

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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URBAN JUSTICE CENTER, THOMAS J. KIRWAN,
Member of the New York State Assembly, and LIZ
KRUEGER, Member of the New York State Senate

Plaintiffs,

v.

GEORGE E. PATAKI, Governor of the State of New
York, SHELDON SILVER, Speaker of the New York
State Assembly, JOSEPH L. BRUNO, President Pro
Tempore and Majority Leader of the New York State
Senate, NEW YORK STATE ASSEMBLY, and NEW
YORK STATE SENATE

Defendants.

Index No. _____

COMPLAINT

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Plaintiffs Urban Justice Center, Thomas J. Kirwan, Member of the New York
State Assembly, and Liz Krueger, Member of the New York State Senate, through their
undersigned counsel, Cleary Gottlieb Steen & Hamilton LLP, allege as follows:

NATURE OF THE ACTION

1. This is a declaratory judgment action brought under N.Y. C.P.L.R. § 3001
seeking an order declaring that various rules and practices of the New York State Legislature
("Legislature") and practices of the Governor violate the United States Constitution ("Federal
Constitution"), the New York State Constitution ("State Constitution"), and the laws of the State
of New York. In addition this action seeks a declaration that Section 5-a of the Legislative Law
violates the Federal and State Constitutions.

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to N.Y. C.P.L.R. § 3001.

3. Venue is proper in New York County pursuant to N.Y. C.P.L.R. § 503

based on the residence of one or more of the plaintiffs.

PARTIES

4. Plaintiff Urban Justice Center is a New York non-profit organization that was founded in 1984 and is based in New York City. It is a non-partisan organization that works to promote access to justice for its clients so that their grievances can be redressed. A fair and open legislative process is of importance to its clients because while they lack backroom clout, the merits of their positions can allow them to prevail in a legislative setting where important issues are openly considered and voted upon. Its clients are individuals who for the most part are eligible to vote or to register to vote in New York State. Such clients of the Urban Justice Center would have standing to bring this lawsuit in their own right. The interests sought to be protected in this lawsuit are germane to the Urban Justice Center's purpose, and neither the claims asserted nor the relief requested requires each of the individual clients to participate in the action.

5. Plaintiff Thomas J. Kirwan is a member of the New York State Assembly. Plaintiff Kirwan is a member of the Republican Party, which is the minority party in the Assembly. Plaintiff Kirwan has a distinct, legally cognizable personal stake in this action because he is unable fairly to represent his constituents' interests due to the various rules and practices of the New York State Assembly that illegally discriminate against members of the Republican Party and deny him an opportunity for actual participation in the legislative process in violation of the Federal Constitution, the State Constitution, and the laws of the State of New York. Plaintiff Kirwan also is aggrieved by practices of the Governor that violate the state constitutional provisions relating to messages of necessity because Assembly members who are

members of the Republican Party do not have a representative at the table in negotiations among the Assembly Speaker, the Senate Majority Leader, and the Governor, and therefore depend on compliance with such constitutional provisions to afford them an adequate opportunity to consider and prepare to debate proposed legislation.

6. Plaintiff Liz Krueger is a member of the New York State Senate. Plaintiff Krueger is a member of the Democratic Party, which is the minority party in the Senate.

Plaintiff Krueger has a distinct, legally cognizable personal stake in this action because she is unable fairly to represent her constituents' interests due to the various rules and practices of the New York State Senate that illegally discriminate against members of the Democratic Party and deny her an actual ability to participate in the legislative process in violation of the Federal Constitution, the State Constitution, and the laws of the State of New York. Plaintiff Krueger also is aggrieved by practices of the Governor that violate the state constitutional provisions relating to messages of necessity because Senate members who are members of the Democratic Party do not have a representative at the table in negotiations among the Assembly Speaker, the Senate Majority Leader, and the Governor, and therefore depend on compliance with such constitutional provisions to afford them an adequate opportunity to consider and prepare to debate proposed legislation.

7. Defendant George E. Pataki is the Governor of the State of New York and its chief executive officer. Defendant Pataki is a direct participant in certain of the illegal practices complained of herein. He is being sued in his official capacity.

8. Defendant Sheldon Silver is the Speaker of the New York State Assembly. Defendant Silver is a direct participant in certain of the illegal practices complained of herein. He is being sued in his official capacity.

9. Defendant Joseph L. Bruno is the President Pro Tempore and Majority Leader of the New York State Senate. Defendant Bruno is a direct participant in certain of the illegal practices complained of herein. He is being sued in his official capacity.

