

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION SECOND DEPARTMENT

DEAN G. SKELOS and PEDRO ESPADA, JR.,
as duly elected members of the New York State
Senate,

Plaintiffs-Respondents,

v.

DAVID A. PATERSON, as Governor of the
State of New York, RICHARD RAVITCH, as
Lieutenant Governor of the State of New York,
and LORRAINE CORTES-VAZQUEZ, as
Secretary of State of the State of New York,

Defendants-Appellants.

No. 2009-06673

**BRIEF OF THE PARTNERSHIP FOR NEW YORK CITY, INC.
AS AMICUS CURIAE IN SUPPORT OF DEFENDANTS**

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New York State is in the midst of the most severe economic crisis since the Great Depression. Every sector of the State's economy has been hit hard. Businesses have closed, job losses have spiked, and the city's and state's tax revenues have fallen.

We have no doubt that New York can make it through this crisis. But how well and how quickly the State recovers depends in large part on the confidence the business community has in the State's ability to meet the challenges it faces. The political instability in the State Senate, and the uncertainty concerning the issue of gubernatorial succession, threaten a successful and timely recovery and the necessary participation of a proactive business community. The business community, and all New Yorkers, need an end to the political chaos and a State government that is free to focus all of its resources on developing and implementing a successful economic recovery plan.

The Partnership for New York City, Inc. is a non-profit, non-partisan organization dedicated to sustaining and enhancing New York's economy. It submits this amicus brief because, in these challenging times, it is imperative that the Governor be allowed to exercise his full Constitutional authority and fill the vacancy in the office of the Lieutenant Governor with the person he believes is best suited to help him steer the State through the difficult economic problems it faces.

INTEREST OF THE AMICUS CURIAE

The Partnership for New York City, Inc. (the “Partnership”) was founded by David Rockefeller and other executives in response to the 1970’s fiscal crisis, which pushed New York City to the edge of bankruptcy. It was established to enable business leaders to work more directly with government and other civic groups to address the social and economic challenges New York faces. For the last thirty years, the Partnership has dedicated itself to sustaining and improving the economic and political environment needed for New York to thrive as a global center of commerce, finance, culture, and innovation.

The Partnership is led by its Co-Chairmen, Lloyd Blankfein, Chairman and CEO of The Goldman Sachs Group, Inc., and Rupert Murdoch, Chairman and CEO of News Corporation. It is comprised of 200 partner companies, which are leaders in a wide range of industries, including financial services, professional services, real estate, media and entertainment, and retail firms. They include 47 Fortune 500 companies, 40 of New York City’s largest publicly-held corporations, and 12 of the city’s largest for-profit employers. Together, they account for several hundred thousand full-time jobs in New York City. Over 70 percent of the companies are headquartered in New York, and the remainder maintain a strong presence in New York. The Partnership represents businesses that make and have made substantial investments in New York State.

And its members are instrumental in making decisions to establish operations in New York, to keep operations in New York, and also to attract other businesses to New York.

The Partners are committed to working with City and State government and civic groups in New York to address broad social and economic problems, such as education, infrastructure, and budgetary matters. The Partnership focuses on research, policy formulation, and issue advocacy at the city, state, and federal levels. It serves as a repository of expertise and creative thinking for those trying to understand and stimulate the growth of the New York City economy and advocates for a number of initiatives to improve the functioning of state and local government so as to make New York a more desirable place to conduct business.

The Partnership also has a direct interest in the economic well-being of the State. Through its affiliate, the New York City Investment Fund (the "Fund"), the Partnership invests in economic development projects in New York City. To date, the Fund has raised more than \$110 million and made more than 90 investments in businesses and non-profit projects that promote the local economy. The Fund's goal is to mobilize the City's financial and business leaders to help build a stronger and more diversified local economy. Priorities for the Fund include job creation, revitalization of distressed areas, and innovative ideas that

position New York at the cutting edge of growth-sector industries. In recent years, the Fund has also worked to address special needs that have arisen in New York City. For example, the Fund partnered with Polytechnic Institute of NYU; the New York State Foundation for Science, Technology, and Innovation; the Industrial & Technology Assistance Corp.; and the New York City Economic Development Corporation to capitalize NYC Seed, an initiative to provide funding and services to early stage information technology and media companies.

