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MOTION SEQUENCE # 002

At an IAS Part 49 of the Supreme Court  
of the State of New York, at the  
Courtthouse thereof, located  
at 60 Centre Street, New York, New York,  
10007, on the 27 of April, 2005

PRESENT: Honorable Cahn  
Justice of the Supreme Court

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In re the application of:  
NEW YORK PUBLIC INTEREST RESEARCH  
GROUP/STRAPHANGERS CAMPAIGN, INC.,  
GENE RUSSIANOFF, COMMON CAUSE, INC.,  
RACHEL LEON, TRI-STATE TRANSPORTATION  
CAMPAIGN, INC., JON ORCUTT, LOCAL 100  
OF THE TRANSIT WORKERS UNION a/k/a  
TWU LOCAL 100, ROGER TOUSSAINT, et al.,  
on their own behalf and on behalf of all straphangers  
and taxpayers in the City and State of New York  
similarly aggrieved,

Attorneys for Petitioners,

For an order pursuant to Article 78 of the C.P.L.R.,

- against -

NEW YORK METROPOLITAN TRANSPORTATION  
AUTHORITY, PETER S. KALIKOW in his capacity of  
Chair/Commissioner of the Metropolitan Transportation  
Authority,

Respondents.

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Upon the reading and filing of the annexed Affirmation of Counsel for Amici  
Curiae dated April 27, 2005, Affidavit of Christine C. Quinn dated April 27, 2005, and  
Brief of Amici Curiae dated April 27, 2005, and all papers and exhibits previously filed

Index: 10529/05

SUPREME COURT STATE OF NEW YORK	
APPROVED	
COMMERCIAL DIVISION SUPPORT OFFICE	
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CLERK'S INITIALS	2005
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ORDER TO  
SHOW CAUSE

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in the above-captioned action and those which have already been filed with the Court in MSG v. Metropolitan Transportation Authority, Index: 104644/05, Amici Curiae, City Council Speaker A. Gifford Miller, City Council Members Christine C. Quinn, Gale A. Brewer, Philip Reed, Bill Perkins, Eva Moskowitz, Charles Barron, David Yassky, John Liu and Letitia James and State Senators Thomas K. Duane and Liz Krueger, will move this Court, on May 3, 2005, at the Courthouse, 60 Centre Street, Motion Support Courtroom 130, 9:30 a.m., or as soon thereafter as counsel can be heard, why an order should not be issued:

- (a) Granting leave to appear as Amici Curiae and file the Brief annexed hereto in support of Petitioners in the above-captioned matter; and
- (b) Granting such other and further relief as the Court deems just and proper.

ORDERED that Amici Curiae shall serve by hand a copy of this Order and the papers upon which it was granted upon the Petitioners, Respondents and the Attorney General on or before the 28 day of April 2005, and it is further;

ORDERED that Petitioners, Respondents or the Attorney General shall serve any answering papers on counsel for Amici Curiae on or before the 3<sup>rd</sup> day of April 2005, ~~and it is further; and~~

~~ORDERED that oral argument is directed on the Order to Show Cause and the relief sought herein on the \_\_\_\_\_ day of \_\_\_\_\_ 2005 at \_\_\_\_\_ or as soon thereafter as counsel may be heard.~~

*Hc*  
*Jsc*

ENTERED

*Alan Cole*  
Justice of the Supreme Court

**ORAL ARGUMENT  
DIRECTED**

*Hc*  
**J.S.C.**

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

----- X  
In re the application of: :  
NEW YORK PUBLIC INTEREST RESEARCH :  
GROUP/STRAPHANGERS CAMPAIGN, Inc., :  
GENE RUSSIANOFF, COMMON CAUSE, INC., :  
RACHEL LEON, TRI-STATE TRANSPORTATION :  
CAMPAIGN, INC., JON ORCUTT, LOCAL 100 :  
OF THE TRANSIT WORKERS UNION a/k/a :  
TWU LOCAL 100, ROGER TOUSSAINT, et al., :  
on their own behalf and on behalf of all straphangers :  
and taxpayers in the City and State of New York :  
similarly aggrieved, :

**AFFIDAVIT OF**  
**CHRISTINE C. QUINN**

Index No. 105292/05

Petitioners,

For an order pursuant to Article 78 of the C.P.L.R.,

- against -

NEW YORK METROPOLITAN TRANSPORTATION  
AUTHORITY, PETER S. KALIKOW in his capacity of  
Chair/Commissioner of the Metropolitan Transportation  
Authority,

Respondents.

