

**IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF MICHIGAN**

**TARA NIKOLAO,**

Plaintiff,

v.

**NICK LYON**, individually and in his official capacity as Director of the Michigan Department of Health and Human Services, **WAYNE COUNTY DEPARTMENT OF HEALTH, VETERANS, AND COMMUNITY WELLNESS, DR. MOUHANAD HAMMAMI**, individually and in his official capacity as Director of the Wayne County Department of Health, Veterans, and Community Wellness, **CAROL AUSTERBERRY**, individually and in her official capacity as Division Director and Deputy Health Officer of the Wayne County Department of Health, Veterans, and Community Wellness, **JANE DOE 1**, individually and in her official capacity as Nurse for the Wayne County Department of Health, Veterans, and Community Wellness, **JANE DOE 2**, individually and in her official capacity as Nurse Manager for the Wayne County Department of Health, Veterans, and Community Wellness,

Defendants.

COMPLAINT

[Civil Rights Action under 42 U.S.C. § 1983 and Michigan State Law]

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Plaintiff Tara Nikolao, by and through her undersigned counsel, brings this Complaint against the above-named Defendants, their employees, agents, and successors in office, and in support thereof alleges the following upon information and belief:

### **INTRODUCTION**

1. This civil rights action seeks to protect fundamental constitutional rights under the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983, and Article 1 § 4 of the Michigan Constitution, and to vindicate the violation thereof. It challenges the constitutionality of Mich. Admin. Code r. 325.176(12) (the “Rule”), which allows State employees to withhold public schooling unless parents submit to a religious inquisition on the substance and logic of their beliefs, and endure false and misleading State-sponsored religious instruction about their beliefs. This action also challenges the ability of an administrative agency to implement a Rule that conflicts with a statute enacted by the legislature.

2. Defendants, as authorized by the Rule, violated the Free Exercise and Establishment Clauses of the First Amendment to the United States Constitution by inquiring into the substance of Mrs. Nikolao's beliefs and indoctrinating her with false and misleading statements about her Catholic faith. The Supreme Court authoritatively stated: "Particularly in this sensitive area [of religion], it is not within the judicial function and judicial competence to inquire whether the petitioner . . . correctly perceived the commands of [her] common faith. ***Courts are not arbiters of scriptural interpretation.***" *Thomas v. Review Bd. of Ind. Emp't Sec. Div.*, 450 U.S. 707, 715-16 (1981) (emphasis added).

3. Additionally, Michigan has long recognized the "special protection" afforded to religious liberty, the fortification of which is "one of the Bill of Rights' most important achievements." *People v Dejonge*, 501 N.W.2d 127, 134 (Mich. 1993). "No provision in our constitution ought to be dearer to man than that which protects the rights of conscience against the enterprises of the civil authority." *Id.* (internal quotation marks, brackets, and citations omitted). "The Michigan Constitution is *at least* as protective of religious liberty as the United States Constitution." *Id.* at 131 n. 9 (emphasis added).

4. Defendants, as authorized by the Rule, force Mrs. Nikolao to undergo these violations in order to receive public schooling for her children.

5. The Rule, thereby, deprives Mrs. Nikolao the right to freely exercise her religious beliefs and the right to be free from State-sponsored religious indoctrination.

6. Furthermore, the Michigan legislature, recognizing the importance of religious liberty, enacted Mich. Comp. Laws § 333.9215, which *mandates* that parents be allowed to exempt their children from State vaccination requirements because of their religious convictions.

7. Mrs. Nikolao seeks a declaration that Defendants violated her clearly established constitutional rights as set forth in this Complaint; a declaration that the Rule and the individual defendants enforcement of the rule violates the United States Constitution and 42 U.S.C. § 1983; a declaration that the Rule violates the Michigan Constitution; a declaration that, through the enforcement and attempted enforcement of the Rule, Defendants have substantially burdened and unlawfully infringed upon Plaintiff's right to free exercise of religion and right to be free from established religious instruction in violation of the United States Constitution and 42 U.S.C. § 1983; a declaration the Rule conflicts with Mich. Comp. Laws § 333.9215; a preliminary injunction and permanent injunction enjoining the enforcement of the Rule; an injunction ordering Defendants to change Mrs. Nikolao's "other" exemption to a religious exemption; and nominal damages for the harm caused by Defendants. Mrs. Nikolao also seeks an award of the

reasonable costs of litigation, including attorneys' fees and expenses, pursuant to 42 U.S.C. § 1988 and other applicable law.

