

STATE OF NEW YORK  
SUPREME COURT

COUNTY OF ALBANY

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HON. DAVID A. PATERSON, As Governor of the State of New York,

Petitioner,

- against -

SENATOR ERIC ADAMS; SENATOR JOSEPH P. ADDABBO, JR.; SENATOR JAMES S. ALESI; SENATOR DARREL J. AUBERTINE; SENATOR JOHN J. BONACIC; SENATOR NEIL D. BRESLIN; SENATOR JOHN A. DeFRANCISCO; SENATOR RUBEN DIAZ, SR.; SENATOR MARTIN MALAVÉ DILAN; SENATOR THOMAS DUANE; SENATOR PEDRO ESPADA, JR.; SENATOR HUGH T. FARLEY; SENATOR JOHN J. FLANAGAN; SENATOR BRIAN X. FOLEY; SENATOR CHARLES J. FUSCHILLO, JR.; SENATOR MARTIN J. GOLDEN; SENATOR JOSEPH A. GRIFFO; SENATOR KEMP HANNON; SENATOR RUTH HASSELL-THOMPSON; SENATOR SHIRLEY L. HUNTLEY; SENATOR CRAIG M. JOHNSON; SENATOR OWEN H. JOHNSON; SENATOR JEFFREY D. KLEIN; SENATOR LIZ KRUEGER; SENATOR CARL KRUGER; SENATOR ANDREW J. LANZA; SENATOR WILLIAM J. LARKIN, JR.; SENATOR KENNETH P. LaVALLE; SENATOR VINCENT L. LEIBELL; SENATOR THOMAS LIBOUS; SENATOR ELIZABETH LITTLE; SENATOR CARL L. MARCELLINO; SENATOR GEORGE D. MAZIARZ; SENATOR ROY J. McDONALD; SENATOR HIRAM MONSERRATE; SENATOR VELMANETTE MONTGOMERY; SENATOR THOMAS P. MORAHAN; SENATOR MICHAEL F. NOZZOLIO; SENATOR GEORGE ONORATO; SENATOR SUZI OPPENHEIMER; SENATOR FRANK PADAVAN; SENATOR KEVIN S. PARKER; SENATOR BILL PERKINS; SENATOR MICHAEL H. RANZENHOFER; SENATOR JOSEPH E. ROBACH; SENATOR STEPHEN M. SALAND; SENATOR JOHN L. SAMPSON; SENATOR DIANE J. SAVINO; SENATOR ERIC T. SCHNEIDERMAN; SENATOR JOSE M. SERRANO; SENATOR JAMES L. SEWARD; SENATOR DEAN G. SKELOS; SENATOR MALCOLM A. SMITH; SENATOR DANIEL L. SQUADRON; SENATOR WILLIAM T. STACHOWSKI; SENATOR TOBY ANN STAVISKY; SENATOR ANDREA STEWART-COUSINS; SENATOR ANTOINE M. THOMPSON; SENATOR DAVID J. VALESKY; SENATOR DALE M. VOLKER; SENATOR GEORGE H. WINNER, JR.; and SENATOR CATHARINE YOUNG,

Respondents.

FOR A JUDGMENT OF *MANDAMUS* PURSUANT TO CPLR ARTICLE 78

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**AFFIRMATION OF MICHAEL P. RAVALLI, ESQ.  
IN SUPPORT OF PETITION FOR *MANDAMUS*  
AND IN OPPOSITION TO RESPONDENTS' ANSWERING/MOVING PAPERS**

Index No. 5435-09 / RJI No. \_\_\_\_\_

Hon. \_\_\_\_\_

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MICHAEL P. RAVALLI, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms under the penalty of perjury that:

1. I am a member of the law firm of Gleason, Dunn, Walsh & O'Shea, attorneys for Petitioner, David A. Paterson, Governor of the State of New York (hereinafter the "Governor"), and as such, I am fully familiar with the matters set forth herein. I make this Affirmation in further support of the Governor's *mandamus* proceeding and application for a judgment and order, pursuant to CPLR 7804(c) and/or 308(5), compelling Respondents' personal attendance in fully assembly at extraordinary sessions of the Senate called by the Governor pursuant to Article 4, Section 3 of the Constitution, in opposition to the motion to dismiss of Respondents Alesi, Bonacic, DeFrancisco, Farley, Flanagan, Fuschillo, Golden, Griffo, Hannon, O. Johnson, Lanza, Larkin, LaValle, Leibell, Libous, Little, Marcellino, Maziarz, McDonald, Morahan, Nozzolio, Padavan, Ranzenhofer, Robach, Saland, Seward, Skelos, Volker, Winner and Young and the motion to dismiss of Respondent Espada.

