabbinical college (indeed, any rabbinical college) on the Subject Property or anywhere in Pomona. The Court recognizes Defendants' point that Plaintiffs could seek to change the ordinances, via a text amendment, but this does not change the analysis. Plaintiffs have alleged facts plausibly establishing that any efforts to change the law will be time consuming and likely unsuccessful."

If a facial challenge is successful, a court will declare the statute in question invalid, which has the effect of striking it down entirely. If successful, taxpayers of the Village of Pomona are subject to paying Tartikov's legal fees as well as fees for the Village's attorney. This could be substantial - over \$2,000,000. All in addition to damages.

Last November an all girls Christian school in San Diego, California won a large case. The existing facilities used by the girls' Academy had become outdated and inadequate, resulting in the Academy not being able to achieve its mission of educating and inspiring "its students to grow as committed Christians." The Academy submitted an unsuccessful application to the City to demolish three single family houses on the property and replace them with a two story class room building and a parking structure.

The case eventually went before a federal jury. The trial began on October 9, 2012, and a verdict was rendered on October ten days later. The jury found for the Academy and awarded a verdict of \$ 1,111,622,000. This is purported to be the largest verdict ever awarded by a jury in a RLUIPA case.