

FAXED TO ATTY ON
CONFORMED ON

7-13-09

At an IAS Part 15 of the Supreme Court of the State of New York, held in and for the County of Nassau, at the Courthouse, located at 100 Supreme Court Drive in Mineola, New York on the 13th day of July, 2009.

PRESENT:
HON. WILLIAM R. LAMARCA
J.S.C.

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

Plaintiffs,

-against-

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

Defendants.

Index No. 13426/09

Hon. William R. Lamarca

IAS Part 15

**ORDER TO SHOW CAUSE WHY
THE PLACE OF TRIAL SHOULD
NOT BE CHANGED TO ALBANY
COUNTY ON THE GROUND OF
IMPROPER VENUE**

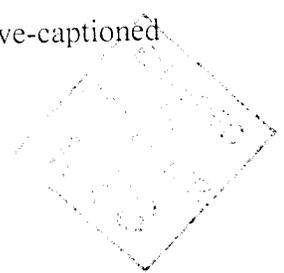
ORAL ARGUMENT REQUESTED

NOTICE RECEIVED # 3/115/09
ORIGINAL RETURN DATE 7/15/09
TRIAL OOTH

Upon reading and filing the annexed, Affirmation of Emergency of Robert C. Juman dated July 10, 2009, the Affirmation of Robert C. Juman dated July 10, 2009 and the Memorandum of Law In Support of Defendant's Motion to Change the Place of Trial to Albany County Upon The Ground of Improper Venue, and the exhibits annexed thereto, and upon all prior pleadings and proceedings heretofore had herein, it is hereby

ORDERED, that the above-named Plaintiffs or their attorneys show cause before this Court, ^{IAS Part 15} at Supreme Court Building, 100 Supreme Court Drive, Mineola, New York, on July 15, 2009 at 2:00 p.m., or as soon thereafter as counsel can be heard, why this Court should not issue an Order pursuant to CPLR 2214(d), changing the place of trial in the above-captioned

7/15



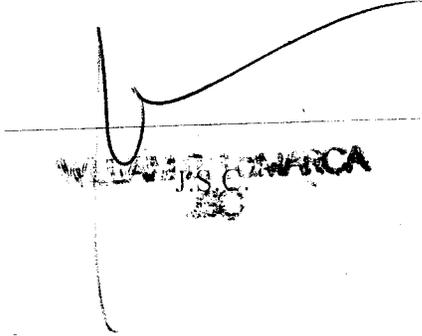
action, and pursuant to CPLR 510, 511, and 6311(1), from Nassau County to Albany County,
and for such other and further relief as is just and proper; and it is further

ORDERED, that Plaintiffs shall serve and file any answering papers, if any, are
to be served by July 14th, 2009, and defendants shall serve and file its reply papers, if any by July
15th 9:30 A.M., 2009, and it is further

ORDERED, that a copy of this Order to Show Cause, together with the papers
upon which it is based, shall be served on or before the 13th of July, 2009 before 1:00 p.m.,
by e-mail on Plaintiffs counsel which shall be deemed good and sufficient service.

Oral argument is requested on the return date of this application.

ENTER:



WILLIAM J. CARCA

ORIGINAL

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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

Plaintiffs,

-against-

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

Defendants.

Index No. 13426/09

**AFFIRMATION OF
ROBERT C. JUMAN IN SUPPORT
OF DEFENDANTS' MEMORANDUM
OF LAW IN SUPPORT OF THEIR
MOTION TO CHANGE THE PLACE
OF TRIAL TO ALBANY COUNTY
UPON GROUND OF IMPROPER
VENUE.**

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

I, Robert C. Juman, hereby affirm under penalty of perjury and say:

1. I am a member of the bar of this court and a partner at Quinn Emanuel Urquhart Oliver & Hedges, LLP, counsel to Defendants David Paterson, Richard Ravitch, and Lorraine Cortes-Vazquez in this matter. I make this affirmation in support of Defendants' Memorandum of Law in Support of Their Motion to Change the Place of Trial Based Upon the Ground of Improper Venue, July 10, 2009.

2. The statements made herein are based upon information and belief from correspondence, review with my law partners and my clients, and from my personal knowledge.