2. The Governor duly called an extraordinary session of the Senate of the State of New York for 1:00 p.m. on June 27, 2009 pursuant to his powers under Article 4, Section 3 of the Constitution.

3. The Proclamation for an extraordinary session to be held at 1:00 p.m. on June 27, 2009 is attached as **Exhibit "A"**.

4. Notice of such Proclamation was transmitted by hand delivery of a copy of said Proclamation to each of Respondents' Senate offices in Albany, New York. The actual Proclamation was also delivered to the Secretary of State.

5. On information and belief, a group of Respondent Senators constituting less than quorum met on June 27, 2009 at 1:00 p.m. in the Senate Chamber for approximately ten (10)

minutes or less, and then left the Senate Chamber without conducting or attempting to conduct any substantive business. On information and belief, shortly thereafter, a separate group of Respondent Senators constituting less than a quorum met in the Senate Chamber for approximately ten (10) minutes or less and then left the Senate Chamber without conducting or attempting to conduct any substantive business.

6. On information and belief, the separate gatherings of Respondent Senators described in the preceding paragraph occurred as the result of an agreement among some or all Respondents not to appear in full assembly on June 27, 2009.

7. Respondents did not convene on June 27, 2009 within the meaning of Article 4, Section 3 of the Constitution.

8. The Governor duly called an extraordinary session of the Senate of the State of New York for 6:00 p.m. on June 28, 2009 pursuant to his powers under Article 4, Section 3 of the Constitution.

9. The Proclamation for an extraordinary session to be held at 6:00 p.m. on June 28, 2009 is attached as **Exhibit "B"**.

10. Notice of such Proclamation was transmitted by hand delivery of a copy of said Proclamation to each of Respondents' Senate offices in Albany, New York and by faxing a copy of said Proclamation to each of Respondents' Senate offices in Albany, New York. The actual Proclamation was also delivered to the Secretary of State.

11. On information and belief, a group of Respondent Senators constituting less than quorum met on June 28, 2009 at 6:00 p.m. in the Senate Chamber for approximately ten (10) minutes or less, and then left the Senate Chamber without conducting or attempting to conduct any substantive business. On information and belief, shortly thereafter, a separate group of

Respondent Senators constituting less than a quorum met in the Senate Chamber for approximately ten (10) minutes or less and then left the Senate Chamber without conducting or attempting to conduct any substantive business.

12. On information and belief, the separate gatherings of Respondent Senators described in the preceding paragraph occurred as the result of an agreement among some or all Respondents not to appear in full assembly on June 28, 2009.

13. Respondents did not convene on June 28, 2009 within the meaning of Article 4, Section 3 of the Constitution.

14. The Governor duly called an extraordinary session of the Senate of the State of New York for 3:00 p.m. on June 29, 2009 pursuant to his powers under Article 4, Section 3 of the Constitution.

15. The Proclamation for an extraordinary session to be held at 3:00 p.m. on June 29, 2009 is attached as **Exhibit "C"**.

16. Notice of such Proclamation was transmitted by hand delivery of a copy of said Proclamation to each of Respondents' Senate offices in Albany, New York, by faxing a copy of said Proclamation to each of Respondents' Senate offices in Albany, New York and by email to each Respondent. The actual Proclamation was also delivered to the Secretary of State.

17. As of the time that your affiant executed this Affirmation, the time for the commencement of the June 29, 2009 extraordinary session had not yet come to pass.

WHEREFORE, the Governor requests the Respondents' respective motions to dismiss be denied, the immediate issuance of an order and judgment of *mandamus* against Respondents compelling Respondents' personal attendance in full assembly at extraordinary sessions of the

Senate called by the Governor pursuant to Article 4, Section 3 of the Constitution, and such other and further relief as to this Court seems just and proper.

DATED: Albany, New York  
June 29, 2009

  
MICHAEL P. RAVALLI, ESQ.

