

Special

At a ~~Motion~~ Term of the Supreme Court of the State of New York, held in and for the County of Nassau, at the Supreme Court Courthouse thereof, located at 100 Supreme Court Drive, Mineola New York on the 9th day of July 2009

UNOFFICIALLY

PRESENT: HONORABLE _____ Supreme Court Justice
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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

INDEX No.
ORDER TO SHOW
CAUSE & TEMPORARY
RESTRAINING ORDER

-v.-

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

-----x

Upon the reading of the annexed and accompanying affirmations of counsel, the summons and verified complaint annexed hereto

LET the defendants, or counsel appear and show cause before an I.A.S. Part of the Supreme Court of the State of New York Nassau County at the Courthouse located at 100 Supreme Court Drive Mineola, New York before a justice of this Court on the 9th day of July 2009 at 11:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard

WHY an order should not be issued

1. Preliminarily enjoining Defendants or any other person acting in concert with them from exercising any of the powers of the office of Lieutenant Governor of the State of New

York by the New York State Constitution or by the State of New York, including but not limited to those powers regarding presiding over the Senate of the State of New York;

2. Declaring that the Office of Lieutenant Governor is vacant according to the rules of succession under the Constitution of the State of New York;
3. Declaring as null and void *ab initio* any action taken by any such putative nominee;
4. Directing and enjoining that the Secretary of State and no officer of the state shall accept for any filing any oath of office executed by the putative nominee;

SUFFICIENT CAUSE appearing therefore it is further

UPON THE WRITTEN AND ORAL APPLICATION OF COUNSEL PURSUANT TO SECTION 304 OF THE CPLR IT IS HEREBY DETERMINED, ORDERED, ADJUDGED AND DECREED, that this being July 9, 2009, and the hour being 12:23 ~~A~~ M., and that the Court Clerk's Office is closed, and that the Office of the County Clerk is closed preventing the filing of the initiatory papers in this proceeding, and further, as this application has been made after business hours, and that these facts make the purchase of an Index Number, and a Request for Judicial Intervention and the accompanying filing IMPOSSIBLE, therefore it is

11072
J.S.C. {

ORDERED, Petitioner is hereby granted leave of this Court to make a delayed filing of the within papers and shall file and pay for an Index Number and RJI ~~within~~ the days of the signing of this order with the County Clerk, within the time frames specified by the CPLR, and it is further

ORDERED, that this special proceeding shall be deemed to have been commenced by the signing of this order pursuant to the provisions of CPLR 304, and the case law of the Second Department, and that service thereof may be made immediately,

Sufficient reason appearing therefore, leave is hereby granted to the petitioners to submit on the date set for the hearing or the trial of this matter additional witnesses, exhibits, proofs and other evidence as may be necessary, and,

Sufficient reason appearing therefor, leave is hereby granted to the petitioner to amend his/her pleadings as may be necessary, and,

WJL
J.S.C.

ORDERED THAT PENDING ^{Hearing} ~~DETERMINATION~~ OF THE APPLICATION, DEFENDANTS ARE TEMPORARILY RESTRAINED AND ENJOINED FROM FILING OR CAUSING TO BE FILED ANY OATH OF OFFICE OF DEFENDANT PUTATIVE NOMINEE; AND

WJL
J.S.C.

ORDERED THAT PENDING ^{Hearing} ~~DETERMINATION~~ OF THE APPLICATION, DEFENDANTS ARE TEMPORARILY RESTRAINED AND ENJOINED FROM ACTING WITH REGARD TO OR EXERCISING ANY OF THE POWERS ACCORDED TO THE LIEUTENANT GOVERNOR OF THE STATE OF NEW YORK BY ~~THE~~ NEW YORK STATE CONSTITUTION; AND IT IS FURTHER

WJL
J.S.C.