3. On June 8, 2009, Governor Paterson appointed Richard Ravitch as Lieutenant Governor of the State of New York. This occurred in Albany County.

4. Later that evening, Mr. Ravitch signed the Oath of Office as Lieutenant Governor, and at 11:47 P.M., First Deputy Secretary of State Daniel Shapiro accepted the Oath for filing.

A true and correct copy of Mr. Shapiro's affidavit thereto is attached hereto as Exhibit A. This action was performed in Albany County. Mr. Shapiro's acceptance of Oath for filing occurred in Albany County.

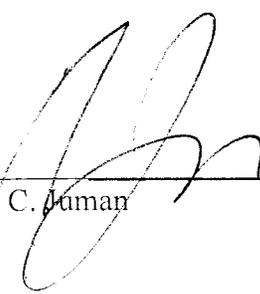
5. While Mr. Ravitch was swearing the Oath of Office and that Oath was being accepted by an authorized representative of the Secretary of State, plaintiffs' counsel appear to have been driving across the state from Albany County to Nassau County. A true and correct copy of a news report confirming statements from plaintiffs' counsel to this effect is attached hereto as Exhibit B.

6. Plaintiffs initiated the above-captioned action around Midnight and commenced with an Order to Show Cause, a true and correct copy of which is attached hereto as Exhibit C. The summons and complaint assert that "the basis for venue designated is the Plaintiff Dean G. Skelos is a resident of Village of Rockville Centre, Nassau County, Under CPLR 503." A true and correct copy of the summons and complaint is attached hereto as Exhibit D.

7. Only July 9, in receipt of Plaintiff's complaint, Defendants served Plaintiffs with a demand letter under CPLR 511(b) to move the trial to Albany County where venue would be proper. A true and correct copy of the letter and an affidavit of service are attached hereto as Exhibit E.

8. On July 10, at oral argument before this Court, counsel for Plaintiffs orally demanded transfer, and Defendants orally refused consent to Plaintiffs' demand to move the trial to Albany.

Dated: New York, New York
July 10, 2009



Robert C. Juman

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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

Plaintiffs,

**AFFIDAVIT OF
DANIEL SHAPIRO**

- against -

Index No.:

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 State of New York.

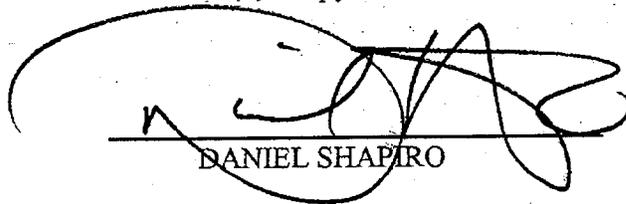
Defendants.

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

DANIEL SHAPIRO, being duly sworn, hereby deposes and says:

1. I am employed by the New York State Department of State as First Deputy
Secretary of State.

2. On July 8 at approximately 11:47 P.M., I accepted for filing the oath of office for
New York State Lieutenant Governor of Richard Ravitch, a copy of which is attached.



DANIEL SHAPIRO

Sworn to before me this
9th day of July, 2009



Notary Public

LISA ULLMAN
Notary Public, State of New York
No. 02UL5056756
Qualified in Albany County
Commission Expires March 11, 2010

JUL 08 2009

Department of State
Secretary of State

**PUBLIC OFFICER
OATH/AFFIRMATION**

Name of Appointee: RAVIOCCA RICHARD
(Last Name) (First Name) (Middle Initial)

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

Insert the name of the County within New York State in which this Oath is being executed. Please note that ss: does not stand for "social security." The appointee's social security number should NOT be inserted anywhere on this form.

I do solemnly swear (or affirm) that I will support the constitution of the United States, and the constitution of the State of New York, and that I will faithfully discharge the duties of the office of

Title of Position:

LIEUTENANT GOVERNOR

Agency Name:

Agency Code: _____

according to the best of my ability.

[Signature]
(Signature of Appointee)

Sworn (or affirmed) before me this 8th
day of July, in the year, 20 09.