**EXHIBIT A**



# State of New York

## Executive Chamber

### PROCLAMATION

Pursuant to the power vested in me by Article IV, Section 3 of the Constitution, I hereby convene the Senate of the State of New York in Extraordinary Session, at the Capitol, in the City of Albany, on the twenty seventh day of June, two thousand nine, at one o'clock, for the purpose of considering nominations I will submit with respect to the following positions:

- (1) Member, Public Employment Relations Board;
- (2) Member, Advisory Council to the Commission on Quality of Care and Advocacy for Persons with Disabilities;
- (3) Member, Adirondack Park Agency;
- (4) Non-Voting Union Member, Capital District Transportation Authority;
- (5) Member, Lake George Park Commission;
- (6) Member, New York State Bridge Authority;
- (7) Member, State University of New York Board of Trustees;

and for the consideration of such other nominations or legislation as I may recommend.



G I V E N under my hand and the Privy Seal  
of the State in the City of  
Albany this twenty-sixth day of  
June in the year two thousand  
nine.

BY THE GOVERNOR

/s/ David A. Paterson

/s/ Lawrence Schwartz

Secretary to the Governor

**EXHIBIT B**



# State of New York

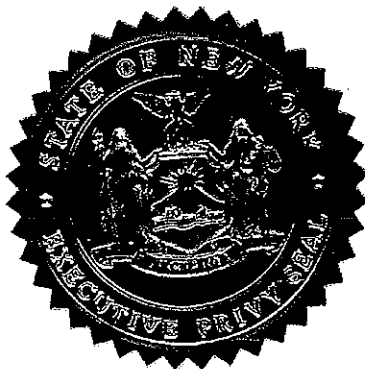
## Executive Chamber

### PROCLAMATION

Pursuant to the power vested in me by Article IV, Section 3 of the Constitution, I hereby convene the Senate of the State of New York in Extraordinary Session, at the Capitol, in the City of Albany, on the twenty eighth day of June, two thousand nine, at six o'clock p.m. for the purpose of:

- (1) acting on gubernatorial nominations for the following positions:
  - a. Member, Public Employment Relations Board;
  - b. Member, Empire State Plaza Art Commission; and
- (2) considering legislation prohibiting discrimination against victims of domestic violence in housing, employment and other settings and strengthening protections for victims of domestic violence;

and for the consideration of such other nominations or legislation as I may recommend.



G I V E N under my hand and the Privy Seal  
of the State in the City of  
Albany this twenty-seventh day of  
June in the year two thousand  
nine.

BY THE GOVERNOR

/s/ David A. Paterson

/s/ Lawrence Schwartz

**EXHIBIT C**



State of New York

JUN 28 2009

Department of State  
Secretary of State

# State of New York

## Executive Chamber

### P R O C L A M A T I O N

Pursuant to the power vested in me by Article IV, Section 3 of the Constitution, I hereby convene the Senate of the State of New York in Extraordinary Session, at the Capitol, in the City of Albany, on the twenty ninth day of June, two thousand nine, at three o'clock P.M. for the purpose of considering legislation I will submit with respect to:

- (1) extending the Power for Jobs program, which would otherwise expire on June 30, 2009;
- (2) extending certain provisions of law to comply with the federal Individuals with Disabilities Education Act, which would otherwise expire on June 30, 2009;
- (3) extending mayoral control of New York City schools, and extending the exemption from the Wicks Law for the School Construction Authority, which would otherwise expire on June 30, 2009;
- (4) extending the State's authority to enter into construction contracts without formal competitive bidding in certain emergencies, which authority would otherwise expire on June 30, 2009;
- (5) extending certain provisions of law to comply with the No Child Left Behind Act, including provisions regarding supplemental educational services, unsafe school choice and compliance with the Gun Free Schools Act, as well as provisions regarding the education of homeless children and the transfer of student disciplinary records, which provisions would otherwise expire on June 30, 2009;
- (6) extending the authority of the Town of Deerpark in the County of Orange to issue bonds and bond anticipation notes, which authority would otherwise expire on June 30, 2009;
- (7) extending for one year the freeze on medical malpractice insurance rates, which would otherwise expire on June 30, 2009;
- (8) extending the New York City commercial rent reduction and sales tax exemptions for areas in lower Manhattan, which would otherwise expire on June 30, 2009;
- (9) extending the annual rate of interest of the five New York City actuarially funded retirement systems, which rate would otherwise expire on June 30, 2009;