10. Defendant New York State Assembly has adopted certain of the rules and practices complained of herein.

11. Defendant New York State Senate has adopted certain of the rules and practices complained of herein.

BACKGROUND

12. The Framers of our Federal and State Constitutions created a representative system of government under which various factions and interests could compete freely to secure the passage of legislation. Representatives were intended to have a fair opportunity to represent their constituents and to make the voices of their constituents heard. The people, through their representatives, were to have access to the decision-making process to which they could present their grievances. Both the Federal and State Constitutions protect the freedom of speech, debate, and access necessary to keep the legislative process open. Both prohibit unjustified discrimination by the government based on political belief or political association.

13. Current legislative practice in New York State – even as recently revised by both houses of the Legislature – makes a mockery of these constitutional principles. Rather than being the representatives of their constituents, the members of the Legislature are the servants of the majority leaders in each house. Thus, in response to a recent report on the state legislative process, described more fully below, the Senate Majority Leader described himself as the “CEO of [a] company” and the elected members as “212 employees.” See Michael Cooper, *So How Bad Is Albany? Well, Notorious*, N.Y. Times, July 22, 2004, at B1. Also, as detailed

below, current legislative practice flouts specific provisions inserted in our State Constitution and laws to secure the integrity of the legislative process.

14. On July 21, 2004, the Brennan Center for Justice at New York University School of Law released a report, entitled *The New York State Legislative Process: An Evaluation and Blueprint for Reform* (the “Brennan Center Report” or “Report”). A copy of the Brennan Center Report is attached hereto as Exhibit A and incorporated herein by reference. The Brennan Center Report’s findings are based on quantitative, historical, and comparative data developed through analyses of major laws enacted in New York from 1997 through 2001. The Report’s findings also are based on interviews with sitting members of the New York State Assembly and Senate, and their staff. The Brennan Center Report concluded that New York State’s legislative process is the most dysfunctional in the nation. Editorial boards of numerous newspapers throughout New York State similarly have characterized the Legislature as dysfunctional. See, e.g., *Bring Democracy to State Legislature*, N.Y. Daily News, August 8, 2004 (Editorial) (“The Legislature is mired in paralytic dysfunction Vesting total control in Bruno and Silver and letting them operate behind closed doors clearly isn’t working. Why not try the democratic process?”); *Albany’s Failures*, Press & Sun-Bulletin (Binghamton), July 20, 2004 (Editorial) (“New Yorkers get taxed more heavily than almost all other Americans, and what do they get in return? The most dysfunctional government in the union. It’s F-rated, all right”); *Declare Your Independence*, Observer-Dispatch (Utica), July 4, 2004 (Editorial) (“And so, fellow New Yorkers, while we cannot quite declare our independence from New York State, we can declare our independence from this state’s dysfunctional government and demand better from Pataki, Bruno, Silver and the Legislature”); Buffalo News, May 3, 2003 (Editorial) (“It’s been interesting – in a stopping-by-a-car-wreck sort of way – to watch the State Legislature flail

around in its usual dysfunctional manner while it tries to pass a budget”); *Late Again: Budget Reform Bills Abound in Albany, but Nothing Changes*, The Post-Standard (Syracuse), March 27, 2003 (Editorial) (“[M]ost legislators have only feigned interest in fixing the overly secretive and dysfunctional budget-making process. That would mean risking the wrath of legislative leaders, who rule like despots.”).

15. On November 29, 2004, the plaintiffs circulated a draft complaint to Defendants Pataki, Silver, Bruno, and every member of the Assembly and Senate. The cover letter accompanying the draft complaint notified the defendants that the plaintiffs would forebear until at least January 18, 2005 from filing the complaint in the hope that their grievances would be resolved either by voluntary and binding agreement of the Governor or by the new rules to be adopted by each house of the Legislature earlier in January 2005. The plaintiffs also held a press conference at the Capitol on November 29, 2004, announcing their intention to file the complaint unless their grievances were addressed, and distributing copies of the draft complaint to the public. The plaintiffs said in their cover letter to the defendants that they stood ready to meet and confer with the defendants to discuss the issues raised in their draft complaint. None of the defendants contacted the plaintiffs or their representatives.