The Partnership has a unique perspective on the impact of political instability on the business community and the health of New York's economy. The Partnership believes that upholding the Governor's full authority to exercise the powers vested in him under the Constitution to fill the vacancy in the Lieutenant Governor's office will have an important stabilizing effect on the political situation in the State. That, in turn, will have a positive impact on the State's business environment.

SUMMARY OF ARGUMENT

The Partnership submits this brief to address three compelling reasons why this Court should uphold Governor Paterson's right under the Constitution to appoint a Lieutenant Governor of his choosing:

First, in deciding an application for preliminary injunction, courts in this State take into consideration how the injunction would affect the public interest. Here, there is a strong public interest in a stable government that can lead the State through and out of the economic crisis it is facing. That public interest is served by affirming the Governor's right to appoint a Lieutenant Governor.

Second, affirming the Governor's right under the Constitution to appoint a Lieutenant Governor will remove any uncertainty concerning gubernatorial succession and will prevent a repeat of the political deadlock that paralyzed the Senate earlier this Summer.

Third, affirming the Governor's right under the Constitution to appoint a Lieutenant Governor provides Governor Paterson with a second-in-command who can work with the Governor to lead the State through these difficult times.

BACKGROUND

New York State was and continues to be affected by the nationwide economic downturn. The New York State Comptroller has stated that the current

financial crisis is the “most serious since the Great Depression, and this recession is shaping up to be the worst in the post-World War II era.”¹ New York is facing mounting job losses, increasing business failures, and significant revenue declines.

The unemployment picture is challenging: over the last twelve months, the state’s unemployment rate jumped from 5.3 percent to 8.7 percent.² It now stands at its highest level since 1992.³ As of June 2009, 854,000 New York State residents were unemployed, the greatest number on record since 1976.⁴ Since August 2008, New York State has lost over a quarter million jobs. And the 2.7 percent projected decline in private sector employment for 2009 would be the largest annual decline since 1990.⁵

In the nine months between August 2008 and May 2009, New York City shed 108,000 jobs, most of which were in the financial sector and in

¹ Office of the New York State Comptroller, *Review of the Financial Plan of the City of New York* 1 (2008).

² Press Release, New York State Dep’t of Labor, Highest Unemployment Rate in State Since 1992 (July 16, 2009), *available at* <http://www.labor.state.ny.us/workforceindustrydata/pressreleases/pruistat.htm>.

³ *Id.*

⁴ *Id.*

⁵ Press Release, New York State Division of Budget, Governor Paterson Will Deliver Economic and Fiscal Recovery Plan to Address \$2.1 Billion Current-Year Budget Deficit (July 30, 2009) [hereinafter July 30, 2009 Division of Budget Press Release], *available at* http://www.budget.state.ny.us/pubs/press/2009/press_release09_FPQ1_update.html.

professional and business services.⁶ Those sectors have faced significant losses and dislocation, with several large bank failures and acquisitions. Steep job losses are expected to continue through 2009, with employment in financial services and professional services projected to fall by 5.2 percent and 6.2 percent, respectively.⁷

These job losses are mirrored by a corresponding deterioration in New York State's revenues. In recent years, Wall Street has typically provided 20 percent of the State's tax revenue.⁸ But because of a 44 percent plunge in bonuses paid in the securities industry, Wall Street alone accounted for a \$1 billion decline in the State's personal income tax revenues last year.⁹ Overall, between first quarter 2008-09 and first quarter 2009-10, general fund personal income tax collections declined by \$4.2 billion.¹⁰ And there is no assurance that a shaken New York City financial services industry will continue to be the prime tax revenue generator that it has been since the early 1990s.

⁶ Office of the New York City Comptroller, *Economic Notes: New York City Recession Moderates*, July 2009, at 2, 6.

⁷ July 30, 2009 Division of Budget Press Release, *supra* note 5.

⁸ Michael Quint, *New York to Close Budget Gap with \$7.2 Billion Cuts*, Bloomberg.com, Dec. 16, 2008, <http://www.bloomberg.com/apps/news?pid=20601103&sid=aNuxV8EYU1M8>.