----- X

STATE OF NEW YORK )

ss.:

COUNTY OF NEW YORK )

Pursuant to CPLR § 7804(d), Christine C. Quinn, being duly sworn, deposes and says:

1. I am currently a member of the New York City Council, representing the Third Councilmanic District, in which the John D. Caemerrer West Side Yards (hereinafter the "Rail Yards") are located. I am thus the elected representative of the city residents whose daily lives will be most affected by construction of the proposed New York Sports and Convention Center. (hereinafter the "NYSCC"). I have served as a City Council Member since February of 1999.

2. Central to my duties as a Council Member are the responsibilities of passing a responsible and balanced annual City budget, making appropriate land use decisions, and adopting effective zoning plans to ensure that the public is properly served by its governmental agencies. Bowing to pressure from the Bloomberg Administration, the New York Metropolitan Transportation Authority (hereinafter the “MTA” or the “Authority”) conducted an unfair and non-competitive bidding process for the development and related property rights over the Rail Yards and selected an inferior bid far below fair market value. In so doing, the MTA not only breached its fiduciary duty to the public, but did great harm to the future of our mass transportation system and the people of the City of New York.

3. As the chosen representative of thousands of constituents that pay for and rely upon the bus and subway systems operated by the MTA, I have an interest, on behalf of my constituents, in any disposition of valuable MTA assets. Moreover, the disposition of MTA assets has a direct impact upon my function and duties as a Council Member, as the New York City budget includes substantial annual funding for the MTA.

4. Furthermore, the bid submitted by Jets Development, LLC (hereinafter the “Jets”) and the MTA’s arbitrary and capricious decision to select that bid rests on fundamental misconceptions of city budget, land use, zoning and public transportation laws – misconceptions that undermine the rightful authority of the City Council, as designated by the New York City Charter, and, consequently, my authority as a Council Member and the rights of my constituents.

The MTA’s Fiscal Crisis

5. The MTA is in the midst of a fiscal crisis. Despite having imposed two substantial fare and toll hikes over the past three years, closed token booths in the New York city subways and eliminated thousands of jobs, the MTA admits that it faces “daunting” operating deficits of

\$607 million in 2006, \$689 million in 2007 and \$991 million in 2008. Prepared Remarks of Gary Lanigan, MTA Director of Budgets and Financial Management, City Council Preliminary Budget Hearing for FY 2006, at 2 (March 18, 2005) (hereinafter “Lanigan Remarks”).

Moreover, the MTA has not explained how it intends to fund its \$27.6 billion Capital Plan over the next five years, Lanigan Remarks, at 4-6, since the State of New York’s recent budget provides over \$9 billion less than the MTA requested. State Budget for FY 2006, available at <http://www.budget.state.ny.us/pubs/press/2005/pr0412005.html> (indicating allocation of approximately \$18.2 billion to MTA capital plan).

6. The Rail Yards represent undoubtedly the MTA’s most valuable real estate asset, a little over 13 acres of developable property just off the waterfront in the heart of Midtown Manhattan. As discussed in detail below, the City Council’s recent approval of the development plan for the surrounding Hudson Yards area, including the financing of the extension of the Number Seven train, have increased the Rail Yards’ value significantly. Through disposition of the development and related property rights above the Rail Yards at or near market value, the MTA has a unique opportunity to ease its fiscal crisis and/or help fund its capital plan without slashing services, issuing bonds or requesting tax money. By contrast, the decision to award rights to the Rail Yards at a fraction of their market value, would have a direct and devastating impact upon train, subway and bus services in New York City and New York State – causing straphangers to suffer additional fare hikes, service disruptions and, ultimately, tax increases. In order to fulfill its mandate to implement an effective mass transit policy and maximize benefit to the people of the state of New York, the MTA must overcome pressure from the Mayor and obtain a reasonable return for the development and related property rights over the Rail Yards.

## The Unfair Negotiation and Bidding Process for the Rail Yards

7. On November 2, 2004, after more than seven months of exclusive, closed-door negotiations among the MTA, the Jets and the Pataki and Bloomberg Administrations regarding construction of a stadium over the Rail Yards, the MTA commissioned and received an independent appraisal setting the fair market value of the development and related property rights over the Rail Yards at \$923,400,000. Nevertheless, two months later, in response to the Jets' embarrassingly low offer of \$100 million, the MTA indicated its willingness to accept the offer if it were increased to \$300 million, less than a third of the MTA's own appraisal of fair market value. The MTA's willingness to accept such a low offer, in spite of its fiscal crisis, is strong evidence of the MTA's lack of concern for its fiduciary duty to the public and inability to withstand political pressure from the Mayor.