16. On January 10, 2005, both houses of the Legislature were poised to vote on new rules governing the practices of their chambers. The Assembly voted on and adopted new rules that day, but Defendant Bruno recommended that the Senate temporarily adopt last year’s rules while he negotiated new rules with the Senate minority leader. On January 24, 2005, the Senate voted on and adopted new rules. While some of the new rules adopted by both houses represent some improvement, and hold the promise of adequately addressing the issue of empty seat voting as described in the draft complaint, they largely fail to correct the rules and practices

that unjustifiably discriminate against members of the Senate and the Assembly who are not members of the majority party to the point where they are denied meaningful participation in the legislative process. Indeed, editorial boards of numerous newspapers throughout New York State have stated that the revised rules inadequately address the problems contributing to the Legislature's dysfunction. See, e.g., *State Senate's Baby Steps; Reform of Legislative Rules Falls Short*, Newsday, February 1, 2005 (Editorial) ("It'll take great strides by legislators to reach the goal of eliminating 'dysfunctional' as the most common adjective applied to Albany. But the State Senate's Republican leadership appears ready to take only baby steps"); *Reform, Senate Style*, Times Union (Albany), January 26, 2005 (Editorial) ("So Senate Majority Leader Joseph L. Bruno ... says, 'Reform is in the eye of the beholder.' If so, then many New Yorkers are no doubt wondering when was the last time the senator had his vision tested. For only someone who has difficulty seeing, or who doesn't want to see, could defend the package of reforms passed by Senate Republicans on Monday"); *Senate Rule Reforms Still Fall Short*, The Post-Standard (Syracuse), January 26, 2005 (Editorial) ("And like the Assembly 'reforms,' they barely touch the unilateral power of the leader, his Rules Committee, and the closed-door majority meetings where the real decisions are made"); *A Start, At Least; Legislative Reform in New York State Remains a Work in Progress*, The Post-Standard (Syracuse), January 12, 2005 (Editorial) ("By themselves, however, the measures won't move the deliberative process from the closed-door party conference to the committee room and legislative floor where it belongs. Nor will they necessarily alter the practice of "three men in a room" – the year-end sessions where Gov. George Pataki sequesters himself with Assembly Speaker Sheldon Silver and Senate Majority Leader Joseph Bruno to wrestle with key legislation.").

17. Plaintiff Kirwan and Plaintiff Krueger both voted against the new rules in their respective houses. Many of the rules and practices that remain unchanged, or not changed in material ways, were among those identified by the Brennan Center Report as contributing to the Legislature's dysfunction. The gravamen of this Complaint is that many of these rules and practices also violate the law. Below the improper practices are briefly described. Subsequently, in each Count, the reason or reasons why the rule or practice is illegal are identified.

A. Unequal Funding Of Member Support

18. In order to effectively represent one's constituents, a member needs staff support and an ability to communicate with his or her constituents by mail, in newsletters, or by e-mails and websites. If the minority party members are discriminated against in the provision of these necessities, they will be at a disadvantage in seeking redress for the grievances of their constituents. If these support services are provided to members on a basis of equality for equal responsibility, there will be a level playing field for the airing of constituent grievances.

19. In New York, the Speaker and Majority Leader effectively control the funds available for each member's personal staff. In addition, they control the members' use of office space. The Speaker and Majority Leader also effectively control each member's necessary expenses, such as computers, mailing and printing costs for newsletters, and travel reimbursements. In addition, the majority party leadership imposes content restrictions on minority members' publications as a condition to funding the printing and postage of such publications in an effort to deter vigorous debate of legislation.

20. The Speaker and Majority Leader make more funds and resources available to members who are members of the majority party than to members of the minority party who have equal responsibility. The differences in stipends and other resources are gross and not reasonably related to differences in need, but rather are related solely to differences in

party enrollment. They are adopted with the purpose, intent, and effect of punishing constituents who elect a representative in the Assembly who is a Republican or a representative in the Senate who is a Democrat by impeding constituent communication.

B. Unequal Member Items

21. In addition to the unequal funding for legislators' staff, operating costs, and constituent communications, the Speaker and Majority Leader also control the distribution of funds to individual members for member-initiated projects in their districts, known informally as "member items."

22. Member items typically are drawn from lump-sum appropriations agreed upon by the Governor, Speaker, and Majority Leader during budget negotiations. These budget negotiations do not result in an agreement between the legislative branch and the executive branch as to how the monies will be spent as the State Constitution contemplates. Rather the Speaker and the Majority Leader control the allocation of these funds to particular members for particular purposes in their respective house.

23. The Speaker and Majority Leader give more money in the form of member items to members of the majority party in each house than to other members. They allocate the money to their own members in light of the political needs of the majority party to maintain control in each house. Thus, a majority party member who faces potentially strong opposition is likely to receive more money. A minority member who faces potentially strong opposition is likely to receive less money. The party enrollment of the member, therefore, is the most important factor in deciding the allocation of member items. In addition, the rules and practices with respect to member items have been adopted with the purpose, intent, and effect of punishing constituents who elect a representative in the Assembly who is a Republican or a

representative in the Senate who is a Democrat by withholding benefits that would have been available had they elected a representative from the majority party.

