NEW YORK
STATE
SENATE
ALBANY, NEW YORK 12247

June 24, 2009

Honorable David Paterson
Governor of the State Of New York
Executive Chamber
Albany, New York

Dear Governor Paterson:

Pursuant to your Executive Chamber Proclamation, dated June 23, 2009, the New York State Senate alone convened at 3 p.m. yesterday afternoon in an Extraordinary Session for the purpose of considering your recommended legislation. We successfully attained a quorum and passed several bills through the Senate.

However, there are serious constitutional and procedural issues regarding the manner in which this Extraordinary Session of the Senate was convened, and we are concerned that these issues could resurface in future Extraordinary Sessions that you might convene or have already sought to convene.

While there is no disputing your constitutional power to convene the Senate alone on certain occasions, legislation passed by the Senate in an Extraordinary Session without the participation of the Assembly in that same session could be subject to a cognizable Constitutional challenge.

It is our understanding that the New York State Constitution requires that both houses of the Legislature be assembled at the same Extraordinary Session in order for legislation submitted by the Governor to become law. According to Article IV, section 3 of the Constitution, the "governor shall have power to convene the legislature, or the senate only, on extraordinary occasions." But, nevertheless, the two legislative sessions – one in the ordinary course of business and one in an extraordinary Session pursuant to your call -- remain separate and distinct. Thus, bills passed by the Assembly during an ordinary session that it conducted at or around the time of an Extraordinary Session of the Senate may not be deemed the "*same as*" identical bills passed by the Senate during the Extraordinary Session.

The Constitution requires that only a bill that has passed both the Senate and Assembly is ripe for presentment to the governor. *See* N.Y. Const., art. IV, s 7. If the Senate and Assembly separately enact bills in different sessions – which is what happened today -- such bills arguably

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have not passed both the Senate and Assembly. It is questionable that a bill passed by the Senate in Extraordinary Session and a bill passed by the Assembly in Regular Session satisfy the requirements of the Presentment Clause.

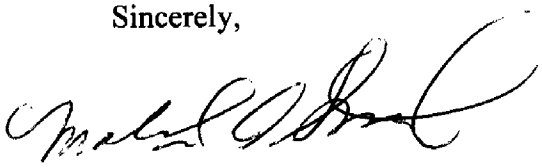
The history of the provision providing for a Senate-only Extraordinary Session supports this conclusion. The words "or the Senate only" -- the constitutional language empowering the governor to convene the Senate for an extraordinary Session – were added to the Constitution in 1821 in order to permit the Governor to exercise this power *only when the Senate was exercising its exclusive appointing power*. In 1821, Martin Van Buren, former New York State Senator, US Senator and President of the United States, stated that "[t]he Amendment was supported ... *upon the ground that it might be necessary for the Senate, with whom was lodged a part of the appointing power, to be convened without the other branch of the Legislature* .... " PROCEEDINGS AND DEBATES OF THE CONVENTION OF 1821, ASSEMBLED FOR THE PURPOSE OF AMENDING THE CONSTITUTION OF THE STATE OF NEW YORK, page 552 (emphasis added).

Further, while there are at least ten states with similar state Constitutional provisions, we have been unable to find any legal precedent where only one house was called into Extraordinary Session and successfully passed legislation.

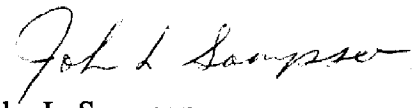
Another concern that must be noted is the process by which bills were introduced at today's Extraordinary Session. Given that an Extraordinary Session is a new and distinct session from the 2009-2010 regular legislative session, all Extraordinary Session bills have to be submitted for introduction pursuant to the rules of each house. Today, this process was not followed properly or timely, and, therefore, impeded our ability to act on these bills.

We write this letter in good faith and with a commitment to moving ahead with the peoples' business. We look forward to your speedy response and hope that we will be able to proceed more effectively and efficiently in any future Extraordinary Session of the Legislature or the Senate.

Sincerely,



Malcolm A. Smith
Temporary President of the Senate and Majority Leader



John L. Sampson
Democratic Conference Leader

cc: Members of the Senate