8. Over the last few years, the disposition of the Rail Yards became the subject of an intense political battle. On one side, good government groups, editorial boards and advocates for straphangers and ordinary New Yorkers applied pressure on the MTA to create an open, public bidding process to yield the most beneficial terms possible. Meanwhile, the Mayor and members of his Administration used hardball tactics, such as denigrating the patriotism and motives of opponents, to pressure the MTA to negotiate solely with their favored bidder, the Jets.

9. On February 22, 2005, in response to mounting grassroots opposition as well as an unsolicited bid from Madison Square Garden , L.P. (hereinafter "MSG"), the MTA opened a bidding process by issuing a Request for Proposals (hereinafter "RFP") for the development and related property rights over the Rail Yards. However, under intense pressure from the Bloomberg Administration to sell its most valuable asset as quickly as possible, the MTA fashioned a bidding process that was flawed from the outset: bidders were given a mere twenty-

seven days to submit “where is/as is,” unconditional, full and final proposals. This unduly abbreviated time-period served to negate the ability of many potential bidders to even appraise the property – a complicated task since development will require construction of a platform costing hundreds of millions of dollars – let alone formulate a detailed, thorough and well-financed bid proposal.

10. In addition, upon information and belief, the MTA chose not to share with all parties vitally important site information necessary to compile a bid. For example, upon information and belief, the RFP required bidders to comply with a complex web of construction requirements and to assume responsibility for extensive environmental liabilities, but the MTA failed to explain the contents of these requirements or provide information about environmental risks and conditions to anyone but the Jets.

11. Meanwhile, according to media reports, the Bloomberg Administration engaged in an intimidation campaign to ward off prospective bidders. The result of such a flawed process was predictable: the submission of only two serious bids, neither one of which even approached the fair market value of the Rail Yards. In sum, in the instant case, the MTA’s unfairly brief bidding timeframe, its unwillingness to share information with prospective bidders equally, and the Jets’ advantage over rival bidders through the many months of close collaboration with the Bloomberg Administration and the MTA in preparing its bid rendered the bidding process virtually prohibitive to other competitive bids.

#### The MTA’s Arbitrary and Capricious Selection of the Jets’ Bid

12. Through public statements, the Mayor and members of his Administration sent a clear and strong political message to the MTA Board, including the Mayor’s own appointees, as to which bid the Mayor supported.

13. The Jets' bid of \$210 million constitutes less than 23 percent of the site's fair market value as determined by the MTA's appraiser. By contrast, MSG has bid \$400 million, not including MSG's proposed payment of \$360 million for construction of the platform, or 43 percent of fair market value. MSG's bid contains no subsidies from the City or State.

14. A critical element of the Jets' bid is \$600 million in subsidies from the Pataki and Bloomberg Administration. Without these subsidies, the Jets have no financial plan to construct the required platform over the Rail Yards. Despite Mayor Bloomberg's unquenchable desire to funnel city money to a stadium, these subsidies are unlikely to ever materialize. At this time, neither the City Council nor the State Legislature has appropriated any money for these subsidies; in fact, since no one, including the Governor and Mayor, has proposed appropriation legislation, the City Council and State Legislature have not even begun any review process. With the State budget for 2006 already finalized and the City budget well on its way to completion, there is no chance of the subsidies materializing in the near future. Given the concerns of key legislators at the City and State level, as well as public opinion opposing subsidies for the NYSCC stadium, approval of appropriation legislation at any point is a highly unlikely proposition.

15. In selecting the Jets' inferior, contingent and rule-violating bid, the MTA confirmed what was obvious: that the MTA, under pressure from the Bloomberg Administration, was unfairly committed to favoring the Jets rather than to maximizing benefit to the transportation system and the people of the state of New York.

#### The Administration's Illegal PILOT Plan

16. According to the testimony of New York City Budget Director Mark Page at a City Council hearing on February 7, 2005, the Administration's plan to finance the \$300 million



subsidy relies exclusively upon revenues derived from Payments In Lieu Of Taxes (hereinafter “PILOTs”) collected from tax-exempt development projects in New York City. Testimony of Mark Page, Council Hearing on Financing, at 40-43, 61-63, 90-92. According to Page, the Bloomberg Administration would create a local development corporation (the “LDC”), which will issue bonds to raise the \$300 million subsidy; for the next 20 to 30 years, the Administration plans to hand over to the LDC all City PILOT revenues, valued at \$71 million per year, to pay the debt service on the bonds. Id. The Administration has no intention of including the receipt or the transfer of these PILOT payments in the City budget, nor of requesting Council consent or authorization for the transfer. Id. at 88-92. Rather, though the Administration ultimately plans to transfer over a billion dollars during the next two to three decades, the Administration contends that it needs no City Council approval whatsoever.