⁹ Press Release, Office of the New York State Comptroller, DiNapoli: Wall Street Bonuses Fell 44 % in 2008 (Jan. 28, 2009) [hereinafter January 28, 2009 Office of the New York State Comptroller Press Release], *available at* <http://www.osc.state.ny.us/press/releases/jan09/012809.htm>.

¹⁰ July 30, 2009 Division of Budget Press Release, *supra* note 5.

At the same time, consumers spent less in New York, causing the economic base underlying the sales tax to fall an unprecedented 14 percent – eclipsing the declines sustained in the wake of September 11, 2001. The combined impact of job losses and reduced spending caused sales tax collections to decrease by \$160 million.¹¹

Partly as a result of this loss in revenue, the State's current \$2.1 billion deficit is expected to more than double, to \$4.6 billion, in 2010-11 and to balloon to \$13.3 billion in 2011-12 and \$18.2 billion in 2012-13.¹² New York City's coffers also have been negatively affected, as the slump in the financial sector cost the city an estimated \$275 million in income tax revenue.¹³ Dwindling tax revenue prompted Mayor Bloomberg to propose a "doomsday budget" that included plans to eliminate almost 4,000 city jobs and raise the city sales tax to 8.875%.¹⁴

The political deadlock that paralyzed the New York State Senate over the past few months added to the economic crisis. The New York State Constitution requires that the Legislature approve any non-property taxes levied by

¹¹ *Id.*

¹² *Id.*

¹³ January 28, 2009 Office of the New York State Comptroller Press Release, *supra* note 9.

¹⁴ Kathleen Lucadamo, *Mayor Bloomberg Unveils City Budget with Higher Sales Taxes, Plastic Bag Surcharge*, N.Y. Daily News, May 1, 2009.

local governments.¹⁵ But because no legislative action was taken during the stalemate, various state and local revenue-generating initiatives, such as sales tax increases, were not approved. As a result, the stalemate directly cost the State, City, and local governments an estimated \$2.9 billion,¹⁶ and it certainly complicated local government financial planning and budgeting.

New York City was heavily impacted by the deadlock. The Senate's failure to approve tax measures in the city's 2010 budget triggered postponements in the hiring of 250 police officers, 150 firefighters, 175 school safety agents, 150 crossing guards, and 34 emergency operators.¹⁷ It also delayed the renewal of a provision allowing for mayoral control of city schools.¹⁸ Mayor Bloomberg estimated that inaction in Albany cost the city \$60 million a month.¹⁹

¹⁵ See N.Y. Const. art. XVI, § 1 ("The power of taxation shall never be surrendered, suspended or contracted away, except as to securities issued for public purposes pursuant to law. Any laws which delegate the taxing power shall specify the types of taxes which may be imposed thereunder and provide for their review."); see also N.Y. Dep't of State, *Local Government Handbook* 99 (5th ed. 2008) ("The power of taxation is an inherent attribute of state sovereignty, not possessed by its political subdivisions.").

¹⁶ Fact Sheet, Office of the New York State Comptroller, Cost of State Senate Inaction to New Yorkers (July 2, 2009) [hereinafter July 2, 2009 Office of the New York State Comptroller Fact Sheet], available at <http://www.osc.state.ny.us/press/releases/jul09/070209factsheet.htm>

¹⁷ James Barron, *Senate Impasse in Albany Forces City to Impose Hiring Freeze*, N.Y. Times, July 7, 2009.

¹⁸ Jennifer Medina & Javier C. Hernandez, *Senate Deal Keeps Mayor in Control of Schools*, N.Y. Times, July 25, 2009.

¹⁹ Barron, *supra* note 17.

ARGUMENT

I. THE PUBLIC INTEREST IS WELL-SERVED BY VACATING THE PRELIMINARY INJUNCTION

The appointment of a Lieutenant Governor will facilitate and accelerate the State's recovery from the economic and fiscal crisis. That fact should weigh heavily in the Court's analysis of the Respondents' motion for a preliminary injunction.

A party seeking a preliminary injunction must establish by clear and convincing evidence: i) a likelihood of success on the merits, ii) the prospect of irreparable harm if the preliminary injunction is withheld, and iii) a balancing of equities in the movant's favor. *See Omakaze Sushi Restaurant, Inc. v. Ngan Kam Lee*, 57 A.D.3d 497, 497 (2d Dep't 2008) (affirming denial of a preliminary injunction); *Gluck v. Hoary*, 55 A.D.3d 668, 668 (2d Dep't 2008).