ORDERED that the service of the a copy of this Order to Show Cause and the papers upon which it is based be made on or before 1:00 PM on the 9th day of July 2009, which shall be deemed good and sufficient service if made as follows

Pursuant to CPLR 307 (2) on each of the Defendants by delivering copies at their offices as follows :

UPON Defendant Paterson at the Office of the Governor, The Capitol, Albany, NY, 12224

UPON the putative nominee at the Office of the Lieutenant Governor, The Capitol, Albany, NY, 12224 or in person

UPON the Defendant Lorraine Cortes-Vazquez, by the Attorney General, or at her office at 99 Washington Ave. Albany, NY 12231,

Pursuant to CPLR 307 (1) upon Attorney General Andrew Cuomo, by delivering a copy at the office of the Attorney General, The Justice Building, Albany, NY, 12224 or 200 Old Country road, Suite 310, Mineola, NY 11501 and it is further

WJ
J.S.C.

~~ORDERED~~ that answering papers, if any, shall be served so as to be received by counsel on or before 2009.

Dated Mineola, New York

July 8, 2009

ENTER:

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URS WOLFF LALLY JSC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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

Plaintiff,

-against-

INDEX No.
EMERGENCY
AFFIRMATION

DAVID PATERSON, as Governor of the State of New
York, and
RICHARD RAVITCH, putative nominee
for Lieutenant Governor of the State of New York,
LORRAINE CORTES-VAZQUEZ,
Secretary of State of the State of New York,

Defendants.

-----X
TO THE SUPREME COURT OF THE STATE OF NEW YORK:

JOHN CIAMPOLI, an attorney duly admitted to the practice of law before the
Courts of the State of New York, does hereby affirm under the penalties of perjury as
follows:

1. He is the attorney for the Plaintiff Pedro Espada, Jr. in the above captioned proceedings.
2. He is fully familiar with the facts and circumstances of this matter.
3. This application is made to the Justice sitting in the Emergency Part of the Supreme Court Nassau County, and is of the most urgent nature.
4. Pursuant to local rules, counsel offers this affirmation certifying the emergency nature of this application.

5. The case at bar is one of a Constitutional Crisis created by the defendant Governor, by acting to appoint defendant Ravitch as the Lieutenant Governor, and presiding officer of the State Senate of the State of New York.
6. This action is in blatant violation of the terms of the New York State Constitution and is unprecedented in the history of this state.
7. The Governor waited until AFTER the close of business on July 8, 2009 to make the announcement of this purported appointment.
8. Upon information and belief, based upon press reports, the purported Lieutenant Governor nominee has been instructed to attend upon the Capitol in Albany, New York tomorrow morning to be sworn in.
9. Upon information and belief, Defendant Governor intends the execution and filing of an oath of office with the Defendant Secretary of State by the Defendant purported nominee to preclude and evade the jurisdiction of the Supreme Court by creating the claim that the purported nominee actually occupies the subject public office.
10. The Governor, in creating this Constitutional Crisis, and to prevent a challenge to his action in the Courts, has created the present emergency.
11. Were the Defendant purported nominee to occupy the office the Plaintiffs could be deprived of the right to proceed before this Court on the basis that the exclusive remedy is a quo warranto proceeding which may only be brought in the name of the people of the state by the Attorney General.

12. The failure to have this action commenced by signature and served forthwith will therefore irreparably injure the Plaintiffs.

A handwritten signature in black ink, appearing to read "John Ciampoli". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

DATED: July 8, 2009

John Ciampoli, Esq.
677 Broadway (Suite 202)
Albany, New York 12207
518 527 1217 / cell: 518 522 3548

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

_____ X

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

Plaintiff,

INDEX No.
AFFIRMATION OF SERVICE

-against-

DAVID PATERSON, as Governor of the State of New
York, and
RICHARD RAVITCH, putative nominee
For Lieutenant Governor of the State of New York,
LORRAINE CORTES-VAZQUEZ,
Secretary of State of the State of New York

Defendants.

_____ X

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

ADAM C. RICHARDSON, an attorney duly admitted to the practice of law before the
Courts of the State of New York, does hereby affirm under the penalties of perjury as follows:

1. That at on Wednesday July 8, 2009 I served the following people true and correct papers in the
above entitled action and made them aware that we were appearing at the Nassau County
Supreme Court in Mineola, New York at approximately 11:50 P.M. July 8, 2009:

a. Peter Kiernan, Counsel to Governor David Paterson by email at 10:37 p.m. to the email
address peter.kiernan@chamber.state.ny.us.

b. Peter Kienan, Counsel to Governor David Paterson in person on the second floor of the
Capitol Building, Albany, New York at 10:52p.m.

c. Henry Greenberg, Counsel to Attorney General Andrew Cuomo by email at 10:37 p.m.
to the email address hgreenberg@vzw.blackberry.net.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

X

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

Plaintiff,

INDEX No.
AFFIRMATION OF SERVICE

-against-

DAVID PATERSON, as Governor of the State of New
York, and
RICHARD RAVITCH, putative nominee
For Lieutenant Governor of the State of New York,
LORRAINE CORTES-VAZQUEZ,
Secretary of State of the State of New York

Defendants.