Jaclyn L. Perlmutter
Notary Public

JACLYN L. PERLMUTTER
NOTARY PUBLIC, State of New York
No. 01PES128510
Qualified in New York County
Commission Expires March 12, 2011

PUBLIC OFFICERS LAW §78 CERTIFICATE

I, the Appointee named above, hereby acknowledge receipt of a copy of sections 73, 73-a, 74, 75, 76, 77 and 78 of the Public Officers Law, together with such other material related thereto as may have been prepared by the Secretary of State, and I acknowledge that I have read the same and that I undertake to conform to the provisions, purposes and intent thereof and to the norms of conduct for members, officers and employees of the legislature and state agencies.

[Signature]
(Signature of Appointee)

July 8, 2009
(Date)

(Appointee must sign both the Public Officer Oath/Affirmation and the Public Officer's Law §78 Certificate)

Battle over Lt. Gov. Richard Ravitch's appointment heads to court

BY KENNETH LOVETT,
ELIZABETH BENJAMIN AND GLENN BLAIN
DAILY NEWS ALBANY BUREAU

Friday, July 10th 2009, 4:00 AM

Gov. Paterson's decision to appoint a lieutenant will be front and center in a Long Island courtroom Friday - despite the end of the Senate stalemate.

On Wednesday, Paterson took the legally questionable action of appointing former transit boss Richard Ravitch as lieutenant governor.

Paterson said his primary reason for naming a lieutenant was to make sure there was an orderly succession if something happened to him.

"A vacancy in the Senate can change the leadership in a heartbeat," he said. "I thought the best public policy was to go out and find the best person that I could think of who could govern in my absence and that person is Richard Ravitch."

In a rush to beat a Republican suit questioning the constitutionality of the appointment, Ravitch, 76, signed his oath of office Wednesday night at Peter Luger Steakhouse in Brooklyn.

At that time, Republicans drove "all night" to Nassau County to get an order that temporarily kept Ravitch from exercising the duties of the job.

An appellate court judge last night overturned that order and the two sides will be in State Supreme Court in Mineola today to argue over whether Paterson had the right to name Ravitch.

Paterson said yesterday he will not ask Ravitch to preside over the Senate until the legal questions surrounding the appointment are answered.

The governor's outside lawyers also defended the legality of his actions, saying there is nothing in the Constitution prohibiting him from filling the vacancy of the lieutenant governor.

But he admitted this is "not the clearest delineation of duty that the Constitution can find."

Attorney General Andrew Cuomo has said he does not believe the governor has the constitutional right to appoint a lieutenant governor.

His office is not representing the governor in the case, since it believes Paterson is wrong.

Ravitch did not seem too upset he may not be needed to preside over the Senate.

"If I have less to do, wonderful," he said.

Meanwhile, Sen. George Winner, an Elmira Republican, said the Assembly should consider impeaching Paterson for "willful violations of the Constitution."

With Frank Lombardi

gblain@nydailynews.com

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

PRESENT: HONORABLE **DEBORAH LALLY** 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 10th 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

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 RJJ within the day 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,

41072
J.S.C.

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.
Heating
ORDERED THAT PENDING ~~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.
Heating
ORDERED THAT PENDING ~~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

Ullery
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 9, 2009

ENTER:

Ullery

UNSWIFTLY J.S.C.

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,

INDEX No.
VERIFIED COMPLAINT

-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

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 8, 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.

5. The Constitution also provides that the Governor and Lieutenant Governor shall be chosen jointly, by the casting by each voter of a single vote applicable to both offices.
6. Further, it provides that the respective persons having the highest number of votes cast jointly for them for Governor and Lieutenant Governor respectively shall be elected.
7. As a consequence, no one can be elected Lieutenant Governor on his own or as an independent elected office. The office of the Lieutenant Governor is not an elective office under the Public Officers Law.
8. The Governor may not fill the office of Lieutenant Governor.
9. Article IV § 6 of the State Constitution provides for the succession regarding the offices of Governor and Lieutenant Governor. In pertinent part it provides that in case of the removal of the Governor from office or of his or her death or resignation, the Lieutenant Governor shall become Governor for the remainder of the term. This is the manner by which Defendant Paterson became Governor.
10. Further, the Constitution provides that in case the governor is impeached, is absent from the state or is otherwise unable to discharge the powers and duties of the office of governor, the lieutenant-governor shall act as governor until the inability shall cease or until the term of the governor shall expire.
11. The Constitution is silent on the situation when the Lieutenant Governor ascends to the office of governor, therefore leaving a vacancy in his own office. The fact that the Constitution is silent has long been properly understood to be that the office is unfilled until the next election for the office of Governor.