17. This unilateral appropriation of over a billion dollars in PILOT money would violate the Council’s authority under the New York City Charter, which clearly commits the power to appropriate funds to the City Council. N.Y. City Charter § 227. The Administration’s plan for an illegal slush fund also runs afoul of state law, which requires PILOT revenues to be remitted to New York City’s general fund and disbursed pursuant to the normal budget process, through an appropriation adopted by the Council. Speaker Miller and I recently introduced legislation, cosponsored by 34 Council Members and the Public Advocate, confirming that the Charter requires Council authorization for the disbursement of PILOT payments. See N.Y. City Council Int. No. 584-A.

18. The Administration’s illegal effort to circumvent the City Council’s appropriation authority adversely affects the Council and the public in New York City, as well as inflicts great harm upon deep-seated principles of democracy. Moreover, the lost revenue resulting from the

MTA's selection of the Jets' inferior bid will undoubtedly require the Council to increase the City's contributions to the MTA in order to maintain the vibrancy and health of our aging mass transit system.

Passage of the Comprehensive Package of Legislation, including the Extension of the Number 7 Train, to redevelop the Hudson Yards Area

19. Development of the Hudson Yards area, located generally between West 28th and West 43rd Streets, from Seventh Avenue to the Hudson River - but not including the Rail Yards - has been a long-term City goal. The process of securing a comprehensive redevelopment plan, including rezoning and improvement of public transportation access to transform Hudson Yards into a dynamic, transit-oriented urban center began in earnest over four years ago.

20. That the Number Seven train extension is critical to the concept of the Hudson Yards redevelopment plan, not to mention its success, is beyond dispute. Without the Number Seven Train extension, there would have been no approval of the redevelopment plan. In addition, in preparing the Environmental Impact Statement, the City Planning Department and the MTA relied upon the extension of the Number Seven train as an integral feature.

21. On January 19, 2005, the Council approved a comprehensive plan for the Hudson Yards area, passing various pieces of implementing legislation, including a zoning resolution creating the Special Hudson Yards District. See N.Y. City Zoning Resolution Art. IX, Chpt. 3. Significantly, the Special Hudson Yards District does not include the Rail Yards, and the City Council made abundantly clear that approval of the redevelopment plan bore no relationship to the success or failure of the NYSCC stadium. Responding to complaints that the plan would allow excessive density, the Council reduced the authorized development area by more than one million square feet. See N.Y. City Council Resolution 782, ULURP No. 040499(A)ZMM (January 19, 2005).


22. That same day, as part of the same package of legislation, by an overwhelming vote of 45 to 2, the City Council passed Resolution 760, endorsing the Administration's financing plan for the extension of the Number Seven train through a bond issue – a plan that also does not rely in any way upon construction of the NYSCC stadium or any other development over the Rail Yards. N.Y. City Council Resolution 760 (January 19, 2005). Council leadership deliberately added explicit language emphasizing that the Hudson Yards infrastructure projects, including the Number Seven extension and its financing plan, were wholly independent from the NYSCC stadium plan. Id. Passage of Resolution 760 cleared away the last governmental hurdle standing in the way of the Number Seven train extension.

23. The idea that the City would now reverse course and refuse or fail to finance the extension if the MTA failed to approve the Jets' bid is preposterous and flies in the face of recent history. Similarly, the idea that the City Planning Department, the City Planning Commission and the City Council would now revisit the rezoning plan in order to add 4.4 million square feet of Transferable Development Rights to the Rail Yards, potentially throwing off the careful balance achieved through years of planning and negotiation, is ludicrous. It is inconceivable that the City Council would ever enact such a rezoning scheme.

24. Statements by members of the Board of the MTA that, in the absence of a Jets football stadium, the extension of the Number Seven train would be endangered are profoundly misleading, are inconsistent with the City Council's intent, and directly contradict what the Bloomberg Administration led the City Council to believe in approving the Special District. The City Council approval of the Special District is premised on the extension of the Number Seven

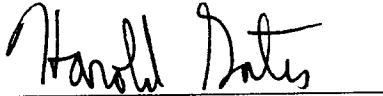
train, consistent with the EIS. The Jets Stadium will not contribute anything, and is not essential, to the financing of the Number Seven train extension.

Dated: New York, New York  
April 27, 2005



Christine C. Quinn

Sworn to before me this  
27th day of April, 2005



Notary Public

**HAROLD GATES**  
NOTARY PUBLIC, State of New York  
No. 02GA6064513  
Qualified in Kings County  
Commission Expires February 5, 2007

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

**Index No. and Year: 105292/05**

In re the application of:  
NEW YORK PUBLIC INTEREST RESEARCH  
GROUP/STRAPHANGERS  
CAMPAIGN, INC., et al,

Petitioners,

For an order pursuant to Article 78 of the C.P.L.R.,

- against -

NEW YORK METROPOLITAN  
TRANSPORTATION AUTHORITY, et al,

Respondents.