X

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

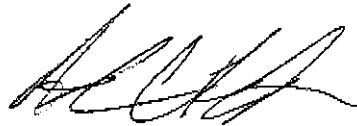
ADAM C. RICHARDSON, an attorney duly admitted to the practice of law before the
Courts of the State of New York, does hereby affirm under the penalties of perjury as follows:

1. In an attempt to serve Richard Ravitch in the above named action I contacted him by cell
phone at 917-693-0081 at approximately 10:25 p.m. on July 8, 2009.
2. After identifying myself I made Mr. Ravitch aware that we intended to serve him papers in
this matter.
3. After inquiring whether he had a fax number or email address that we may serve him at, Mr.
Ravitch informed me that he had to be up early to travel and would not accept service.
4. I again inquired whether he had a fax number or email address where we may send the papers.
Mr. Ravitch informed me that he would be traveling to Albany early on June 9, 2009.

5. After getting no satisfactory response from Mr. Ravitch I informed him that he was refusing service and that we intended to move forward with the above captioned matter, whereby Mr. Ravitch acknowledged my statement.

6. The call then terminated approximately three minutes after it had begun.

DATED: JULY 8, 2009



Adam C. Richardson, Esq.
Room 316 the Capitol
Albany, New York 12247
518-455-2406 / cell: 518-528-4596

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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

Plaintiff,

INDEX No.
SUMMONS

-v.-

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

-----X
TO THE ABOVE NAMED DEFENDANT :

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to
serve a copy of your Answer upon the plaintiffs attorneys within 20 days after the service of this
Summons, exclusive of the date of service or within 30 days after the service is complete if this
Summons is not personally delivered to you within the State of New York. In case of your failure
to appear or answer, judgment will be taken against you by default for the relief demanded in the
complaint.

Plaintiffs designate Nassau County as the place of trial. The basis for venue
designated is the Plaintiff Dean G. Skelos is a resident of Village of Rockville Centre, Nassau
County under CPLR 503

DATED July 9, 2009

Mineola, New York

DAVID L. LEWIS
Attorney for the Plaintiff Dean Skelos
225 Broadway Ste 3300
New York, NY 10007
212 285 2290

JOHN CIAMPOLI
677 Broadway Ste 202
Albany NY 12207
518 527 1217

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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

Plaintiff,

-v.-

DAVID PATERSON, as Governor of the State of New
York, and
RICHARD RAVITCH, putative nominee for Lieutenant Governor
of the State of New York, and LORRAINE
CORTES- VAZQUEZ, the Secretary of State of the
State of New York

Defendants
-----x

INDEX No.
VERIFIED COMPLAINT

Plaintiffs by their counsel as and for their complaint alleges as follows

PRELIMINARY STATEMENT

1. This is an action seeking a declaratory judgment and, *inter alia*, an injunction against the defendants attempt to illegally and unconstitutionally fill a vacancy in the office of Lieutenant Governor in and by a manner contrary to law.
2. On July 9, 2009 at 5:01 PM defendant Paterson "appointed" defendant Ravitch to "serve out the remainder of his term with him."
3. Defendant Paterson claims that the Constitution of the State of New York gives him the power of appointment to the office of Lieutenant Governor.
4. The New York State Constitution provides a specific statement of executive power. Article IV § 1 states that executive power shall be vested in the governor. It creates the office of Lieutenant Governor. The Lieutenant Governor shall be chosen at the same time, and for the same term.