### **JURISDICTION AND VENUE**

8. On December 1, 2015, pursuant to the Administrative Procedures Act, Mrs. Nikolao filed a petition requesting a declaratory ruling from the Michigan Department of Health and Human Services ("MDHHS").

9. On February 2, 2016, Mrs. Nikolao received a final decision from Nick Lyon, the Director of MDHHS, denying her request. (Exhibit A).

10. Mrs. Nikolao alleges violation of her First and Fourteenth Amendment Rights under 42 U.S.C. § 1983, and violation of Michigan law. Therefore, under 28 U.S.C §§ 1331 and 1367, this Court has jurisdiction.

11. Venue is proper in the Eastern District of Michigan pursuant to 28 U.S.C § 1391(b)(2) as a substantial part of the events giving rise to the claim occurred in this district.

### **PLAINTIFF**

12. Plaintiff Tara Nikolao is an adult resident of Wyandotte, Michigan in Wayne County. She is a registered nurse and the mother of four children.

13. Mrs. Nikolao is a devout Roman Catholic and, therefore, objects to vaccinations manufactured from aborted fetal cells. Mrs. Nikolao further believes

that, as a Catholic, she has a “grave responsibility . . . to make a conscientious objection with regard to those [vaccines] which have moral problems.”

14. Mrs. Nikolao’s personal religious beliefs also oppose all vaccines, even those that are not manufactured from aborted fetal cells, because she believes that the body is God’s temple and injecting it with chemicals that permanently alter the body violates the will of God.

### **DEFENDANTS**

15. Defendant Nick Lyon is the Director of MDHHS, an administrative agency for the State of Michigan, and is responsible for the operation, management, and policy of MDHHS, including promulgation, administration, and enforcement of the Rule and the MDHHS document on Religion (Exhibit B).

16. Defendant Nick Lyon, on behalf of MDHHS, rejected Plaintiff’s petition for a declaratory ruling on the constitutionality of the Rule. (Exhibit A).

17. Defendant Nick Lyon is sued individually and in his official capacity as Director of MDHHS. At all relevant times, Defendant Nick Lyon was acting under color of state law.

18. Defendant Wayne County Department of Health, Veterans, and Community Wellness (“WCHD”) is a county agency responsible for implementing the Rule. At all relevant times, WCHD supervised and employed health department staff, including Defendants Jane Doe 1 and Jane Doe 2.

19. Defendant Mouhanad Hammami is the Director of WCHD and is responsible for the operation, management, and policy of WCHD. Defendant Mouhanad Hammami is sued individually and in his official capacity as Director of WCHD. At all relevant times, Defendant Mouhanad Hammami was acting under color of state law.

20. Carol Austerberry is the Division Director and Deputy Health Officer of WCHD and is responsible for the management, operation, and policy of the Wellness Services Division of WCHD, which includes the vaccine waiver services. Defendant Carol Austerberry is sued individually and in her official capacity as Division Director and Deputy Health Officer of WCHD. At all relevant times, Defendant Carol Austerberry was acting under color of state law.

21. Defendant Jane Doe 1 is a nurse at WCHD. At all relevant times, she was an agent, servant, or employee of WCHD, acting under color of state law. Defendant Jane Doe 1 is sued individually and in her official capacity as a nurse for WCHD.

22. Defendant Jane Doe 2 is a nurse manager at the WCHD. At all relevant times, she was an agent, servant, or employee of WCHD, acting under color of state law. Defendant Jane Doe 2 is sued individually and in her official capacity as a nurse manager for WCHD.