C. Placing Insurmountable Obstacles To Discharge Motions

24. A reasonable ability to discharge a bill from committee so that it can be debated in the full house and voted is critical to the ability of members who are not members of the majority party to bring the grievances of their constituents before the Legislature. This is because whether a committee votes on a bill currently is effectively in the control of the majority party, unlike the situation in most other jurisdictions. A vote on a motion to discharge is therefore necessary to give the minority members a fair chance to persuade members of the majority party whose constituents share the grievances of their constituents not to be recorded as opposed to debate and vote on the issue in question. Insurmountable obstacles to motions to discharge not only eliminate the accountability of majority party members to their constituents, they effectively deprive minority party members of actual participation in the legislative process by depriving them of any ability to press for debate on legislation that has a reasonable chance of passage.

25. All legislative chambers nationwide and Congress provide a mechanism to discharge a bill from a standing committee to the full chamber for its consideration.

26. The rules and practices of the New York State Legislature, however, render it nearly impossible for a minority party legislator to obtain consideration of a bill by the full Senate or Assembly. The restrictions are more extreme than in any other legislative chamber nationwide or in Congress.

27. The rules and practices of the New York State Legislature impose stringent limitations on the use of motions to discharge from committees to the full chambers any legislation that does not have the Speaker's or Majority Leader's and, therefore, the majority

party's support. New York is alone in placing at least six different restrictions of significance upon such motions. See N.Y. Assemb. R. IV, §§ 7(b)-(d); N.Y. Sen. R. VI, § 2(b); N.Y. Sen. R. XI, §§ 2(b)-(e).

28. For example, the rules and practices of the New York State Legislature permit only the original sponsor of a bill to make a motion to discharge the bill from committee. See N.Y. Assemb. R. IV, § 7(c)(2); N.Y. Sen. R. VI, § 2(b). Of all the state legislative chambers nationwide and Congress, only in one other state's chambers is the primary sponsor herself required to make the motion to discharge.

29. In addition, the rules and practices of the New York State Legislature limit stringently the timing of motions to discharge. See N.Y. Assemb. R. IV, §§ 7(b)-(d); N.Y. Sen. R. XI, §§ 2(b)-(e). For example, discharge motions may not be made before a committee has had at least sixty days to consider and report a bill in the Assembly and at least thirty days in the Senate, and at the same time, discharge motions may not be made after the fourth Tuesday in April. In addition, only one discharge motion may be considered on any given calendar legislative day. See N.Y. Assemb. R. IV, § 7(c); N.Y. Sen. R. XI, § 2(c). No other state's legislative chambers or Congress has rules so severely limiting the timing of motions to discharge. These extremely restrictive rules on timing can be overridden only in the discretion of the Speaker or Majority Leader, or by the unanimous consent of the chamber. See N.Y. Assemb. R. IV, § 7(b); N.Y. Sen. R. XI, § 2(b).

30. The rules and practices of the New York State Senate strictly curtail even discussions on motions to discharge. The motion's sponsor has just ten minutes to explain the motion, "and no other explanation or debate on the motion or upon the canvass of agreement shall be permitted by any member." See N.Y. Sen. R. XI, § 2(e).

31. Furthermore, the rules and practices of the New York State Senate prevent the public from knowing their representatives' positions on motions to discharge. In New York, as in most states, motions to discharge require the affirmative "aye" vote of a majority of members elected in the full chamber to succeed. In the New York State Senate, the members' votes on motions to discharge are not recorded. Rather in recent years the Senate majority has devised a method of voting called "canvass of agreement" under which a motion to discharge can be defeated without members of the majority party having to go on record as opposed to the motion. The same procedure is used with respect to amendments offered by the minority and opposed by the majority leadership. This "canvass of agreement" procedure was devised with the express purpose of making it impossible for the minority to put the majority party members on the record with respect to their votes while not curtailing the ability of the majority to put the minority members on the record with respect to their votes.

32. As a result of the majority leadership's control over legislation, minority party members are unable to bring bills to the floor of each chamber for debate and a vote even when there is significant support for the legislation that gives it a reasonable chance of passage were all members required to put their vote on the record.

D. Secret Debates And Votes

33. Fundamental to both accountability and the ability of the minority party reasonably to influence the legislative process is the need for matters to be debated and voted in public. When the debate and vote are secret, the elected members' constituents will not know how their representatives voted. If an elected member secretly takes a position of which his or her constituents would not approve, or if he or she has failed to support vigorously the redress of a grievance that is of importance to his or her constituents, the secrecy of the debate and votes precludes the creation of a record on which that member can be held accountable.