12. The Lieutenant Governor possesses the following constitutional and statutory duties. He is the president of the State Senate a member of the impeachment court, a member of the Committee on Open Government a member of the State Defense Council, and other related offices such as College board of trustees ex officio.
13. In the past Temporary Presidents have fulfilled the office of the Lieutenant Governor upon the resignation or death of the then Lieutenant Governor. It occurred as many as 14 times prior to the instant case.¹
14. In the case of the impeachment of Governor Sulzer, Martin Glynn succeeded to the office of Governor and then even under that situation Governor Glynn saw no reason to appoint a Lieutenant Governor.
15. The modern era has more than once seen the office of Lieutenant Governor rendered empty. No governors have attempted to appoint a Lieutenant Governor. There have twice been special elections for a Lieutenant Governor position (Hamilton Fish, 1847, not challenged; Joe R. Hanley, 1943, challenged (Ward v. Curran 291 N.Y. 642 (1943) (Ordering a special election))).
16. The law was subsequently changed to clarify that there was no provision under the Constitution for a special election of a Lieutenant Governor. Even in these instances however, there was never any contemplation that an appointment was possible.
17. While documents relied on by the Defendant Governor in supporting his authority make note of the fact that the Public Officer's Law now specifically precludes the

¹ John Tayler, 1811; Peter R. Livingston, 1828; Charles Dayan, 1828; Charles Stebbins, 1829; William M. Oliver, 1830; Dennis McCarthy, 1885; John Raines, 1906; George H. Cobb, 1910; Robert F. Wagner, 1913; Joe R. Hanley, 1942, 1943; Walter J. Mahoney, 1954; Warren M. Anderson, 1973, 1985; Joseph L. Bruno, 2008; Malcolm Smith, 2009—all took office by operation of the Constitution as Temporary President of the Senate to act as Lieutenant Governor.

possibility of a special election, and yet remains silent on the issue of an appointment by the Governor, this is simply not dispositive authority.

18. The Governor is precluded by the Constitution, Article IV, § 6 from filling a vacancy in the office, as the Constitution clearly provides that the Temporary President of the Senate becomes the acting Lieutenant Governor by operation of law. Therefore, it is not a situation as described in Public Officer's Law § 43 "with no provision of law for filling the same," except rather than a statutory framework, there is a Constitutional framework.
19. The Plaintiff's theory conveniently ignores the Constitutional framework in reaching that conclusion.

JURISDICTION AND VENUE

20. Plaintiffs have the constitutional and statutory duty as officers of the New York State Senate to insure that no interloper or individual not elected to the office of Lieutenant Governor preside over the body.
21. Plaintiff Skelos is a resident of and maintains offices in Nassau County, New York.

PARTIES

22. Plaintiff Dean Skelos is a State Senator elected from the 9th Senatorial District. He is also the duly elected Majority Leader of the New York State Senate. Senator Skelos is also the leader of the Republican Conference and one of the co-leaders of the Bipartisan Reform Coalition in the Senate. Until June 8, 2009 he served as the Minority Leader of the New York State Senate.
23. Plaintiff Pedro Espada Jr., is a State Senator elected from the 33rd Senatorial District. He is also the duly elected Temporary President of the New York State Senate.

Senator Espada is also one of the co-leaders of the Bipartisan Reform Coalition in the Senate. Prior to June 8, 2009, he was a State Senator.

24. Defendant David A. Paterson is the Governor of the State of New York. On March 17, 2008 he succeeded to the office of Governor after the resignation of the prior Governor, Eliot Spitzer.
25. Richard Ravitch is the putative appointee of the Governor to serve as Lieutenant Governor to serve out the remainder of Governor Paterson's term with him.
26. Lorraine Cortez-Vazquez is the Secretary of State of the State of New York and as such is the person charged with acceptance and filing of oaths of office for any officer of the Executive Department

FACTUAL ALLEGATIONS

27. On July 8, 2009, Governor Paterson announced that he was "appointing" Richard Ravitch as the Lieutenant Governor.
28. He stated that it was an extraordinary act.
29. Paterson stated that he believed that the appointment was constitutional and thus not prohibited by the language of the State constitution.
30. The Constitution is a specific grant of power from the People to the officers of the State and must be followed by its terms. No official of the State may act in a manner not permitted by the Constitution.
31. The Constitution sets out a succession scheme for Executive Offices.
32. It specifically does not grant power to the Governor to appoint a Lieutenant Governor when the office is vacant.