## STATEMENT OF THE FACTS

### I. The Rule, Mich. Admin. Code r. 325.176(12)

23. In December 2014, the Joint Committee on Administrative Rules implemented a new rule that requires parents seeking a religious exemption to travel to a county health department and speak with a local health department employee to receive the certified waiver necessary to exempt their children from the vaccinations and attend public schools. Michigan Department of Health and Human Services, *Immunization Waiver Information*, [http://www.michigan.gov/mdhhs/0,5885,7-339-73971\\_4911\\_4914\\_68361-344843--,00.html](http://www.michigan.gov/mdhhs/0,5885,7-339-73971_4911_4914_68361-344843--,00.html) (last visited July 5, 2016); Mich. Admin. Code r. 325.176(12).

24. This new requirement was not enacted by the Michigan legislature but rather by a small committee comprised of only five State representatives and five State senators. Michigan Department of Health and Human Services, *Immunization Waiver Information*, [http://www.michigan.gov/mdhhs/0,5885,7-339-73971\\_4911\\_4914\\_68361-344843--,00.html](http://www.michigan.gov/mdhhs/0,5885,7-339-73971_4911_4914_68361-344843--,00.html) (last visited July 5, 2016); Michigan Legislative Council, *Joint Committee on Administrative Rules*, <http://council.legislature.mi.gov/CouncilAdministrator/jcar> (last visited July 5, 2016).

25. This new Rule was implemented despite the statutory requirement that a child “is exempt” from State vaccination requirements if the parents “present[] a

written statement to the administrator of the child's school or operator of the group program to the effect that the [vaccination requirements] cannot be met because of religious convictions." Mich. Comp. Laws § 333.9215.

26. MDHHS provides the local health department employees, including WCHD, with a *Note for Local Health Department Staff – Waiver Education: Religion* ("Religious Waiver Note"), which provides the employees with a menu of statements and arguments to coerce parents with religious objections into vaccinating their children. (Exhibit B).

27. The Religious Waiver Note contains many misrepresentations and falsehoods about Catholic beliefs and teachings relating to vaccines.

28. Specifically, the Religious Waiver Note falsely states, "In 2005, Pope Benedict XVI addressed [vaccines made from aborted fetal cells]. It was determined that parents who chose not to give vaccines derived from these cells would be in 'more proximate cooperation with evil' than those who gave their children the vaccines in question because of the life saving nature of vaccines." (Exhibit B).

29. Pope Benedict XVI never uttered the phrase that parents would be in "more proximate cooperation with evil," or any similar statement regarding vaccines.

30. This is a statement by Msgr. Jacques Suaudeau to the press, *not Pope Benedict XVI*. Carol Glatz, *Vatican Says Refusing Vaccines Must be Weighed Against Health Threats*, Catholic News Service (July 26, 2005) (Exhibit C).

31. Msgr. Suaudeau distanced himself from this statement saying that it was a “mistake” to speak with “some English-speaking journalist” and that people should read “Moral Reflections on Vaccines Prepared from Cells Derived from Aborted Human Foetuses” to understand the Church’s position. Children of God for Life, *Vatican Official Clarifies his Position*, <https://cogforlife.org/2005/08/03/vatican-official-clarifies-his-position/> (last visited July 5, 2016).

32. The Vatican document produced on vaccines containing the cells of aborted children by the Vatican’s Pontifical Academy for Life, *again not Pope Benedict XVI*, did not contain any condemnation of parents who refuse to vaccinate, especially not the specific, quoted phrase in the Religious Waiver Note. *See* (Exhibit D).

33. The Religious Waiver Note authorizes and encourages local health department employees to excessively entangle themselves in a person’s religion by having them instruct people in their faith.

## **II. Defendants violate Mrs. Nikolao's First Amendment Rights**

34. Mrs. Nikolao's religious beliefs prevent her from vaccinating her children.

35. As a Roman Catholic, she believes it is sinful to use vaccines manufactured from aborted fetal cells.

36. As a Catholic, Mrs. Nikolao has a "grave responsibility . . . to make a conscientious objection with regard to those [vaccines] which have moral problems," such as those created from aborted fetal cells. (Exhibit D).

37. Mrs. Nikolao also believes that the body is a temple and injecting it with chemicals that alter the person permanently violates the will of God.

38. Prior to October 2015, Mrs. Nikolao received the statutorily mandated religious exemption from the State vaccination requirement approximately ten times by submitting her objection in writing and providing it to her children's school.