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."

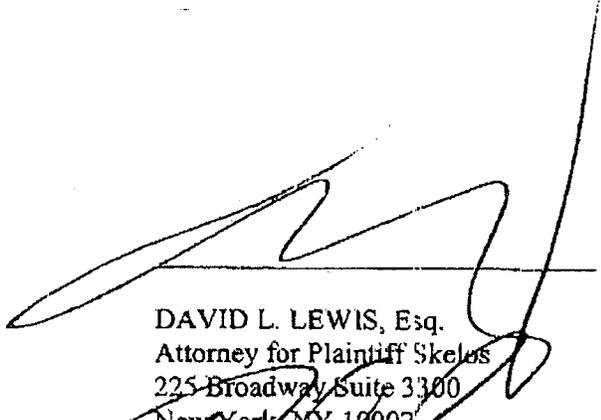
46. At this time the Clerk's office is closed, preventing the required filing, as well as the purchase of an Index Number and a RJI.
47. Further, this application is being made after the close of regular business hours so that that fact alone would prevent filing.
48. Application is hereby made for a 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

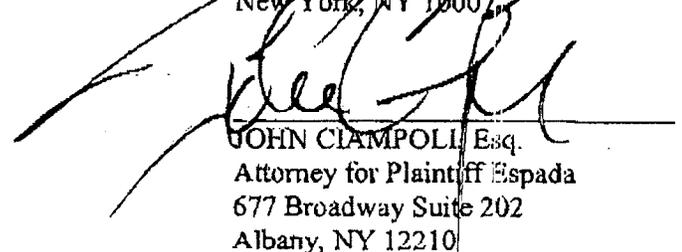
1. the acts of the Defendant Paterson are unconstitutional;
2. the "appointment" of defendant Ravitch is in all respects unconstitutional;
3. ordering the Defendant Vazquez to not accept for filing any oath of office executed by Defendant Ravitch;
4. enjoining the defendants from taking any acts to fill 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 Skelos
225 Broadway Suite 3300
New York, NY 10007



JOHN CIAMPOLI, Esq.
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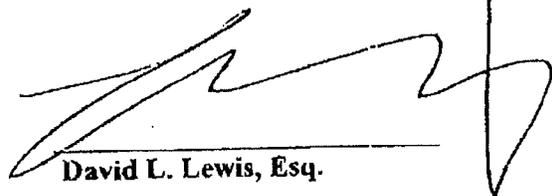
ATTORNEY'S VERIFICATION

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 CLAMPOLI, 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.
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 Albany and Petitioner(s) residing in the County of the Bronx.

DATED: Mineola, NEW YORK
July 8, 2009



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July 9, 2009

VIA E-MAIL OR POSTAL MAIL

David L. Lewis, Esq.
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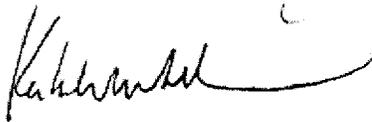
John Ciampoli, Esq.
Counsel for Plaintiff Espada
677 Broadway Suite 202
Albany, NY 12210

Re: Skelos et ano. v. Paterson et al. Index No. 13426/09

Gentlemen:

I write on behalf of my clients, defendants David Paterson, Richard Ravitch, and Lorraine Cortes-Vazquez. NASSAU COUNTY is an improper venue for the above-captioned action. This letter constitutes a written demand under CPLR 511(b) that venue be changed to ALBANY COUNTY where venue is proper under CPLR 506(b), 6301 and 6311(1).

Sincerely,



Kathleen M. Sullivan

quinn emanuel urquhart oliver & hedges, llp

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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

Plaintiffs,

-against-

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

Defendants.