In applying this test, courts in this State consider how the preliminary injunction would affect the public interest. As the Second Department stated in *Depina v. Educational Testing Service*, "in ruling on a motion for a preliminary injunction, the courts must weight the interests of the general public as well as the interests of the parties to the litigation." 31 A.D.2d 744, 745 (2d Dep't 1969) (quoting 7A Weinstein-Korn-Miller, N.Y. Civ. Prac., par. 6301.21); *see also Chatham Towers, Inc. v. Bloomberg*, 6 Misc. 3d 814, 826-27 (Sup. Ct. N.Y. Co. 2004) ("Whenever a request for a preliminary injunction implicates public

interests, a court should give some consideration to the balance of such interests in deciding whether a plaintiff's threatened irreparable injury and probability of success on the merits warrants injunctive relief.'") (quoting *Time Warner Cable of New York City v. Bloomberg L.P.*, 118 F.3d 917, 929 (2d Cir. 1997)), *aff'd as modified*, 18 A.D.3d 395 (1st Dep't 2005); *Destiny USA Holdings, LLC v. Citigroup Global Mkts. Realty Corp.*, No. 09-4157, 2009 WL 2163483, at *8 (Sup. Ct. N.Y. Co. July 17, 2009) ("Importantly, as part of the 'balancing of the equities' prong of the preliminary injunction test, courts may consider the affect [sic] that a preliminary injunction would have on the public interest at large.").

In *Chatham Towers*, for example, a group of Lower Manhattan residents and business owners attempted to enjoin implementation of a network of checkpoints and barriers in the neighborhood surrounding One Police Plaza. *See* 6 Misc. 3d at 825. The court denied their motion, citing the heightened public safety concerns in the area, which included not only police headquarters but also several courthouses and two detention facilities. *Id.* at 826-27. The court noted that "thousands of people [were] immediately affected by the security implementations in the area, or lack thereof." *Id.* at 827; *see also Standard & Poor's Corp. v. Commodity Exch., Inc.*, 683 F.2d 704, 712 (2d Cir. 1982) (affirming issuance of preliminary injunction and citing "[t]he need to protect the public" as a "strong ground" for doing so); *Orasure Tech., Inc. v. Prestige Brands Holdings, Inc.*, 42

A.D.3d 348, 349 (1st Dep't 2007) (denying plaintiff's motion to preliminarily enjoin defendant from selling product in part due to irreparable damage to defendant's employees and third-party vendors).²⁰

Like *Chatham Towers*, this case clearly implicates the public interest. There is strong public interest in a stable and functioning government, and one that can effectively lead the State out of the financial crisis. The larger public interest is served by denying the preliminary injunction.

II. THE APPOINTMENT OF A LIEUTENANT GOVERNOR PROVIDES CERTAINTY AND STABILITY TO THE BUSINESS COMMUNITY

How soon, and how easily, New York recovers from this financial crisis depends in part on stimulating and supporting New York's business sectors. This demands continuity and stability in government as uncertainty yields reluctance by businesses to invest in New York, to move to New York, and to stay in New York.

A. Certainty in the Gubernatorial Line of Succession Is Critical to New York's Economic and Fiscal Health

The office of the president *pro tempore* of the Senate – which stands second in line to the Governorship behind the Lieutenant Governor – has been in

²⁰ Additionally, because plaintiffs' complaint seeks a permanent injunction, *see* Complaint at *17, the effect on the public interest of the Governor's appointment of Mr. Ravitch to serve as Lieutenant Governor would come into play at any trial of this matter. *See McDermott v. City of Albany*, 309 A.D.2d 1004, 1006-07 (3d Dep't 2003) (denying permanent injunction based, in part, on finding that damage to plaintiff's land resulting from storm-water diversion project was outweighed by public benefit from project).

dispute for much of this Summer. For a period of several weeks in June and July, the situation was particularly confusing as Senate Democrats and Republicans each recognized a member of their own party as president *pro tempore*, such that two rival senators staked a claim to that office at the same time. Given the razor-thin majority that Democrats hold in the Senate, there can be no assurance that the office of president *pro tempore* will not continue to be the subject of contention in the coming months.

