
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

**VERIFIED PETITION FOR A JUDGMENT OF
MANDAMUS TO COMPEL**

Index No. _____ / RJI No. _____

Hon. _____

Petitioner, Hon. David A. Paterson, respectfully alleges, as follows:

1. Petitioner, David A. Paterson is the Governor of the State of New York, and as such is responsible for all of the duties and responsibilities of the Governor under the Constitution and laws of the State of New York.

2. Respondents are state senators of the State of New York, and as such have all the duties and responsibilities of a state senator pursuant to the Constitution and laws of the State of New York.

3. On information and belief, a dispute remains extant among members of the New York State Senate (the "Senate") concerning the powers of leadership in the Senate (the "Dispute").

4. Urgent business of the people of the State of New York requires the Senate to convene and take substantive action.

5. The Dispute and the failure of the Senate to convene and take substantive action constitute an "extraordinary occasion" within the meaning of Article 4, Section 3 of the Constitution.

6. On June 23, 2009, Petitioner duly called an extraordinary session of the Senate for 3:00 p.m. on June 24, 2009 pursuant to his powers under Article 4, Section 3 of the Constitution.

7. The Proclamation calling said June 24, 2009 session of the Senate is attached as **Exhibit "A"**.

8. Notice of such Proclamation was transmitted by: email to each Respondent; by faxing a copy of said Proclamation to each Respondent's Senate District office, and to each Respondent's office in Albany, New York. In addition, a copy of such Proclamation was provided to each Respondent by hand delivery to each Respondent's office in Albany, New

York. The actual Proclamation also was delivered to the Secretary of State. This is the procedure of the Executive Chamber for such proclamations (the "Notice Procedure").

9. On information and belief, Respondent Espada publicly communicated his refusal to attend the June 24, 2009 Senate session, as an "act of civil disobedience," notwithstanding his responsibility to do so.

10. On information and belief, Respondent Espada further publicly stated that he "would encourage my coalition partners to join me in not attending" the June 24, 2009 Senate session.

11. On information and belief, on June 24, 2009, less than a quorum of Respondents assembled at 3:00 PM in the Senate Chamber.

12. The Respondents did not convene on June 24, 2009 within the meaning of Article 4, section 3 of the Constitution.

13. Petitioner duly called an extraordinary session of the Senate of the State of New York for 3:00 p.m. on June 25, 2009 pursuant to his powers under Article 4, Section 3 of the Constitution.

14. The Proclamation for an extraordinary session to be held at 3:00 p.m. on, June 25, 2009, is attached as **Exhibit "B"**. The Notice Procedure was used for such Proclamation.

15. On information and belief a group of Respondent Senators constituting less than a quorum met on June 25, 2009 at 3:00 PM in the Senate Chamber for less than 4 minutes, 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 less

than 3 minutes, and then left the Senate Chamber without conducting or attempting to conduct any substantive business.

16. On information and belief, the separate gatherings of Respondent Senators described in the preceding paragraph occurred as a result of an agreement among some or all Respondents not to appear in full assembly on June 25, 2009.

17. The Respondents did not convene on June 25, 2009 within the meaning of Article 4, section 3 of the Constitution.

18. Petitioner duly called an extraordinary session of the Senate of the State of New York for 12:00 p.m. on June 26, 2009 pursuant to his powers under Article 4, Section 3 of the Constitution.

19. The Proclamation for an extraordinary session to be held at 3:00 p.m. on, June 25, 2009, is attached as **Exhibit "C"**. The Notice Procedure was used for such Proclamation.

20. On information and belief a group of Respondent Senators constituting less than a quorum met on June 26, 2009 at 12:00 PM in the Senate Chamber for less than 5 minutes, 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 less than 5 minutes, and then left the Senate Chamber without conducting or attempting to conduct any substantive business.

21. On information and belief, the separate gatherings of Respondent Senators described in the preceding paragraph occurred as a result of an agreement among some or all Respondents not to appear in full assembly on June 26, 2009.

22. State senators have a non-discretionary responsibility and duty under Article 4, Section 3 of the Constitution to assemble at sessions convened pursuant to said Article 4, Section 3.