Index No. 13426/09

**AFFIRMATION OF
SERVICE**

I, Brad Evan Rosen, hereby affirm under penalty of perjury and say:

1. I am a member of the bar of the State of New York. I am associated with the law firm of Quinn Emanuel Urquhart Oliver & Hedges LLP, counsel to Defendants David Paterson, Richard Ravitch, and Lorraine Cortes-Vazquez in this action, and am not a party to this action.

2. On July 9, 2009, I caused to be served a true and correct copy of Defendants' Demand for a Change of Venue by emailing it to counsel for plaintiffs at the following addresses:

DAVID L. LEWIS, Esq.

Attorney for Plaintiff Skelos

dlewis@lewisandfiore.com

bfrost@lewisandfiore.com

JOHN CIAMPOLI, Esq.

Attorney for Plaintiff Espada

padronejc@yahoo.com

4. I verbally confirmed with Counsel for Plaintiff Espada that he had received the letter.

Dated: July 10, 2008



Brad Evan Rosen

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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

Plaintiffs,

- 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.

Index No.: 13426/09

RJI No.:

**DEFENDANTS' MEMORANDUM OF LAW
IN SUPPORT OF THEIR MOTION TO
CHANGE THE PLACE OF TRIAL TO ALBANY COUNTY
UPON GROUND OF IMPROPER VENUE**

QUINN, EMANUEL, URQUHART, OLIVER
& HEDGES, LLP

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51 Madison Avenue
22d Floor
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Counsel for Defendants

Date: July 10, 2009

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CONCLUSION6

Defendants David A. Paterson, Richard Ravitch, and Lorraine Cortes-Vasquez respectfully submit the following memorandum of law in support of their motion to change the place of trial to Albany County upon ground of improper venue.

PRELIMINARY STATEMENT

This action belongs in Albany. All of the material acts and events were taken by Government officers in Albany. No material acts or events were taken in Nassau County. Transfer to Albany is therefore required pursuant to CPLR 506(b) and 6311(1). In the alternative, a change of venue should be ordered in the interests of justice and convenience pursuant to CPLR 510(3).

STATEMENT OF FACTS

On July 8, 2009, acting from Albany County, the Governor appointed Richard Ravitch as Lieutenant Governor of the State of New York. At 11:47 pm that evening, acting from Albany County, First Deputy Secretary of State Daniel Shapiro accepted Mr. Ravitch's oath for filing. Aff. of Robert C. Juman, July 10, 2009 ("Juman Aff."), Ex. A.

On the evening of July 8, 2009, Plaintiffs' counsel appears to have traveled several hours from Albany County to Nassau County. *See* Juman Aff. Ex. B (news report). Plaintiffs initiated this action in Nassau County at around midnight. *See id.* Ex. C (Order to Show Cause) at p. 2 (order granted at 12:23 am). The Complaint alleges that venue is proper in Nassau County because one of the Plaintiffs resides here. *Id.* Ex. D (Complaint) at ¶ 21.

On July 9, 2009, Defendants served Plaintiffs with a letter pursuant to CPLR 511(b), demanding that this action be tried in Albany County. Juman Aff., Ex. E. On July 10, 2009, during oral argument before this Court, Defendants again demanded transfer. *Id.* ¶ 8 Plaintiffs objected to such transfer. *Id.*

ARGUMENT

I. THIS ACTION MUST BE TRIED IN ALBANY COUNTY (CPLR 506(B))

Plaintiffs seek to “enjoin[] 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.” Juman Aff. Ex. C (Order to Show Cause) at ¶ 1. Such a proceeding may be brought only in the district where all relevant acts of the defendants allegedly occurred—here, in the Third Department. CPLR 506(b) provides:

A proceeding against a body or officer shall be commenced in any county within the judicial district where the respondent made the determination complained of or refused to perform the duty specifically enjoined upon him by law, or where the proceedings were brought or taken in the course of which the matter sought to be restrained originated, or where the material events otherwise took place, or where the principal office of the respondent is located . . .