With no Lieutenant Governor in place, and with the ongoing rivalry for Senate leadership, the gubernatorial line of succession is far from certain. Should Governor Paterson not be able to carry out his duties, there is the distinct possibility that the legislature may become embroiled in a political fight over his office. The uncertainty that flows from this situation is detrimental to business confidence. It deters investment in the State and hampers economic recovery. Put simply, unpredictability regarding the fundamental issue of who is leading the State government – and disputes arising from multiple parties staking claim to the same office – is bad for business.

A Lieutenant Governor, standing between the Governor and the president *pro tempore* in the constitutional line of succession, alleviates the uncertainty concerning succession. The Lieutenant Governor would simply ascend

to the Governorship, by operation of law, thereby ensuring an orderly transition of power.

For such an orderly succession, it is necessary that Governor Paterson appoint a Lieutenant Governor. An “economic special advisor” cannot ensure orderly succession and prevent political turmoil. Only a Lieutenant Governor can create predictability and continuity in the line of succession, and thereby effect a significantly important stabilizing influence on the business sector.

B. As President of the Senate, the Lieutenant Governor Can Keep Order and Prevent Political Deadlock

The Senate stalemate that shut down Albany earlier this Summer was an unnecessary shock to the State’s already battered economy. In delaying action on crucial legislation, the stalemate cost the State almost \$3 billion, and New York City lost money at a rate of a couple of million dollars a day and had to impose a hiring freeze, including on police recruits and firefighters.²¹

In addition, the legislation affected by the deadlock – including mayoral control of New York City public schools and tax bills and extenders needed for state and local governments to function – concerns matters essential to promoting the State’s economic competitiveness. To compete with other states for companies looking to relocate, and to retain business in this State, New York needs

²¹ See July 2, 2009 Office of the New York State Comptroller Fact Sheet, *supra* note 16 (concluding that fiscal impact of Senate inaction across city, state, and local governments was \$2.9 billion); Barron, *supra* note 17.

strong and functioning public schools; the legislative deadlock unnecessarily put the City's schools at risk. The State also must ensure that cities and municipalities have the tax revenues they need to plug budget deficits and pay for key services.

The inaction by the State Senate eroded the business community's confidence in the ability of the Senate to enact and implement policies to address the State's pressing fiscal issues. The stalemate in the Senate – and its impact on the economy – could have been avoided had there been a Lieutenant Governor to act as president of the Senate, to cast tie-breaking votes to keep the Senate functioning,²² and to stymie the contest for the power of succession. By acting to keep the Senate from devolving into deadlock, a Lieutenant Governor will help to prevent legislative inaction in the future.

III. THE APPOINTMENT OF A LIEUTENANT GOVERNOR PROVIDES THE GOVERNOR A SECOND-IN-COMMAND TO SPEARHEAD THE STATE'S RESPONSE TO THE CURRENT ECONOMIC CRISIS

The New York State Constitution envisions the Governor and Lieutenant Governor working together as a team to solve the State's problems. Governors have often turned to their lieutenants in times of crisis to undertake difficult and important tasks. In this time of economic distress, Governor Paterson should also be able to turn to a Lieutenant Governor to assist him in addressing the State's challenges.

²² See N.Y. Const. art. IV, § 6.

A. Allowing the Appointment to Stand Is Consistent with Article IV, § 1 of the New York State Constitution

Article IV, § 1 states that the Governor and Lieutenant Governor “shall be chosen at the same time” and “chosen jointly.”²³ This plain language evinces a preference that the Governor and Lieutenant Governor not only work together as a team, but also that they be from the same political party. This is especially critical when it comes to economic affairs: because Democrats and Republicans often hold divergent viewpoints on economic programs, a Governor and a Lieutenant Governor from different political parties could result in deadlock that thwarts progress.