39. On October 5, 2015, Mrs. Nikolao went to WCHD to comply with the burdens of the new Rule, expecting to receive the statutorily required religious exemption from the State vaccination requirements as she had approximately ten times before.

40. In order to comply with her beliefs, the Rule required Mrs. Nikolao to leave work early, pack up her four children, and drive approximately two hours roundtrip to WCHD to attempt to obtain a religious exemption.

41. Upon arrival, Defendants Jane Doe 1 and Jane Doe 2, employees of WCHD, pursuant to Mich. Admin. Code r. 325.176(12) and the Religious Waiver Note promulgated by MDHHS, subjected Mrs. Nikolao to State-sponsored bullying and harassment because of her religious beliefs.

42. After Mrs. Nikolao stated that she had a religious objection to vaccines, Defendant Jane Doe 1 asked Mrs. Nikolao what her *actual* reason was for objecting.

43. Mrs. Nikolao again asserted that she had a religious objection and the nurse repeatedly stated that she needed to be more specific.

44. Mrs. Nikolao refused because she did not want to share her personal religious beliefs with the government and the Michigan exemption statute did not require her to do so.

45. Defendant Jane Doe 1 insisted on more specifics because the “State’s got documentation that a lot of the religions are now going for the vaccines.”

46. Mrs. Nikolao still refused.

47. Defendant Jane Doe 1 pressed harder, repeatedly asking what Mrs. Nikolao's belief was and if it had to do with the ingredients in vaccines or injections.

48. Mrs. Nikolao insisted her request for an exemption was based upon her religious beliefs.

49. Defendant Jane Doe 1 then left to get her supervisor, Defendant Jane Doe 2.

50. Mrs. Nikolao explained to Defendants Jane Doe 1 and Jane Doe 2 that the State law only required a person to assert a religious objection.

51. Defendant Jane Doe 2 issued an ultimatum: if Mrs. Nikolao wanted the statutorily mandated religious waiver, she needed to declare what religion she practices, explain her religious beliefs, and engage in a back and forth discussion with the Wayne County nurse concerning her religious objection because, according to Defendant Jane Doe 2, *there are no religions that have objections to vaccines.*

52. Defendant Jane Doe 2 then showed Mrs. Nikolao the Religious Waiver Note created and promulgated by MDHHS, which contains misrepresentations and lies about Catholic beliefs and teachings.

53. As a Roman Catholic, Mrs. Nikolao believes that the Pope "is the perpetual and visible source and foundation of the unity both of the bishops and of

the whole company of the faithful.” *Catechism of the Catholic Church*, 882 (internal quotation marks and citations omitted). The Pope, as Vicar of Christ, “has full, supreme, and universal power over the whole Church, a power which he can always exercise unhindered.” *Id.* (internal quotation marks and citations omitted).

54. Defendants attempted to use Mrs. Nikolao’s beliefs and adherence to Papal authority to coerce her into vaccinating her children by telling her lies about the Catholic faith and untrue Papal statements.

55. In the end, despite the Michigan statute providing an exemption for religious convictions, Defendants refused to give Mrs. Nikolao a religious exemption, requiring her to mask her religious beliefs in the shroud of an “other” objection.

56. This façade on its own violated Mrs. Nikolao’s religion since, as a Catholic, she has a “grave responsibility . . . to make a *conscientious* objection with regard to those [vaccines] which have moral problems.” (Exhibit D) (emphasis added).

57. Defendants deprived Mrs. Nikolao of her religious and moral responsibility to object to the aborted fetal cell vaccinations on account of her religion, forcing her to violate her beliefs.

58. Mrs. Nikolao did her best under the circumstances to fully comply with her religion by placing “v.c.” (an abbreviation for the Latin term “*vi coactus*,”

which indicates that a person is signing under duress) before her signature but MDHHS and WCHD, through enforcement of the Rule, took away her statutory right to make her conscientious religious objection, as required by the teachings of her faith, by characterizing her religious objection as “other” and not as religious.

59. Mrs. Nikolao will be forced to undergo these constitutional violations again in fall 2016 in an attempt to comply with her religious beliefs by seeking an exemption for one of her children from the State vaccination requirements.