33. Public Officers Law requires that for the provision of law relied on by the Governor to apply, the office to be filled by appointment must be an elective office.
34. The office of Lieutenant Governor is not an office that is elective in that he cannot run alone for the office or be elected to that office. In light of the requirement of a unitary ticket which commands only one vote from the voter, the Lieutenant Governor is not elected in the sense that “elective office” means under Public Officer’s Law § 43.
35. The Governor claims that there is an emergency and upon that basis he has appointed a Lieutenant Governor. No emergency justifies acting outside the parameters of the Constitution.
36. Plaintiffs seek a declaratory judgment that the “appointment of the Defendant Ravitch by the Defendant Paterson is in all respects unconstitutional.

TEMPORARY RESTRAINING ORDER

37. The only remedy is a temporary restraining order and preliminary injunction that should be rendered into a permanent injunction to prevent the unconstitutional “appointment” and the taking of office by an interloper
38. The order sought is designed to prevent the taking and filing of an oath of office by the Defendant, Ravitch.
39. In order to obtain a temporary restraining order and an injunction the plaintiff must establish first, a likelihood of success on the merits, second, irreparable harm in the absence of an injunction and third, that the balance of equities exist in favor of granting the injunction.

40. First the plaintiffs have a likelihood of success on the merits on the basis that no authority or precedent permits the Governor to appoint a person to an office which is one subject to voter determination in a unitary ticket.
41. The plaintiffs will suffer irreparable harm for two reasons. First, plaintiffs by virtue of their oaths of office to uphold the Constitution of the State of New York, will be in direct violation of their office if they were commanded to or willingly participated in a “legislative session” conducted under the aegis of an interloper to constitutional office. Additionally, any legislation passed by the body while presided over by a person not constitutionally authorized is void *ab initio*.
42. The balance of equities favor the granting of the injunction and the temporary restraining order. The failure to prevent the oath of office being administered and being filed would result in the Defendant Ravitch assuming office and thus not be subject to being immediately removed from office.
43. The governor has claimed that legal experts were consulted on the matter and supported his action.
44. Specifically lacking was an opinion of the Attorney General, formal or informal.

STATEMENT OF THE NEW YORK STATE ATTORNEY GENERAL

45. Further to the balance of equities, the statement of New York State Attorney General Andrew Cuomo, encapsulates the issues and the nature of the action. He stated, “The State Constitution explicitly prescribes what occurs when there is a vacancy in the Office of Lieutenant Governor. In such circumstance, Article, 4, Sec. 6 states that “the Temporary President of the Senate shall perform all the duties of the Lieutenant-Governor during such vacancy. . . .” Article 4, Section 1 of the Constitution

expressly provides that “the Lieutenant-Governor shall be chosen at the same time, and for the same term” as the Governor. The Legislature did not authorize a Governor to bypass this provision of the Constitution and fill a vacancy in the Office of Lieutenant Governor pursuant to Public Officers Law Section 43. That statute, which provides for Gubernatorial appointment to fill certain vacancies, applies only when there is “no provision of law for filling the same.” With respect to the Lieutenant Governor, however, the Constitution leaves no gap concerning a vacancy in that office – Article 4, Section 6 expressly addresses that circumstances. In sum, we understand the apparent political convenience of the proponents’ theory due to the current Senate circumstances. In our view, however, it is not constitutional. In addition, contrary to the proponents’ goal, we believe it would not provide long term political stability but rather the opposite, by involving the Governor in a political ploy that would wind through the courts for many months.”

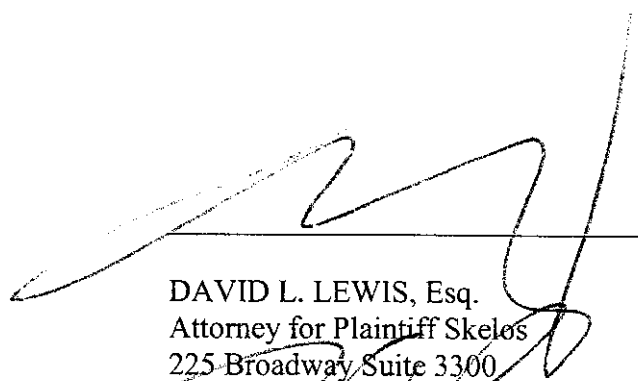
46. At this time the Clerk’s office is closed, preventing the required filing, as well as the purchase of an Index Number and a RJI.
47. Further, this application is being made after the close of regular business hours so that that fact alone would prevent filing.
48. Application is hereby made for a commencement of this proceeding by the signing of the accompanying Order to Show Cause, pursuant to CPLR 304 and the case law, *Gravagna v. Board of Elections*, 21 A.D.3d 504 (2nd Dept., 2005).
49. No application for the within relief has been made to any Court.
50. These proceedings represent the Petitioner’s only recourse under the Law.
51. These pleadings are hereby certified as non-frivolous by counsel.