34. In New York, each party has a legislative conference for each chamber. In other words, there is a majority legislative party conference in the Assembly and a minority legislative party conference in the Assembly, and a majority legislative party conference in the Senate and a minority legislative party conference in the Senate. The legislative party conferences debate and reach conference positions on pending bills.

35. The legislative party conferences meet in secret and produce no publicly available records. Because bills typically are not debated in the full chambers of the Legislature, the only meaningful debates occur in the legislative party conferences. The secrecy of the conferences deprives the public of the ability to hear the opinions of members, staff, or experts on pending pieces of legislation.

36. With rare exceptions, legislative party conference members are required to vote on the floor of the full chamber as the majority of the legislative party conference decided during its secret meeting. Thus, in the Senate where the majority party conference constitutes only slightly more than half of the members of the entire Senate, only slightly more than a quarter of the entire membership of the Senate can assure the passage or defeat of legislation in that house. In the Assembly, slightly more than one-third of the entire membership of the Assembly can assure the passage or defeat of legislation in that house.

E. Abuse Of Messages Of Necessity

37. The New York State Constitution requires that “[n]o bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage, unless the governor, or the acting governor, shall have certified, under his or her hand and the seal of the state, the facts which in his or her opinion necessitate an immediate vote thereon, in which case it must

nevertheless be upon the desks of the members in final form, not necessarily printed, before its final passage ...” See N.Y. Const. art. III, § 14.

38. While the New York State Constitution places the power to issue messages of necessity in the hands of the Governor, the Speaker and Majority Leader request messages of necessity from the office of the Governor, and, thus, the Speaker and Majority Leader determine in practice which bills are passed using such a message. Recently, when the Governor issued a message of necessity and then vetoed the very same bill, his staff was quoted as saying that messages of necessity are issued as a courtesy to the legislative leaders.

39. Far from being reserved for cases of necessity, the Speaker and Majority Leader routinely use messages of necessity to bypass the New York State Constitution’s requirement that bills be on the desks of the members for at least three days prior to a vote. According to the Brennan Center Report, from 1997 through 2001, a message of necessity was requested and obtained for at least one chamber’s vote on 26.9% of the major legislation that was passed.

40. The routine use of messages of necessity to bypass the constitutional aging requirement facilitates the passage of major legislation without any debate or participation by legislators, including particularly minority party legislators. Because leaders’ meetings are routinely held without the participation of the minority party leaders in each house, even the minority conferences may be unaware of the terms of even a major piece of legislation.

41. When the Assembly adopted new rules on January 10, 2005, it added New York State Assembly Rule IV, Section 10(b)(1)(f), which directs the Assembly’s Committee on Rules to review each message of necessity issued by the Governor and, before ordering a bill for a second and third reading before the full Assembly, to accept each such message of necessity by

an affirmative vote of a majority of all of the members of the Committee on Rules. See N.Y. Assemb. R. IV, § 10(b)(1)(f). When the Senate adopted new rules on January 24, 2005, it added New York State Senate Rule VII, Section 5(d), which provides that when “a message of necessity is received from the Governor, such message shall be filed with the Journal Clerk of the Senate upon final passage of the bill.” These changes in no way speak to the constitutional obligation of the Governor personally to sign a message and to recite facts that in his or her opinion create a need for immediate passage.

42. The improper and excessive use of messages of necessity is materially aided by the practice that they are not typically signed by the Governor personally as the State Constitution requires. Rather, the Governor’s counsel typically authorizes the signature of messages of necessity with a signature machine autopen. Furthermore, messages of necessity are typically boilerplate and therefore fail to state any facts showing the necessity for immediate passage despite the constitutional requirement that facts be stated.

F. Leadership Control Over Member Pay

43. Most members of the Assembly and the Senate receive additional compensation commonly referred to as a “Lulu.” These Lulus are specified in Section 5-a of the Legislative Law as an additional amount to be paid the committee chairs and ranking minority members. The Lulus paid to ranking members for a particular committee are less than the amount paid to the chairs. In addition this Lulu system disadvantages the minority because it enforces the leader’s control over the majority members and impairs the ability of minority members to attract majority member support for legislation in the face of opposition by the Speaker or the Majority Leader. This is so because the Speaker and the Majority Leader can and do punish their members who fail to follow their direction by depriving them of a committee chairmanship or moving them to a lower compensated chairmanship. In addition Lulus lack any

justification based on enhanced time demands placed on committee chairs or ranking minority members since service in the Legislature has become a full-time job for all members. Although not mentioned in the Brennan Center Report, the Lulu compensation system, a critical component of the so-called “three men in a room” regime, substantially contributes to the dysfunction of the Legislature and the exclusion of minority members from participation in the legislative process.