**FIRST CAUSE OF ACTION**  
**(Violation of the Free Exercise Clause of the First Amendment)**

60. Plaintiff incorporates by reference all stated paragraphs.

61. The Rule and Defendants’ enforcement of the Rule substantially burden Mrs. Nikolao’s free exercise of religion without being the least restrictive means of furthering a compelling governmental interest in violation of the First Amendment to the United States Constitution as applied to the States and their political subdivisions under the Fourteenth Amendment and 42 U.S.C. § 1983.

62. Defendants have deprived and continue to deprive Mrs. Nikolao of the right to freely exercise her faith.

63. The Rule and Defendants’ enforcement of the Rule are not neutral or generally applicable because parents with specific religious beliefs and who practice specific religions are singled out and pressured into compliance.

64. The Rule and Defendants' enforcement thereof forced Mrs. Nikolao to choose between two alternatives that violated her faith: either inject her children with vaccines produced from abortions or deny her faith and duty to make a conscientious objection by taking an "other" exemption.

65. The Rule and Defendants enforcement thereof coerced Mrs. Nikolao into violating her beliefs and penalized her for her beliefs by threatening to deny her the rights, benefits, and privileges enjoyed by other citizens.

66. The Rule and Defendants' enforcement thereof place a substantial burden on Mrs. Nikolao's religious exercise.

67. The hassle of taking time off work and driving to the local health department is a substantial burden on the exercise of her religion.

68. Undergoing a religious inquisition filled with lies about her faith from health department employees is a substantial burden on Mrs. Nikolao's religious exercise.

69. The Rule is not the least restrictive means of encouraging parents to vaccinate their children or providing for public health and safety.

70. For nearly 40 years, the State implemented a different exemption process codified in Mich. Comp. Laws § 333.9215 (2016), which it still follows for medical exemptions.

71. Defendants do not have a compelling interest in forcing Mrs. Nikolao to violate her faith.

**SECOND CAUSE OF ACTION**  
**(Violation of the Establishment Clause of the First Amendment)**

72. Plaintiff hereby incorporates by reference all stated paragraphs.

73. The Rule and Defendants' enforcement of the Rule excessively entangle the government in religion in violation of the First Amendment to the United States Constitution as applied to the States and their political subdivisions under the Fourteenth Amendment and 42 U.S.C. § 1983.

74. Defendants Jane Doe 1 and Jane Doe 2, acting pursuant to the Rule and the Religious Waiver Note promulgated by MDHHS and WCHD, told Mrs. Nikolao that her beliefs were wrong as "no religions oppose vaccination" and attempted to instruct her on the teachings of the Catholic Church.

75. "[C]ivil determination of religious doctrine" violates the First Amendment. *Serbian E Orthodox Diocese v Milivojevich*, 426 U.S. 696, 709 (1976).

76. Defendants Jane Doe 1 and Jane Doe 2, acting pursuant to the Rule and the Religious Waiver Note promulgated by MDHHS and WCHD, inquired into Mrs. Nikolao's sincerely held religious beliefs, refusing to give her a religious waiver unless she engaged in a back and forth discussion on her beliefs.

77. Defendants gave false quotes from the Pope, using his authority to attempt to manipulate Mrs. Nikolao into violating her sincerely held religious beliefs.

78. Defendants put on the guise of religious instructors in an attempt to further their agenda.

79. Defendants violate the Establishment Clause by forcing their interpretation of religious documents and beliefs on parents.

**THIRD CAUSE OF ACTION**  
**(Violation of Mich. Const. art 1, § 4)**

80. Plaintiff hereby incorporates by reference all stated paragraphs.

81. The Constitution of the State of Michigan guarantees that “[e]very person shall be at liberty to worship God according to the dictates of his own conscience” and that “[t]he civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief.” Mich. Const. art. 1, § 4.

82. Defendants have forced Ms. Nikolao to violate the dictates of her conscience.

83. Defendants have diminished Ms. Nikolao’s civil and political rights, and privileges and capacities because of her religious belief.

84. The Rule and Defendants’ enforcement of the Rule substantially burden Mrs. Nikolao’s ability to worship God according to the dictates of her

conscience without being the least restrictive means of furthering a compelling governmental interest in violation of Article 1, Section 4 of the Michigan Constitution.