23. Article 13, Section 1 of the Constitution requires all members of the legislature including state senators to take an oath of office; to swear or affirm to support the Constitution of the State of New York; and to faithfully discharge the duties of the office to which they are elected. Article 13, Section 1 of the Constitution provides in pertinent part as follows:

Members of the Legislature ... shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: “I do solemnly swear (or affirm) that I will support the Constitution ... of the State of New York, and that I will faithfully discharge the duties of the office of [Senator]..., according to the best of my ability ...”

(Emphasis added; word “Senator” in brackets supplied).

24. On information and belief, all Respondents took their oath of office as required by Article 13, Section 1 of the Constitution.

25. The discharge of the duties of the office of state senator requires personal appearance and assembly at sessions of the Senate convened pursuant to Article 4, Section 3 of the Constitution.

26. The Senate cannot properly function if senators fail or refuse to attend in full assembly at extraordinary sessions convened pursuant to Article 4, Section 3 of the Constitution and discharge the duties of the office state senator.

27. There is urgent business before the Senate and the people of the State have suffered and will continue to suffer irreparable harm as a result of the failure of the Respondents to convene within the meaning of Article 4, Section 3 of the Constitution.

28. On information and belief Respondents have determined not to convene in full assembly in extraordinary sessions of the Senate called by the Petitioner.

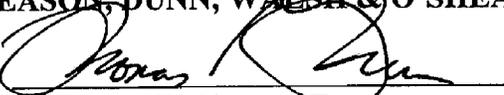
29. Petitioner intends to continue to call additional extraordinary sessions of the Senate pursuant to Article 4, Section 3 of the Constitution.

WHEREFORE, Petitioner requests the immediate issuance of a judgment of *mandamus* against Respondents compelling Respondents' personal attendance in full assembly at extraordinary sessions of the Senate called by Petitioner pursuant to Article 4, Section 3 of the Constitution, together with such other and further relief as to this Court seems just and proper.

Dated: Albany, New York
June 26, 2009

Yours, etc.

GLEASON, DUNN, WALSH & O'SHEA

By: 

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Attorneys for Petitioner
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Albany, New York 12207
Telephone (518) 432-7511

STATE OF NEW YORK)
)SS:
COUNTY OF ALBANY)

DAVID A. PATERSON, being duly sworn, deposes and says that he is the Petitioner in the within action; that the foregoing Petition is true to his knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matter, he believes it to be true.

David A. Paterson
DAVID A. PATERSON

Sworn to before me, this
20th day of June, 2009.

Thomas F. Gleason
Notary Public

THOMAS F. GLEASON
Notary Public, State of New York
Qualified in Rensselaer County
No. 4921931
Commission Expires 2/8/10



State of New York

JUN 23 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 fourth day of June, two thousand nine, at three o'clock, for the purpose of considering legislation with respect to:

- (1) providing same-sex couples the same opportunity to enter into civil marriages as opposite-sex couples;
- (2) capping the growth of State government spending to help control State expenditures, improve New York's long-term fiscal integrity and make government more accountable;
- (3) establishing the Green Jobs-Green New York program to promote energy efficiency, energy conservation, and the installation of clean energy technologies; reduce energy consumption and costs; reduce greenhouse gas emissions, support community development and create green job opportunities; and make certain technical corrections;
- (4) expanding access to health insurance for young adults through age 29;
- (5) expanding consumer protections for distressed homeowners, creating additional foreclosure prevention opportunities in the State, requiring foreclosing parties to maintain foreclosed property, establishing protections for tenants residing in foreclosed properties, and establishing provisions to prevent distressed homeowners from falling prey to rescue scams;
- (6) enacting farm workers fair labor protections, including granting a day of rest, overtime, collective bargaining rights, workers' compensation and other protections to farm workers;
- (7) facilitating the investment of over six hundred million dollars for capital improvements at and adjacent to the Monticello Race Track;

- (8) acting on gubernatorial nominations for the position of Chairman and Member of the State Liquor Authority, Member of the State Council on Arts, and President and Chief Executive Officer of the Urban Development Corporation d/b/a/ Empire State Development Corporation and Commissioner of Economic Development and Trustee of the Power Authority of the State of New York;
- (9) authorizing the fifth phase of school construction projects in the City of Buffalo by the Joint School Construction Board;
- (10) increasing the hotel and motel taxes of the County of Suffolk, and extending the authorization to impose such taxes until December 31, 2015;

and for the consideration of legislation with respect to such other subjects 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-
third day of June in the
year two thousand nine.