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**ORDER TO SHOW CAUSE & SUPPORTING DOCUMENTATION**

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**BALESTRIERE PLLC**  
*ATTORNEYS FOR PROPOSED AMICI CURIAE*  
*CITY COUNCIL SPEAKER GIFFORD MILLER, ET AL.*  
225 BROADWAY – SUITE 2700  
NEW YORK, NEW YORK 10007  
(212) 374-5400

To:

Service of a copy of the within  
is hereby admitted:

Dated: \_\_\_\_\_, 20\_\_

Attorneys for \_\_\_\_\_

\_\_\_\_\_

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**PLEASE TAKE NOTICE:**

Notice of Entry

that the within is a (certified) true copy of a  
duly entered in the office of the clerk of the within named court on \_\_\_\_\_, 20\_\_.

Notice of Settlement

that an order  
will be presented for settlement to the Hon.  
within named Court, at  
on \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ M.

of which the within is a true copy  
one of the judges of the

Dated,

Yours, etc.

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

-----X

In re the application of:  
NEW YORK PUBLIC INTEREST RESEARCH  
GROUP/STRAPHANGERS CAMPAIGN, INC.,  
GENE RUSSIANOFF, COMMON CAUSE, INC.,  
RACHEL LEON, TRI-STATE TRANSPORTATION  
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OF THE TRANSIT WORKERS UNION a/k/a  
TWU LOCAL 100, ROGER TOUSSAINT, et al.,  
on their own behalf and on behalf of all straphangers  
and taxpayers in the City and State of New York  
similarly aggrieved,

**AFFIRMATION OF  
JOHN BALESTRIERE**

Index: 105292/05

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- against -

NEW YORK METROPOLITAN TRANSPORTATION  
AUTHORITY, PETER S. KALIKOW in his capacity of  
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Respondents.

-----X

John Balestriere, an attorney admitted to practice before the courts of the State of  
New York, affirms the following to be true, pursuant to Section 2106 of the Civil Practice  
Laws and Rules:

1. I am an attorney licensed to practice law in the State of New York, serving  
as counsel to City Council Speaker A. Gifford Miller, City Council Members Christine C.  
Quinn, Gale A. Brewer, Philip Reed, Bill Perkins, Eva Moskowitz, Charles Barron,  
David Yassky, John Liu and Letitia James and State Senators Thomas K. Duane and Liz

Krueger, the proposed Amici Curiae. I submit this affirmation in support of the Order to Show Cause granting leave to appear as Amici Curiae in support of Petitioners in the above-captioned case and to file the accompanying Brief. I am fully familiar with the facts and circumstances set forth herein.

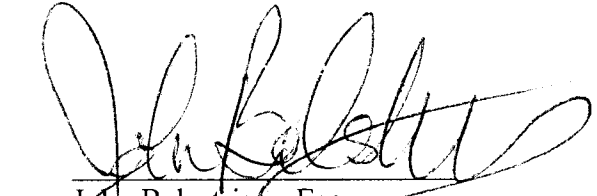
2. The Amici Curiae respectfully request permission to submit a Brief in support of Petitioners, in order to bring to the attention of this court the facts set forth in the affidavit of Council Member Christine C. Quinn.

3. The petition in the above-captioned matter is currently scheduled for argument before the Honorable Justice Herman Cahn on May 3, 2005. It is respectfully requested, therefore, that the Order to Show Cause annexed hereto be made returnable on that day, as the information contained in the Brief of Amici Curiae is relevant to the issues and arguments contained in that petition.

4. The relief sought in this application has not been sought previously from this or any other court.

WHEREFORE, it is respectfully requested that the order to show cause of City Council Speaker A. Gifford Miller, City Council Members Christine C. Quinn, Gale A. Brewer, Philip Reed, Bill Perkins, Eva Moskowitz, Charles Barron, David Yassky, John Liu and Letitia James and State Senators Thomas K. Duane and Liz Krueger granting leave to appear as Amici Curiae and to file the accompanying Brief be granted in all respects, and that the accompanying Brief be accepted by the Court as filed.

Dated: April 27, 2005  
New York, New York



John Balestriere, Esq.  
BALESTRIERE PLLC  
Attorney for Amici Curiae  
225 Broadway, Suite 2700  
New York, New York 10007  
(212) 374-5401