Over time, the people of New York have taken steps to ensure that the Governor and Lieutenant Governor do, in fact, function as a team. Before 1953, the Governor and Lieutenant Governor were elected separately, which meant that they could be members of different political parties.²⁴ Governor Dewey, a Republican, supported amending Article IV, § 1 to provide for joint election of the

²³ N.Y. Const. art. IV, § 1 (“The executive power shall be vested in the governor, who shall hold office for four years; the lieutenant-governor shall be chosen at the same time, and for the same term They shall be chosen jointly, by the casting by each voter of a single vote applicable to both offices . . .”). Article IV, § 1 should be read as making election the ordinary means, but not the exclusive means, by which the offices of Governor and Lieutenant Governor are filled. Indeed, if Article IV, § 1 made election the exclusive means of filling the offices of Governor and Lieutenant Governor, Governor Paterson could not be Governor today.

²⁴ See Peter J. Galie, *Ordered Liberty: A Constitutional History of New York* 272 (1996).

Governor and Lieutenant Governor.²⁵ In doing so, he stressed the importance of the Governor and Lieutenant Governor working together, as well as the dangers of their holding opposing views.

In a February 1953 message, Governor Dewey stated:

We should no longer risk the confusion and maladministration which might result from having the Governor of one party while the Lieutenant Governor leads the opposition. We have seen enough of this in other countries where the multi-party system keeps such constant turmoil and struggle for advantage that government is in chaos and people turn away from their institutions. . . .²⁶

Governor Dewey's amendment was put to the citizens of New York for a vote. On Election Day 1953, the people of New York approved amending Article IV, § 1 to provide that the governor and lieutenant governor would be "chosen jointly."²⁷

In practice, the amendment has often resulted in the Governor and Lieutenant Governor working closely together to implement key aspects of their agenda. For example, Governor Cuomo considered Lieutenant Governor Lundine a "junior partner" and gave him numerous responsibilities, ranging from State drug

²⁵ See, e.g., Governor Thomas E. Dewey, *February 9, 1953 Message Regarding Joint Election of Governor and Lieutenant Governor*, in *New York State Legislative Annual 1953* 318-19 [hereinafter *February 9, 1953 Dewey Message*]; see also *Text of Governor Dewey's Annual Message Presenting His Program to the Legislature*, N.Y. Times, Jan. 8, 1953 (stating, in the context of voicing support for the amendment, that "[g]ood government requires responsible, cohesive administration").

²⁶ February 9, 1953 Dewey Message, *supra* note 25, at 319.

²⁷ See Leo Egan, *All 9 Amendments Adopted by State*, N.Y. Times, Nov. 4, 1953.

czar to supervising the overhaul of the State's housing construction program.²⁸ Governor Rockefeller entrusted his long-time Lieutenant Governor, Malcolm Wilson, with engendering support in the Legislature for key programs.²⁹ Governor Carey had Lieutenant Governor Cuomo serve as the state's "ombudsman" to ensure more effective delivery of government services.³⁰ And Governor Pataki appointed Lieutenant Governor Betsy McCaughey Ross to pilot his Medicaid-reform program.³¹

In accordance with Article IV, § 1's vision that the Governor and Lieutenant Governor work as a team, Governor Paterson should be able to appoint and rely on a Lieutenant Governor who supports the Governor's agenda and can work hand-in-hand with him to implement that agenda.

B. Mr. Ravitch is Well-Suited to Team with Governor Paterson During This Critical Time

Every Governor should have the ability to fill a vacancy in the office of Lieutenant Governor with the person he believes is best suited to assist him to

²⁸ See generally Stan Lundine, *The Role of the Lieutenant Governor, in New York State Today: Politics, Government, and Public Policy* (Peter W. Colby & John K. White eds., 2d ed. 1989); Elizabeth Kolbert, *Lundine Surmounts the Little Ignominies of Being No. 2*, N.Y. Times, Apr. 11, 1989.

²⁹ See Malcolm Wilson, *My Years with Nelson Rockefeller, in New York State Today: Politics, Government, and Public Policy* (Peter W. Colby ed., 1st ed. 1985).

³⁰ See Mario Cuomo, *New York Needs an Elected Ombudsman*, N.Y. Times, Mar. 5, 1981.

³¹ See Robert B. Ward, *New York State Government* 83 (2d ed. 2006).

steer the state. As Governor Dewey explained in 1953, “In our State the executive duties are so exceedingly heavy that an able Lieutenant Governor, holding full confidence of his associates, is essential to the proper conduct of the people’s business.”³² That statement continues to ring true today.