WHEREFORE the plaintiffs demand a judgment declaring

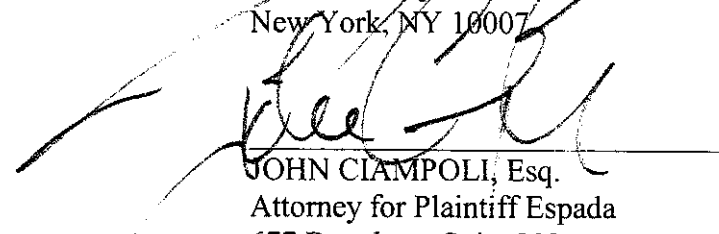
1. the acts of the Defendant Paterson are unconstitutional;
2. the "appointment" of defendant Ravitch is in all respects unconstitutional;
3. ordering the Defendant Vazquez to not accept for filing any oath of office executed by Defendant Ravitch;
4. enjoining the defendants from taking any acts to fill the office of Lieutenant Governor; and
5. Granting such other and further relief as may be just and proper

Dated : Mineola, New York

July 8, 2009



DAVID L. LEWIS, Esq.
Attorney for Plaintiff Skeles
225 Broadway Suite 3300
New York, NY 10007



JOHN CIAMPOLI, Esq.
Attorney for Plaintiff Espada
677 Broadway Suite 202
Albany, NY 12210

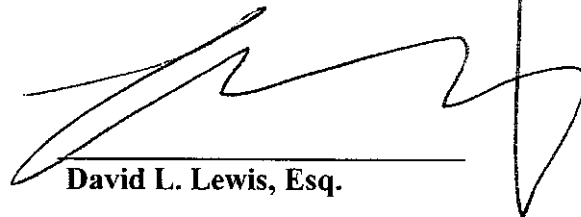
ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
COUNTY OF NASSAU) s.ss:

David L. Lewis, Esq., an attorney duly admitted to the practice of law before the Courts of the State of New York, does hereby affirm under the penalties of perjury:

1. He is the attorney for the Plaintiff, Senator Dean G. Skelos, in this action.
2. He has personally reviewed the contents of this document with his client(s), and upon the conclusion of said review as to the facts alleged therein, believes same to be true, where made upon information and belief.
3. As for all other allegations, Counsel has personal knowledge thereof and believes the within allegations to be true, to his personal knowledge.
4. This affirmation is being used pursuant to the provisions of the CPLR and applicable case law, due to the fact that time is of the essence and that petitioner and his counsel are in different counties. Counsel having offices in the County of New York and Petitioner(s) residing in the County of the Nassau.

DATED: Mineola, NEW YORK
July 8, 2009



David L. Lewis, Esq.

ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
COUNTY OF NASSAU) s.ss:

JOHN CIAMPOLI, an attorney duly admitted to the practice of law before the Courts of the State of New York, does hereby affirm under the penalties of perjury:

1. He is the attorney for the Plaintiff, Senator Pedro Espada, Jr., in this action.
2. He has personally reviewed the contents of this document with his client(s), and upon the conclusion of said review as to the facts alleged therein, believes same to be true, where made upon information and belief.
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4. This affirmation is being used pursuant to the provisions of the CPLR and applicable case law, due to the fact that time is of the essence and that petitioner and his counsel are in different counties. Counsel having offices in the County of Albany and Petitioner(s) residing in the County of the Bronx.

DATED: Mineola, NEW YORK
July 8, 2009



677 Broadway, Suite 202
Albany, New York 12207
518 - 436 - 3865 / 518 - 527 - 1217