**CLAIMS BY THE PLAINTIFFS WHO ARE MEMBERS
OF THE MINORITY PARTY IN EACH HOUSE ON BEHALF
OF THEMSELVES AND THEIR CONSTITUENTS AND BY THE
ORGANIZATIONAL PLAINTIFF ON BEHALF OF ITSELF AND ITS CLIENTS**

Unequal Funding Of Member Support

COUNT I
(Equal Protection)

44. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 43 hereof.

45. The rules and practices of the New York State Legislature permitting majority party members in each house to receive greater funding for staff support, services, and constituent communication than minority party members are not justified by any lawful criteria but rather are based solely on the party enrollment of the disadvantaged member. These discriminatory rules and practices affect fundamental rights of members and their constituents, have an illegitimate purpose, are not supported by a compelling or important state interest, and have no rational basis in relation to any legitimate purpose. They therefore violate the Equal Protection provisions of the Federal and State Constitutions.

COUNT II

(Freedom of Speech, Association, and Debate)

46. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 45 hereof.

47. The rules and practices of the New York State Legislature permitting majority party members in each house to receive greater funding for staff support, services, and constituent communication than minority party members discriminate against minority party members solely by reason of their political beliefs and associations. These discriminatory rules and practices, as well as the content restrictions heretofore alleged, are not narrowly tailored to serve a compelling state interest. They therefore violate the free speech, association, and debate provisions of the Federal and State Constitutions.

COUNT III

(Gift of State Resources)

48. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 47 hereof.

49. The rules and practices of the New York State Legislature permitting majority party members in each house to receive greater funding for staff support, services, and constituent communication than minority party members provide a substantial benefit to such majority party without any benefit to the state. These rules and practices therefore violate the gift and loans provisions of Article VII, Section 8 of the New York State Constitution.

Unequal Member Items

COUNT IV

(Equal Protection)

50. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 49 hereof.

51. The rules and practices of the New York State Legislature permitting majority party members to receive more money in the form of member items than minority party members are not justified by any lawful criteria but rather are based solely on the party membership of the disadvantaged member. These discriminatory rules and practices affect fundamental rights of members and their constituents, have an illegitimate purpose, are not supported by a compelling or important state interest, and have no rational basis in relation to any legitimate purpose. They therefore violate the Equal Protection provisions of the Federal and State Constitutions.

COUNT V

(Freedom of Speech, Association, and Debate)

52. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 51 hereof.

53. The rules and practices of the New York State Legislature permitting majority party members in each house to receive more member items than minority party members in each house discriminate against minority party members and their constituents solely by reason of their political beliefs and associations. These discriminatory rules and practices are not narrowly tailored to serve a compelling state interest. They therefore violate the free speech, association, and debate provisions of the Federal and State Constitutions.

COUNT VI

(Gift of State Resources)

54. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 53 hereof.

55. The rules and practices of the New York State Legislature permitting majority party members in each house to receive more member items than minority party

members provide a benefit to the majority party that is not based on the needs of the state and is grossly disproportionate to any state benefit. These rules and practices therefore violate the gift and loans provisions of Article VII, Section 8 of the State Constitution.

COUNT VII
(Failure to Appropriate)

56. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 55 hereof.

57. Under current practices, member items are drawn from lump-sum appropriations agreed upon by the Governor, Speaker, and Majority Leader during closed-door budget negotiations. These budget negotiations do not result in an agreement between the legislative branch and the executive branch as to how the monies will be spent as the State Constitution contemplates. This practice violates Article VII, Section 7 of the State Constitution which provides that no money shall ever be paid out of the state treasury or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law, and that every such law shall distinctly specify the sum appropriated, and the object or purpose to which it is to be applied.

Placing Insurmountable Obstacles To Discharge Motions

COUNT VIII
(Equal Protection)

58. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 57 hereof.

59. The rules of the New York State Legislature restricting the availability of a motion to discharge a bill from committee so that it can be considered by the full house have the purpose and effect, and were adopted with the intent, of unreasonably impairing the effectiveness of members of the minority party in each house. They are so extreme that they

have no substantial justification other than to disadvantage minority members on the basis of political belief and association by creating insurmountable obstacles to bringing a matter to debate and vote over the objection of the majority leaders. These discriminatory rules and practices affect fundamental rights of members and their constituents, have an illegitimate purpose, are not supported by a compelling or important state interest, and have no rational basis in relation to any legitimate purpose. They therefore violate the Equal Protection provisions of the Federal and State Constitutions.