- (10) extending the authorization of New York City marshals to exercise the same functions, powers and duties as sheriffs with respect to the execution of money judgments, which would otherwise expire on June 30, 2009;
- (11) extending provisions relating to compulsory arbitration between certain public employee organizations to resolve impasses in collective bargaining agreements, which provisions would otherwise expire on July 1, 2009;
- (12) extending the applicability of the Real Property Tax Law § 421-b tax benefit to residential construction completed prior to July 1, 2010;
- (13) extending the ability of school districts, charter schools and Boards of Cooperative Educational Services, to make conditional appointments of prospective employees under certain circumstances, which ability would otherwise expire on July 1, 2009;
- (14) requiring New York City bond anticipation notes to mature no later than one year from the date of issuance and permit such notes to be renewed for a period not to exceed two years from the original date of issue, or such longer period as may be permitted for bond anticipation notes of the State;
- (15) authorizing an additional half percent increase in New York City sales and compensating use taxes;
- (16) extending New York City's bond guidelines, which would otherwise expire on July 15, 2009;
- (17) conforming certain New York City tax laws with New York State tax law;
- (18) authorizing unincorporated business tax reduction;
- (19) placing certain outstanding Transitional Finance Authority ("TFA") debt under the existing New York City General Obligation cap in the Local Finance Law; making the existing statutory cap on TFA borrowing for general capital purposes applicable to outstanding debt of the TFA rather than all debt issued by the TFA; and continuing to exempt Recovery Bonds and Building Aid Bonds from the TFA's general debt limit and provide that the amount of variable rate bonds outstanding for general capital purposes be limited to the current twenty percent of the TFA's general debt limit, with provisions for customary exclusions;
- (20) modifying New York City's Energy Cost Savings Program ("ECSP") and Lower Manhattan Energy Program ("LMEP") to establish eligibility for the Industrial and Commercial Abatement Program as a basis for eligibility for ECSP and LMEP;
- (21) capping the maximum class growth rate in New York City at zero percent to provide relief for certain residential property tax classes;
- (22) expanding the expedited land use review provisions of the General Municipal Law to include federally financed projects to construct new rental housing for elderly or disabled persons of low income;
- (23) extending for an additional year, the authority of local boards of elections to provide write-in vote opportunities, which would otherwise expire on July 10, 2009;

- (24) extending certain of New York City's authorities pertaining to its obligations, including its authority to sell bonds at private sale, exchange refunding bonds for outstanding bonds in certain circumstances, issue bonds or notes with variable rates of interest, enter into interest rate exchange agreements, and include the pledge and agreement of the State in agreements with holders and guarantors of the City obligations, which would otherwise expire on July 15, 2009;
- (25) extending certain powers of the New York State Infrastructure Trust Fund in the State of New York Mortgage Agency ("SONYMA"), which powers would otherwise expire on July 16, 2009;
- (26) extending the powers of SONYMA to purchase forward commitment mortgages and to issue new money tax-exempt bonds and new money taxable bonds, as well as increasing the maximum amount of SONYMA's authority to issue new money tax-exempt bonds, which would otherwise expire on July 16, 2009;
- (27) extending the restriction on contacts during the procurement process, which restrictions would otherwise expire on July 31, 2009;
- (28) extending the expiration date which authorized the Department of Environmental Conservation to engage in sweepstakes or contests to increase subscribers of the Conservationist magazine, which authority would otherwise expire on August 1, 2009;
- (29) enacting provisions pertaining to the regulation of mortgage loan originators ("MLO"), which if not enacted by August 1, 2009, would relinquish regulation of MLOs to the federal government;
- (30) extending certain provisions of the Social Services Law setting forth the income and resources that are exempt from consideration in determining the amounts of benefits to be provided to a household receiving public assistance, which provisions would otherwise expire on August 22, 2009;
- (31) authorizing, extending or increasing various hotel/motel taxes and mortgage recording taxes for the following counties and cities:

a. Hotel/Motel Taxes

- 1. Albany County;
- 2. Chautauqua County;
- 3. Orange County;
- 4. Schoharie County;
- 5. Suffolk County;
- 6. Tioga County;
- 7. Washington County;
- 8. City of New Rochelle;
- 9. City of Peekskill; and
- 10. City of Rye.

b. Mortgage Recording Taxes

- 1. Cattaraugus County;
- 2. Essex County;
- 3. Fulton County;
- 4. Genesee County;
- 5. Hamilton County;
- 6. Schoharie County;
- 7. Rockland County;
- 8. City of Peekskill; and
- 9. City of Yonkers.