85. Defendants have deprived and continue to deprive Mrs. Nikolao of the rights and privileges afforded to other citizens because of her religious beliefs.

86. The Rule and Defendants' enforcement thereof forced Mrs. Nikolao to choose between two alternatives that violated the dictates of her conscience: either inject her children with vaccines produced from abortions or deny her faith and duty to make a conscientious objection by taking an "other" exemption.

87. The Rule and Defendants enforcement thereof coerced Mrs. Nikolao into violating her beliefs and penalized her for her beliefs by threatening to deny her the rights, benefits, and privileges enjoyed by other citizens.

88. The Rule and Defendants' enforcement thereof place a substantial burden on Mrs. Nikolao's religious exercise.

89. The hassle of taking time off work and driving to the local health department is a substantial burden on the exercise of her religion.

90. Undergoing a religious inquisition filled with lies about her faith from health department employees is a substantial burden on Mrs. Nikolao's religious exercise.

91. The Rule is not the least restrictive means of encouraging parents to vaccinate their children or providing for public health and safety.

92. For nearly 40 years, the State implemented a different exemption process codified in Mich. Comp. Laws § 333.9215, which it still follows for medical exemptions.

93. Defendants do not have a compelling interest in forcing Mrs. Nikolao to violate her faith.

**FOURTH CAUSE OF ACTION  
(Violation of Mich. Comp. Laws § 333.9215)**

94. Plaintiff hereby incorporates by reference all stated paragraphs.

95. In 1978, nearly 40 years ago, the Michigan legislature set forth the procedure for a parent to exempt a child from vaccination requirements on religious grounds.

96. The procedure remained virtually the same until the Rule came into effect in 2015.

97. As laid out in Mich. Comp. Laws § 333.9215, a child *is exempt* from immunizations if: (1) parents puts in writing that they cannot comply with the vaccination requirements because of religious convictions or other objections and (2) parents present that written statement to the administrator of the child's school.

98. Ignoring this statutory mandate, the Rule sets forth additional requirements that conflict with the nondiscretionary language “is exempt” in Mich. Comp. Laws § 333.9215.

99. The Rule requires that parents get their exemption certified by the local health department and receive education on the risks of not vaccinating their child. Mich. Admin. Code, r. 325.176 (12).

100. MDHHS cannot change laws enacted by the legislature.

101. The Joint Committee on Administrative Rules cannot change laws enacted by the legislature.

102. Mich. Comp. Laws § 333.9215 sets forth a mandatory, nondiscretionary exemption if a parent complies with two requirements.

103. The Rule changes the law, which sets forth the procedure for obtaining a religious vaccine exemption waiver, and is, therefore, prohibited by Mich. Comp. Laws § 333.9215.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully asks that the Court:

- a. Assume jurisdiction over this action;
- b. Declare that Defendants violated Plaintiff’s fundamental federal and State constitutional rights as set forth in this complaint;

- c. Declare that Mich. Admin. Code r. 325.176(12) is unconstitutional on its face;
- d. Declare that Mich. Admin. Code r. 325.176(12) is unconstitutional as applied to Plaintiff;
- e. Declare that Mich. Admin. Code r. 325.176(12) conflicts with the nondiscretionary mandate in Mich. Comp. Laws § 333.9215;
- f. Enter preliminary and permanent injunctions enjoining Defendants from enforcing Mich. Admin. Code r. 325.176(12);
- g. Declare that the Religious Waiver Note is unconstitutional on its face;
- h. Enter preliminary and permanent injunctions enjoining Defendants from utilizing the Religious Waiver Note;
- i. Enter an injunction ordering Defendants to change Mrs. Nikolao's "other" exemption to a religious exemption;
- j. Award Plaintiff nominal damages against Defendants for loss of her constitutional rights;
- k. Award Plaintiff her reasonable attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988 and other applicable law; and
- l. Grant such other and further relief as the Court finds just and proper.

Date: July 7, 2016

Respectfully submitted,

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*Attorney for Plaintiff*

### **DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury of all issues triable of right by a jury.

Date: July 7, 2016

Respectfully submitted,

/s/ Kate Oliveri  
Kate Oliveri, Esq. (P79932)