COUNT IX

(Freedom of Speech, Association, and Debate)

60. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 59 hereof.

61. The rules and practices of the New York State Legislature restricting motions to discharge a bill from a standing committee to the full chamber discriminate against minority party members in each house by reason of their political beliefs and associations. These discriminatory rules and practices are not narrowly tailored to serve a compelling state interest. They therefore violate the free speech, association, and debate provisions of the Federal and State Constitutions.

Secret Debates And Votes

COUNT X

(Equal Protection)

62. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 61 hereof.

63. The rules and practices of the New York State Legislature allowing secret debates and decisions on the conference position on pending bills in legislative majority party conferences deprive the members of the minority party in each house of actual participation in

the legislative process because they cannot hold majority party members accountable for their votes and respond to the arguments raised in the secret debates. These discriminatory rules and practices affect fundamental rights of members and their constituents, have an illegitimate purpose, are not supported by a compelling or important state interest, and have no rational basis in relation to any legitimate purpose. They therefore violate the Equal Protection provisions of the Federal and State Constitutions.

COUNT XI

(Freedom of Speech, Association, and Debate)

64. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 63 hereof.

65. The rules and practices of the New York State Legislature allowing secret debates and decisions on pending bills in legislative majority party conferences prevent minority party members from advocating the interests of their constituents based on the actual debates and decisions that determine whether legislation will pass or fail, and thereby disadvantage them in the legislative process. One purpose of the provisions of the State and Federal Constitutions respecting free speech is to keep open the legislative process as a channel for change and redress of grievances. These rules and practices are not narrowly tailored to protect an appropriately confidential exchanges of views and do not serve any compelling state interest. They therefore violate the free speech, association, and debate provisions of the Federal and State Constitutions.

COUNT XII

(Constituents' Right to Know)

66. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 65 hereof.

67. The rules and practices of the New York State Legislature allowing secret debates and votes on pending bills in legislative majority party conferences prevent voters from knowing what positions their representatives actually took and whether they actually participated in the debate. This frustrates the accountability of the members of the majority party in each house.

68. The rules and practices of the New York State Legislature allowing secret debates and votes of pending bills in legislative majority party conferences violate the implied constitutional right of voters to know how their representatives voted.

COUNT XIII
(Open Meetings Law)

69. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 68 hereof.

70. The rules and practices of the New York State Legislature allowing secret debates and votes on pending bills in legislative majority party conferences violate the provisions of the New York Open Meetings Law that require public business to be performed in an open and public manner so that the state's citizens be fully aware of and able to observe the performance of public officials.

71. The rules and practices of the New York State Legislature allowing secret, effectively binding votes in legislative majority party conferences on pending legislation are not within the scope of any of the exemptions to the Open Meetings Law. Those exemptions at most exempt deliberations that the conference determines need to be kept confidential. There is no exemption for the policy debate that leads to a vote or to the determination of a conference position.

Abuse Of Messages Of Necessity

COUNT XIV
(Equal Protection)

72. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 71 hereof.

73. The use of messages of necessity other than in accordance with the provisions of the State Constitution, which are intended to deter their excessive use, operates to the substantial disadvantage of members of the minority party in each house in violation of the Equal Protection provisions of the Federal and State Constitutions because such members do not have access to the material final provisions of pending legislation until it is printed in final form and therefore, absent compliance with the constitutional aging requirement, do not have a reasonably adequate opportunity to prepare for the debate and vote on that legislation.

COUNT XV
(Freedom of Speech, Association, and Debate)

74. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 73 hereof.

75. The use of messages of necessity other than in accordance with the provisions of the State Constitution, which are intended to deter their excessive use, operates to the substantial disadvantage of members of the minority party in each house in violation of the provisions of the Federal and State Constitutions protecting the freedom of speech, association, and debate because such members do not have access to the material final provisions of pending legislation until it is printed in final form and therefore, absent compliance with the constitutional aging requirement, do not have a reasonably adequate opportunity to prepare for the debate and vote on that legislation.

COUNT XVI
(Failure to Sign)

76. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 75 hereof.

77. Article III, Section 14 of the State Constitution requires that “[n]o bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage, unless the governor, or the acting governor, shall have certified, under his or her hand and the seal of the state, the facts which in his or her opinion necessitate an immediate vote thereon, in which case it must nevertheless be upon the desks of the members in final form, not necessarily printed, before its final passage ...”

78. Messages of necessity must be signed personally by the Governor. The use of an autopen to sign messages of necessity, therefore, violates Article III, Section 14 of the State Constitution.