Affirming a change of venue, the Second Circuit has held that “[p]ursuant to CPLR 506(b), the proper venue. . . is Albany County where the governmental unit which made the determination is located and where the material events took place.” *County of Nassau v. State*, 670 N.Y.S.2d 775 (2d Dep’t 1998). And it is clear that a “material event” is the place where the challenged determination or decision was made, not the place where its effects are felt. *See Ward v. Sise*, 485 N.Y.S.2d 161, 161 (Sup. Ct. N.Y. Co. 1984) (cited with approval in *New York Republican State Committee v. New York State Com'n on Government Integrity*, 526 N.Y.S.2d 264, 265 (3rd Dep’t 1988)).

Thus, if plaintiffs can bring the instant action at all, they must do so in the Third Judicial Department, where all of the material events they challenge transpired. Governor Patterson's appointment was made in Albany County. Lieutenant Governor Ravitch's oath of office was accepted in Albany County. Lieutenant Governor Ravitch is serving and will continue to serve as such in Albany County. If he takes action as President Pro Tem of the Senate, those actions

will be taken in Albany County. The material acts and events have no connection to Nassau County.

II. THE REQUESTED INJUNCTION CAN ONLY BE ISSUED IN ALBANY COUNTY (CPLR 6311(1))

An injunction against a public official can only be issued the Judicial Department in which the restraint is to be made applicable. CPLR 6311(1) provides in pertinent part as follows:

A preliminary injunction to restrain a public officer, board or municipal corporation of the state from performing a statutory duty may be granted only by the supreme court at a term in the department in which the officer or board is located or in which the duty is required to be performed.

Plaintiffs are not permitted to forum shop in a suit seeking to enjoin the performance of executive functions, and thus the complaint should be dismissed or at a minimum ordered transferred to the Supreme Court, County of Albany.

Plaintiffs have been heard to argue they are not seeking to enjoin statutory duty because, as they argue, Lieutenant Governor Ravitch is improperly serving and rightfully has no duties. This is mistaken as a matter of fact. Even if it were true, it would merely mean that this action must proceed as a *quo warranto* action which may only be pursued by the Attorney General. *See, e.g., Delgado v. Sunderland*, 97 N.Y. 2d 420 (2002) ("an action in the nature of *quo warranto* is the exclusive means to adjudicate title to public office"); *Dekdebrun v. Hardt*, 68 A.D.2d 241 (4th Dept 1979); Emergency Affirmation of John Ciampoli, July 8, 2009, ¶ 11 ("a *quo warranto* proceeding. . . may only be brought in the name of the people of the state by the Attorney General.").

III. THIS ACTION SHOULD BE TRIED IN ALBANY COUNTY IN THE INTERESTS OF JUSTICE (CPLR 510(3)).

The CPLR provisions discussed above require transfer to Albany. In the alternative, this Court should exercise its discretion to change the venue to Albany in the interests of justice and

for the convenience of the relevant witnesses. This discretion is provided by CPLR 510(3), which states that "[t]he court, upon motion, may change the place of trial of an action where. . . the convenience of material witnesses and the ends of justice will be promoted by the change."

It is difficult to imagine a case in which a discretionary change of venue would be more appropriate. Governor Paterson (the first defendant) acted from Albany when he made the appointment at issue. Lieutenant Governor Ravitch (the second defendant) will serve in his official capacity, and engage in the executive and legislative acts at issue, in Albany. Secretary of State Cortes-Vasquez (the third defendant), accepted the Lieutenant Governor's oath of office in Albany. All of the other witnesses and evidence is located in Albany. It would be highly and pointlessly inconvenient to relocate to Mineola. The inconvenience of challenging government action outside of Albany is likely the very reason that CPLR 511(b) and 6311(1), cited above, require such actions to be tried in Albany. And indeed, Plaintiffs' attorneys have already been inconvenienced — traveling several hours through the night from Albany to Mineola to seek the injunction now at issue.

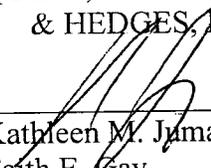
By contrast, *nothing* of relevance — not a single act, event, witness, or document — is located in Nassau County, other than the happenstance of Plaintiff Skelos's residence here. But even Senator Skelos is suing "as [a] duly elected member of the New York State Senate." Senator Skelos, that is, has appeared in this action solely in connection with his acts, duties, and purported rights as a member of the legislature sitting in Albany. This action should be transferred to Albany County, which is the only logical, appropriate, and convenient venue.

