

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

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In re the application of:

NEW YORK PUBLIC INTEREST RESEARCH
GROUP STRAPHANGERS CAMPAIGN, Inc.,
GENE RUSSIANOFF, DAVID A. PATERSON,
EDITH PRENTRISS, KATHERINE ROBERTS,
KEITH CAUSIN, KEVIN MCRAE, FARAH STEIDE,
and ALEXANDER WOOD,

Petitioners,

- and -

ROGER TOUSSAINT as PRESIDENT OF LOCAL
100 TRANSPORT WORKERS UNION OF
AMERICA,

Petitioner In Intervention,

- against -

METROPOLITAN TRANSPORTATION
AUTHORITY a.k.a. MTA, MTA NEW YORK
CITY TRANSIT AUTHORITY, LONG ISLAND
RAILROAD, METRO-NORTH RAILROAD,
STATEN ISLAND RAPID TRANSIT OPERATING
AUTHORITY, LONG ISLAND BUS COMPANY,
Peter S. Kalikow, Chair/Commissioner of the
Metropolitan Transportation Authority and Lawrence
G. Reuter, as President of MTA New York City
Transit Authority, XYZ Corp.'s 1-20, private bus
company and others under contract with the named
Respondents to supply transportation services to
the public whose corporate identities are unknown
and to be determined in discovery,

Respondents.

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**AFFIRMATION
IN SUPPORT
OF LEGISLATIVE
STANDING**

Index: 107871/03
Purchased: 4/30/03

Thomas D. Shanahan, an attorney admitted to practice before this Court, affirms the following under penalty of perjury:

1. I am an attorney for petitioners and submit this affirmation in support of standing for

David A. Paterson in his capacity as minority leader of the New York State Senate.

2. The Court of Appeals has a clearly defined test for legislative standing. That standard was enunciated in Silver vs. Pataki, 96 N.Y.2d 532, 755 N.E.2d 842, 730 N.Y.S.2d 482 (2001).

3. In Silver, the Court of Appeals stated: “The test for determining a litigant’s standing is well settled. A plaintiff has standing to maintain an action upon alleging an injury in fact that falls within his or her zone of interest. “The existence of an injury in fact – an actual legal stake in the matter be adjudicated – ensures that the party seeking review has some concrete interest in prosecuting the action which casts the dispute ‘in the form traditionally capable of judicial resolution’”. Id. 96 N.Y.2d at 538, citing Society of Plastics Indus. v. County of Suffolk, 77 N.Y.2d 761, 772, 573 N.E.2d 1034, 570 N.Y.S.2d 778 (1991).

4. In the context of a legislator, standing falls into one of three categories: lost political battles, nullification of votes and usurpation of power. Silver, Id. Petitioner respectfully submits that based upon the facts in the petition and as detailed in the Affidavit of Paterson already submitted in this action, David A. Paterson has standing based upon nullification of his vote and usurpation of his constitutionally guaranteed oversight power. Affidavit of Patterson, annexed hereto.

5. The Court of Appeals applies the “zone of interest” test in the later two categories cited in Silver. The zone of interest test examines whether the “petitioner can establish that the challenged administrative action has or will have a harmful effect on the petitioner”. See Matter of Dairylea Coop. v. Walkley, 38 N.Y.2d 6, 9, 339 N.E.2d 865, 377 N.Y.S.2d 451 (1975).

6. As Senator Paterson states in paragraph four of his Affidavit:

“As part of my duties under the New York State Constitution, as an elected member of the Senate, and as the leader of the Democratic Party in the Senate, I am responsible for, among other things, exercising oversight over public authorities, including [respondents] as well as participating in the negotiation and authorization of a state budget. As an elected representative, I am also responsible for protecting and advocating the interests of my constituents, who ride the subways, buses and commuter rail lines operated by respondents”.

7. Senator Patterson also states in paragraph four:

“The notice provided by respondents with respect to the hearings that were held in connection with their decision to raise subway, bus and train fares, and close token booths, failed to inform me of the true nature of the respondents’ financial condition, thus preventing me from being able to exercise my constitutional responsibilities properly either at the hearings of in the Senate. Had I known then what I have since learned from the reports issued last week by the New York State Senate and New York City Comptrollers, I would have intervened more forcefully, asked more questions, acted to mobilize more people and organizations, to convince the respondents to either avoid, reduce or delay the fare hikes and avoid, reduce or delay the token booth closings”.

8. Senator Paterson concludes by stating in paragraph six: “The material misrepresentations of the respondents...prevented me from effectively exercising my duties as a Senator to provide meaningful oversight over public agencies”.

9. As Senator Paterson clearly established his exercise of oversight and ability to influence was effected by the malfeasance of the respondents which is confirmed in the audits performed by the Comptrollers, he has established an injury in fact. His judgment and constitutionally charged duty to exercise was improperly influenced by the action of the respondents.

10. Senator Patterson would also have standing absent “personal aggrievement” as this petition is one of general public interest and granting of the relief would benefit the general public. See Police Conference v. Municipal Police Training Council, 62 A.D.2d 416, 405 N.Y.S.2d 511 (3rd Dept. 1978).

11. Based upon the foregoing and the attestations in his annexed Affidavit, Senator David A. Paterson has clearly established standing as a petitioner in this action.

Dated: New York, New York
May 12, 2003

Thomas D. Shanahan