In the face of the “exceedingly heavy” executive duties that Governor Dewey acknowledged, it is important that the Governor have the ability to appoint a Lieutenant Governor to advise and assist him in fulfilling those duties. And just as Governor Paterson’s predecessors relied on their Lieutenant Governors to grapple with key issues of their day, Governor Paterson should be able to appoint a Lieutenant Governor on whom he can rely to assist him in carrying out the economic recovery plan.

In that regard, Governor Paterson recently announced that he will ask his Lieutenant Governor to take on key responsibilities on two fronts, both of which are critical to the state’s economy. First, the Lieutenant Governor will develop, implement, and advise on an Economic and Fiscal Recovery Plan.³³ And

³² February 9, 1953 Dewey Message, *supra* note 25, at 319.

³³ July 30, 2009 Division of Budget Press Release, *supra* note 5.

second, the Lieutenant Governor will work to improve mass transit both in the New York City region and upstate.³⁴

Appointing a Lieutenant Governor, rather than a “special advisor,” is necessary to enable the Lieutenant Governor to carry out fully the responsibilities the Governor would entrust to him. The Lieutenant Governor is the second ranking office in the State, the next-in-line to the Governor, and the president of the Senate. That position carries authority and vests the holder of the position with legitimacy and power needed to effectively implement policies. Positions like “special assistant” and “economic advisor” simply do not carry the same weight in the political or business community as does Lieutenant Governor.

Governor Paterson’s choice of Richard Ravitch to serve as Lieutenant Governor underscores the importance of the position, as Mr. Ravitch is particularly well-suited to carry out the responsibilities Governor Paterson has outlined. In the 1970s, Governor Carey appointed Mr. Ravitch to head the Urban Development Corporation (“UDC”), an organization created to sponsor low- and middle-income housing projects which had become nearly bankrupt. Mr. Ravitch negotiated a complex financial package with bankers and lawmakers that enabled the UDC to

³⁴ See Jimmy Vielkind, *The Asset David Paterson Can't Wait to Deploy*, PolitickerNY.com, July 21, 2009, <http://www.politickerny.com/4589/asset-david-paterson-cant-wait-deploy> (recounting phone conversation between author and Governor Paterson).

survive.³⁵ In 1979, Governor Carey appointed Mr. Ravitch to head another faltering organization – the Metropolitan Transportation Authority (“MTA”). While at the MTA, Mr. Ravitch designed an \$8.5 billion recapitalization plan involving contributions from the private sector as well as from federal and state government; he also improved previously tense labor relations and created the Metro-North Commuter Railroad.³⁶ After leaving public service, Mr. Ravitch rescued the financially troubled Bowery Savings Bank from the brink of extinction.³⁷ Most recently, in 2008, Governor Paterson called on Mr. Ravitch to lead a panel to address the MTA’s fiscal woes.³⁸

As Governor Paterson recently explained, the leadership of this State will be bolstered by the seating of a Lieutenant Governor as well-qualified as Richard Ravitch:

“[A]t a time of unparalleled fiscal difficulty . . . [t]he appointment of Richard Ravitch today will bring the

³⁵ M.A. Farber, *Outsider Ravitch Runs As Exactly That*, N.Y. Times, Aug. 1, 1989.

³⁶ *Id.*

³⁷ *See id.*; Eric N. Berg, *Bowery Savings Bank Is Sold for \$200 Million*, N.Y. Times, Oct. 6, 1987.

³⁸ Eliot Brown, *Paterson Launches Panel to Find M.T.A. Much-Needed Money*, N.Y. Observer, June 10, 2008.

governor a successor, the Senate a presiding officer, and will help to alleviate this crisis.”³⁹

The Partnership agrees. For the sake of all New Yorkers, the Governor’s authority to make this critical appointment should be affirmed.

CONCLUSION

For the reasons set forth above and in the brief submitted by the Defendants-Appellants, the Partnership respectfully requests that the trial court’s order be reversed and the preliminary injunction be vacated.

Respectfully submitted,

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³⁹ Gov. David Paterson, Remarks on The Current Senate Stalemate and its Impact on all New Yorkers (July 8, 2009), available at http://www.ny.gov/governor/keydocs/speech_0708095.html.

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