CONCLUSION

For the foregoing reasons, Defendants' motion to change the place of trial to Albany County should be granted.

Respectfully submitted,

QUINN, EMANUEL, URQUHART, OLIVER
& HEDGES, LLP



Kathleen M. Juman
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51 Madison Avenue
22d Floor
New York, NY 10022
(212) 849-7000

Counsel for Defendants

Date: July 10, 2009

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,

Index No. 13426/09

Plaintiffs,

-against-

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

Defendants.

AFFIRMATION IN
OPPOSITION TO CROSS
MOTIONS AND MOTION
AND SEEKING CHANGE
OF VENUE

-----x

DAVID L. LEWIS, an attorney duly admitted to the
Courts of the State of New York, hereby affirms under the
penalties of perjury:

1. I am the attorney for State Senator Dean G.
Skelos, the Minority Leader of the State Senate.

2. I make this affirmation in opposition to the
cross motions of the defendants seeking various forms of relief
and the motion to change the place of trial to Albany County
alleging improper venue.

3. The gravamen of the instant complaint is that the
Governor has acted outside his constitutional authority making

an appointment where there is no vacant office and in the exercise of a power not granted to him.

FACTS

4. On June 8, 2009 David Paterson the Governor of the State of New York, made a surprise announcement that he was "appointing" Richard Ravitch as Lieutenant Governor of the State of New York.

5. In his brief address he set out no legal authority for such appointment.

6. He contended that the "crisis" in Albany over the issue of who was the duly elected President Pro Tempore as well as the economic crisis of the state required such action.

7. The Press Office of the Governor announced that the swearing in of Mr. Ravitch would be the following day in the Red Room in the Capitol.

8. Within hours of the announcement, your affirmant received at home a robotic call from Paterson 2010 touting the announcement and the appointment of Richard Ravitch. Defendant Paterson's re-election campaign 2010 had begun.

9. The Red Room announcement was a ploy. The statement was an utter misrepresentation to the public and to anyone seeking to challenge the legality of the appointment in that it was designed to prevent any challenge by using false

statements and misdirection so that anyone seeking to challenge the act would be met with a fait accompli.

10. In secret at a Brooklyn steakhouse, Mr. Ravitch was sworn in. At that time he signed a document that was to be his oath of office.

11. Upon information and belief the document, the oath of office was not filed with the Secretary of State that night. It is alleged that it was "handed" to a First Deputy Secretary of State that night.

12. Counsel for the defendants, in open court, represented that the document was filed in Albany that night.

13. Defendant's Exhibit A states that the Deputy Secretary of State accepted the document for filing at 11:47 PM.

14. That the Office of the Secretary of State is not open for business and does not accept documents for filing at 11:47 PM from the general public or others is beyond question. Further acceptance for filing in the Office of the Secretary of State's office is not actual filing.

15. Thus, Mr. Ravitch's oath was not properly filed with the Office of the Secretary of State as required by law. Public Officers Law Section 10 requires that every officer shall take and file the oath of office required by law before he shall be entitled to enter upon the discharge of any of his official

duties. There is no proof that the oath of office was ever properly filed.

16. On July 9, 2009 in the afternoon, Pedro Espada, Jr. rejoined the Democratic Conference and later that same day was elected by them to be their Majority Leader. He abandoned any and all claims to be the Temporary President.

17. By the evening of the 9th of July, Malcolm Smith was the sole occupant of the office of Temporary President and the Senate had begun the process of passing over one hundred bills. For all intents and purposes the "crisis" was over.

18. The Constitution provides for a line of succession denying the Governor any explicit power to appoint a Lieutenant Governor. Section 5 of Article IV of the New York Constitution.

19. Public Officers Law Section 43 enacted in 1909, only allows the governor to make an appointment of a person to "execute the duties" of a vacant office when there is no provision of law elsewhere that provides for the filling of the vacancy.