- (32) allowing for the bonding out of Rockland and Nassau counties incentive payments;
- (33) implementing CUNY Teamsters, NYSCOPA and Council 82 paybills;
- (34) extending the personal income tax surcharge in the City of Yonkers, which would otherwise expire on September 30, 2009;
- (35) increasing by \$500 million the maximum bonding authority of the New York State Housing Finance Agency and extending the Agency's authority to issue bonds to June 30, 2011;
- (36) granting the New York State Bridge Authority the power to issue bonds and notes;
- (37) extending the authorization for East Hampton to issue certain serial bonds, which authorization would otherwise expire on December 31, 2009;
- (38) extending the authorization for the City of Olean to issue deficit financing bonds, which authority would otherwise expire on October 1, 2009;
- (39) providing a mechanism for the orderly and efficient tax-exempt, private activity bond allocation process for state and local issuers by extending for an additional year the current allocation system and modifying use of bond allocations and multi-year set asides, which would otherwise expire on January 1, 2010;
- (40) extending or increasing sales and compensating use taxes, which would otherwise expire on November 30, 2009, for the following counties:
  - a. Allegany;
  - b. Cattaraugus;
  - c. Cayuga
  - d. Oswego;
  - e. Columbia;
  - f. Delaware;
  - g. Dutchess;
  - h. Franklin;
  - i. Fulton;
  - j. Genesee;
  - k. Greene;
  - l. Herkimer;
  - m. Lewis;
  - n. Livingston;
  - o. Monroe;
  - p. Montgomery
  - q. Niagara;
  - r. Oneida;
  - s. Onondaga;
  - t. Ontario;
  - u. Orange;
  - v. Orleans;
  - w. Oswego;
  - x. Putnam;
  - y. Rensselaer;
  - z. Rockland;
  - aa. Schenectady;
  - bb. Schoharie;
  - cc. Seneca;
  - dd. Sullivan;
  - ee. Tompkins;
  - ff. Ulster;
  - gg. Wayne; and
  - hh. Yates.

- (41) making permanent the ability of both military and other overseas voters to apply and obtain a paper ballot for primary, general and special elections and to expand the time frame for returning such ballots, which ability would otherwise expire on December 31, 2009;
- (42) extending the authority of the County of Columbia to collect an additional real estate transfer tax, which authority would otherwise expire on December 31, 2009;
- (43) extending the Village of Suffern Parking Authority, which would otherwise expire on December 31, 2009;
- (44) allowing the Division of Veterans' Affairs to fund local veterans service agencies at the level of current appropriations;
- (45) authorizing the fifth phase of school construction projects in the City of Buffalo by the Joint School Construction Board;
- (46) authorizing the County of Tompkins, through its local county legislative body, to impose an additional surcharge in an amount not to exceed sixty-five cents per access line per month on the customers of every service supplier within such municipality, to pay for the costs associated with obtaining, operating and maintaining the telecommunication equipment and telephone services needed to provide an enhanced 911 emergency telephone system to serve the county;
- (47) authorizing the County of Suffolk, through its local legislative body, to impose a surcharge on wireless communications in the County for eligible wireless 911 service costs;
- (48) authorizing the Essex County Board of Supervisors to adopt a local law providing for the imposition of a real estate transfer tax;
- (49) authorizing the imposition of a mandatory surcharge for traffic offenses in Suffolk and Nassau counties; and
- (50) extending the authority of licensed lenders to charge annual fees on open-end loans, which authority would otherwise expire on June 30, 2009.



G I V E N under my hand and the Privy  
 Seal of the State in the  
 City of Albany this twenty-  
 eighth day of June in the  
 year two thousand nine.

BY THE GOVERNOR

*Louise Schwartz*  
 Secretary to the Governor

*David A. Paterson*