COUNT XVII
(Failure to Recite Facts)

79. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 78 hereof.

80. Article III, Section 14 of the State Constitution requires that “[n]o bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage, unless the governor, or the acting governor, shall have certified, under his or her hand and the seal of the state, the facts which in his or her opinion necessitate an immediate vote thereon, in which

case it must nevertheless be upon the desks of the members in final form, not necessarily printed, before its final passage ...”

81. Messages of necessity must contain a statement of facts that in the opinion of the Governor necessitates an immediate vote on the bill. The use of boilerplate language that does not recite facts demonstrating the necessity of an immediate vote on a bill, therefore, violates Article III, Section 14 of the State Constitution.

Leadership Control Over Member Pay

COUNT XVIII
(Equal Protection)

82. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 81 hereof.

83. The provisions of Section 5-a of the Legislative Law that, when combined with the rules and practices of the New York State Legislature effectively give the Speaker and the Majority Leader the ability to set the pay of majority members of the Legislature, are not justified by any lawful criteria but rather are intended to and have the effect of enforcing the control of the Speaker and the Majority Leader over their members to the substantial disadvantage of minority party members. These statutory provisions as applied in this context affect fundamental rights of minority members and their constituents, have an illegitimate purpose, are not supported by a compelling or important state interest, and have no rational basis in relation to any legitimate purpose. They therefore violate the Equal Protection provisions of the Federal and State Constitutions.

COUNT XIX
(Freedom of Speech, Association, and Debate)

84. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 83 hereof.

85. The provisions of Section 5-a of the Legislative Law that, when combined with the rules and practices of the New York State Legislature effectively give the Speaker and the Majority Leader the ability to set the pay of majority members of the Legislature, operate to the substantial disadvantage of minority members in each house of the Legislature in violation of the provisions of the Federal and State Constitutions protecting the freedom of speech, association, and debate because they unreasonably impair the ability of minority members to associate in support of legislation with members of the majority party.

COUNT XX

(Violation of Article III, Section 6 of the State Constitution)

86. Plaintiffs repeat and reallege each and every allegation set forth in Paragraphs 1 through 85 hereof.

87. Article III, Section 6 of the State Constitution provides:

Any member, while serving as an officer of his or her house or in any other special capacity therein or directly connected therewith not hereinbefore in this section specified, may also be paid and receive, in addition, any allowance which may be fixed by law for the particular and additional services appertaining to or entailed by such office or special capacity.

This provision is an exception to the general requirement of Article III, Section 6, that members be paid a “like” salary. This “special capacity” exception is inapplicable to the current practice of supplementing salary for committee chair and ranking minority member positions because all members of the Senate, and all but forty-six members of the Assembly, hold a chairmanship, leadership, or ranking minority member position. In addition, because service in the Legislature is now a full-time job, service as a committee chair or ranking minority member no longer entails material “particular and additional services” as compared to other members. Accordingly Section 5-a of the Legislative Law as applied to committee chair and ranking minority member positions violates Article III, Section 6 of the State Constitution.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs demand judgment as follows:

1. an order declaring that all expenditures for members' staff, operating costs, and constituent communication be equal for similarly situated members without regard to their political affiliation;
2. an order declaring that spending from lump-sum appropriations for member-initiated projects either must be zero, or equal per member, or as set forth in individual line items approved as provided in the State Constitution;
3. an order declaring that any member may make a motion to discharge a bill from a standing committee to the full chamber for its consideration upon presentation of a petition signed by enough members to indicate a reasonable chance of passage;
4. an order declaring that a bill shall be discharged from a committee and brought to the full chamber for its consideration upon the vote of a majority of the members of the house in question, and further declaring that for that purpose the "ayes" and "nays" shall be recorded;
5. an order declaring that no caucus or conference of the majority political party in either house of the Legislature may in secret take a conference position on any legislative proposal without the debate and "ayes" and "nays" being publicly recorded in the absence of a resolution adopted by a majority of the conference, the ayes and nays being publicly recorded, finding the need for an executive session with respect to a specific discussion;

6. an order declaring that a message of necessity not personally signed by the Governor is ineffective;

7. an order declaring that a message of necessity signed prior to the bill being available for review by the Governor in its final form is ineffective;

8. an order declaring that a message of necessity that does not state facts in support of the necessity of an immediate vote on a bill is ineffective;


9. an order declaring that Section 5-a of the Legislative Law is unconstitutional as applied to committee chair and ranking minority member positions and declaring that all members of the Legislature must receive the same compensation for their service without any additional increment based on committee chairmanship or ranking minority member status; and

10. such further or other relief as this Court deems just and proper.

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Respectfully submitted,

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