20. Nothing in the legislative history of Section 43 suggests that the Legislature wanted its provisions to be applicable to the vacant office of lieutenant governor. And, of

course, even if such legislative intent could be found, the statute cannot trump the provisions of the Constitution.

21. The Governor has no statutory duty to appoint a Lieutenant Governor. If such were the case he has been in dereliction of that duty since he ascended to the position of Governor after the resignation of Elliot Spitzer and likewise other governors who served without a Lieutenant Governor were likewise in derogation of their statutory duty.

VENUE IN NASSAU IS PROPER SEEKING THIS PRELIMINARY INJUNCTION

22. CPLR 6311 (1) provides in effect that a preliminary injunction may not be obtained outside the County of Albany against the Governor when the Governor has acted pursuant to a statutory duty.

23. Thus, CPLR 6311 (1) is inapplicable to the action for a declaratory judgment and a preliminary injunction against the governor regarding the illegal appointment and against the putative Lieutenant Governor for seeking to take office and against the Secretary of State to prevent the filing of a document purporting to fill a non-existent vacancy.

24. The issue before the Court as postured by the Governor is that he has such a statutory duty and thus no injunction should issue in Nassau.

25. The verified pleading seeking relief makes it clear that the issue is not a statutory duty but an unconstitutional act.

VENUE UNDER CPLR 506b IS NOT THE APPROPRIATE STATUTE

26. Defendants similarly assert that the venue provisions mandate that the matter must be transferred to Albany County on the basis of CPLR 506 (b). The defendants are incorrect in two respects. First the action is not an action against a body or an officer as the statute is entitled. Indeed, the venue statute for Article 78 proceedings refers directly back to CPLR 506 (b). In short, where the action is an Article 78, then the matter must observed the venue rule cited by the defendants.

27. An action against a body or an officer is a term of art, specific to acts seeking relief under Article 78 CPLR. CPLR 103 (b) provides that all civil judicial proceedings shall be prosecuted in the form of an action, except where prosecution in the form of a special proceeding is authorized.

28. In the instant action, the Plaintiffs seek a declaratory judgment of unconstitutional action by the governor and other defendants. Such unconstitutional action voids all of the deeds ab initio.

29. As in the case of CPLR 6311, the actions of the defendants are not the performance of a "statutory duty".

30. Thus CPLR 506 (b) is inapplicable to the case at bar.

31. The Plaintiff's complaint guides the issue of venue. Defendants cannot use the venue motion as if it were summary judgment on the merits. For venue to be transferred this court has to resolve the threshold issue of whether or not the governor and the other defendants acted pursuant to a statutory duty.

32. Where the merits are so interwoven with the claims of venue, the matter should stay right where it is given that ordinary venue rules apply to the instant action.

33. Plaintiff Dean G. Skelos resides in the County of Nassau. Its placement for venue purposes is proper given that the residence of the plaintiff is a basis for venue. CPLR 503 (a).

34. The defendants have also suggested without pleading an issue of standing. One of the few duties of the Lieutenant Governor under the Constitution is to preside over the Senate. Dean G. Skelos as Minority Leader has standing based upon the fact that he has the right as a Senator not to be presided over by an interloper. Just as no person can demand to

fill an office that is not vacant, the Governor cannot impose upon a Senator a presiding officer that is illegally "appointed".

35. The motion to change venue should be rejected.

THE MOTION TO DISMISS SHOULD BE DENIED IN ALL RESPECTS

36. As fully set out in the memorandum of law, the defendant's motions to dismiss should be denied in all respects.

PLAINTIFFS ARE ENTITLED TO A DECLARATORY JUDGMENT

37. Plaintiffs have made a sufficient showing to justify the issuance of the declaratory judgment and made a proper showing to justify the imposition of a preliminary injunction by this Court.

CPLR 3211 (C)

38. Pursuant to CPLR 3211(c), it is suggested that this matter be converted to a motion for summary judgment on the law.

WHEREFORE, it is respectfully prayed that the motions of the defendants be denied in all respects, that Nassau County be set as the proper venue for the action and that the Court consider converting the matter under CPLR 3211 (c) to a motion for summary judgment on the law.

AFFIRMED: New York, New York
July 13, 2009

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