BY THE GOVERNOR

Laurence Schwartz
Secretary to the Governor

David A. Paterson



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 fifth day of June, two thousand nine, at three o'clock, for the purpose of considering legislation and nominations I will submit with respect to:

- (1) acting on gubernatorial nominations for the position of Chairman and Member of the State Liquor Authority, Member of the State Council on Arts, and President and Chief Executive Officer of the Urban Development Corporation d/b/a/ Empire State Development Corporation and Commissioner of Economic Development, and Trustee of the Power Authority of the State of New York;
- (2) providing enhanced consumer and provider protections in managed care;
- (3) extending continuation health benefits from eighteen months to thirty-six months;
- (4) revising the methodology for the pre-school supportive health services program to comply with federal Medicaid financing requirements;
- (5) allowing local governments to obtain relief from extraordinary pension costs they would otherwise bear in the near term, to make such costs more manageable and predictable, and to mitigate the need for a reduction in services;
- (6) providing for efficiency in local government by making it easier for municipal governments to form cooperative health benefit plans for their employees; facilitating highway shared services agreements among municipalities, and between municipalities and State agencies; allowing multiple counties to employ a single public health director; increasing the local competitive bidding thresholds on public works contracts; and equalizing the treatment of collateral sources in tort actions against public employers and protecting parties to the settlement of a tort claim from certain unwarranted lien, reimbursement and subrogation claims;

- (7) authorizing the governing body of the City of Peekskill, by the adoption and amendment of local laws, ordinances or resolutions, to impose a tax in such city on deeds by which real property is conveyed;
- (8) extending for two years the mortgage recording tax in the City of Yonkers until August 31, 2011;
- (9) authorizing Starrett City to refinance in excess of its actual project cost in return for thirty years of additional compliance with the provisions of the Mitchell-Lama program;
- (10) making certain technical amendments to: (a) clarify that nonresident shareholders of S Corporations who made an election pursuant to Internal Revenue Code § 338(h)(10) must include income from the sale of property located in New York in their New York source income; (b) repeal certain registration provisions pertaining to tax return preparers; (c) require that the taxicab ride tax in the metropolitan commuter transportation district be imposed on the taxicab medallion owner and not the taxicab owner; and (d) to change the existing operating permit program fees under the Environmental Conservation Law;

and for the consideration of legislation with respect to such other subjects 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-fourth day of
June in the year two thousand
nine.

BY THE GOVERNOR

Laurence Schwartz
Secretary to the Governor

David A. Paterson



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 sixth day of June, two thousand nine, at twelve o'clock noon, for the purpose of considering legislation and nominations I will submit with respect to:

- (1) authorizing voluntary employee benefit associations to "buy in" to Family Health Plus and obtain health insurance coverage for their members;
- (2) expanding energy efficiency and clean energy initiatives of the New York Power Authority ("NYPA") to reduce energy costs for local governments and recipients of NYPA's low-cost power programs;
- (3) establishing regulatory criteria for a pilot project to demonstrate new technology for the capture and sequestration of carbon dioxide in order to reduce greenhouse gas emissions and mitigate climate change;
- (4) authorizing the Office of General Services, on behalf of State agencies, to make aggregate purchases of alternative fuels, renewable energy and renewable energy credits or attributes, and electricity from suppliers in addition to NYPA, to lower costs for State government operations;
- (5) streamlining the planning and reporting requirements placed on school districts and Boards of Cooperative Educational Services by reducing duplicative and burdensome separate reporting systems;
- (6) acting on gubernatorial nominations for the position of Chairman and Member of the State Liquor Authority, Member of the State Council on Arts, President and Chief Executive Officer of the Urban Development Corporation d/b/a/ Empire State Development Corporation and Commissioner of Economic Development, and Trustee of the Power Authority of the State of New York;

and for the consideration of legislation with respect to such other subjects 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-fifth day of
June in the year two thousand
nine.

BY THE GOVERNOR

Louise Schwartz
Secretary to the Governor

David A. Paterson