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May 12, 2003

BY HAND

Honorable Louis B. York
Justice of the Supreme Court
80 Centre Street
New York, N.Y. 10003

Re: NYPIRG Straphangers Campaign v. MTA
Index No. 107871/03

Dear Justice York:

Pursuant to the Court's instructions, we write to address briefly two matters that arose at the hearing on Friday, May 9, 2003: (1) the May 9, 2003 affirmation of Mr. Shanahan, which was served on respondents in Court; and (2) the issue of the standing of a legislator *qua* legislator in this proceeding.

(1) Mr. Shanahan's affirmation (¶¶ 5,6) cites *New York City Health and Hosp. Corp. v. McBarnette*, 84 N.Y.2d 194, 616 N.Y. Supp. 2d 1 (1994), which stands for the proposition that the MTA Board's decision on March 6, 2003 was quasi-legislative and subject to review, "if at all," under CPLR Article 78, "in the nature of mandamus to review." 84 N.Y.2d at 203, n.2, 616 N.Y. Supp. 2d at 5, n.2. Mr. Shanahan also cites (¶ 8) to *Lakeland Water District v. Onondaga Co. Water Auth.*, 24 N.Y. 2d 400, 301 N.Y. Supp. 2d 1 (1969), which stands for the proposition that any applicable standard of review is extremely high: whether the government "acted in disregard of statutory standards, in excess of its grant of authority, in violation of due process or in a discriminating matter." 24 N.Y. 2d at 408, 301 N.Y. Supp. 2d at 6; accord *Sheldon v. NYC Transit Auth.*, 39 A.D. 2d 950, 332 N.Y. Supp. 2d 992 (2d Dep't 1972).

The cases cited in Mr. Shanahan's affirmation (¶ 8) that deal specifically with the public hearing requirement – the issue in this case – demonstrate why petitioners have no viable claim under this stringent standard of review. In each of these cases, the issue was whether respondents had prevented the public from being heard on the issues that were to be voted upon. See *Orbach v. NY State UDC Corp.*, 110 Misc. 2d 720, 442 N.Y. Supp. 2d 900 (Sup. Ct. N.Y. Co. 1981) (UDC failed to appoint qualified person to attend

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hearing and respond to questions); *Forest Hills Residents Assn. v. NYC Housing Auth.*, 69 Misc. 2d 42, 50-52, 329 N.Y. Supp. 2d 69, 78-79 (Sup. Ct. N.Y. Co. 1972) (plan ultimately adopted by board materially differed from the plan presented at public hearing); *Levine v. Long Isl. R.R. Co.*, 38 A.D. 2d 936, 938, 331 N.Y. Supp. 2d 451, 454 (2d Dep't 1972) (no new public hearing required because plan adopted by MTA "bears a reasonable relationship to and is derived from" proposal presented at hearing (*citing Tinsley v. Monserrat*, 26 N.Y. 2d 110, 114, 308 N.Y. Supp. 2d 843, 845 (1970) (same and specific statutory requirements not met)); *Reizel, Inc. v. Exxon Corp.*, 42 A.D.2d 500, 349 N.Y. Supp. 2d 14 (2d Dep't 1973) (zoning decision could be attacked "where no notice is given or the notice given is so deceptive that reasonable persons were duped into not appearing," but no basis on this record); *County of Rensselaer v. Capital District Transp. Auth.*, 42 A.D. 2d 445, 447, 349 N.Y. Supp. 2d 20, 23 (3d Dep't 1973) (fare decision overturned due to failure to hold a public hearing); *Matter of Gernatt Asphalt Products, Inc. v. Town of Sardinia*, 87 N.Y.2d 668; 642 N.Y. Supp. 2d 164 (1996) (despite petitioners' misinterpretation, notice of hearing held sufficient since it "satisfied its purpose of alerting the public to potential and contemplated revisions of local ordinance").

None of the defects alleged by petitioners (Shanahan Aff. ¶7) approach these factual scenarios where the courts have considered or would consider ordering new public hearings. The duly posted notice of public hearing advised the public of the actions under consideration – increasing fares and tolls and closing token booths. Nothing in the notice can be deemed to have defeated the public's right to attend the hearings at which, in reality, several hundred speakers were heard on the precise matters that the MTA Board then considered and adopted on March 6. See Tendler Aff.; Caplan Supp. Aff. ¶¶ 17-18.

No matter how inflammatory petitioners' rhetoric, the notice of public hearing complied with the statutory obligation to give the public notice of the actions under consideration. The MTA's reference in the notice to its two year deficit cannot be characterized as unlawful under the governing statutes (PAL §§ 1205 (1), (7); 1263(9); 1266 (3)). Nor can it otherwise be concluded that the MTA "acted in disregard of statutory standards, in excess of its grant of authority, in violation of due process or in a discriminating manner" (*Lakeland; Sheldon*), based on petitioners' effort to manufacture a legal obligation, where none exists, to present detailed budgetary documents and to propose a budget option (that was not under consideration) that would apply all available funds to 2003, thereby pushing the multi-billion dollar deficit into 2004 (resulting in a much larger fare hike next year). See Caplan Aff. ¶¶ 11-14; Caplan Supp. Aff. ¶¶ 9-18; Respondents' Memorandum of Law (PI) at 10-15.

The MTA's quasi-legislative action, "if at all" subject to judicial review (*McBarnette*), cannot be overturned on this record.

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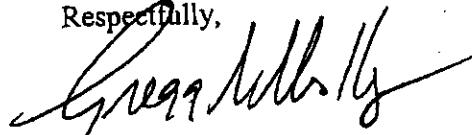
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(2) With respect to the issue of whether petitioner David A. Paterson has standing in his capacity as a legislator, we respectfully refer the Court to *Sheldon Silver, as Member and Speaker of the New York State Assembly v. Pataki*, 96 N.Y.2d 532; 730 N.Y. Supp. 2d 482 (2001). Not only is Mr. Paterson named as a petitioner in his individual capacity (Amed. Pet., Caption and ¶ 2b), but his allegations of injury do not constitute either rationale for legislator standing recognized by the Court of Appeals, i.e., nullification of votes or usurpation of power. *Id.*, 96 N.Y. 2d at 537-42, 730 N.Y. Supp. 2d at 486-90.¹

Respectfully,



Gregg M. Mashberg



Florence Dean

cc (by fax): All Counsel of Record

To ensure completeness of the record, enclosed is an affidavit from Douglas R. Sussman, sworn to May 12, 2003, annexing the "accordion" notice of public hearing that was handed up during the hearing on May 9, and the schematic diagram of the Lawrence Street station that was displayed in Court during the hearing.

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

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**

**IAS Part 2
(Justice York)**

107871/03

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, NEW YORK 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, and XYZ Corps. 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.

AFFIDAVIT OF DOUGLAS R. SUSSMAN

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

DOUGLAS R. SUSSMAN, being duly sworn, deposes and states:

1. I am Deputy Director, Government and Community Relations, Metropolitan Transportation Authority ("MTA"). As part of my official duties, I was responsible for overseeing the dissemination of information and materials in connection with the public hearings held in February 2003 in connection with proposals to increase fares and tolls and close token booths. I am personally familiar with the matters set forth below.
2. Annexed as Exhibit A is what we refer to as the "accordion" notice of public hearings. This document was made available to members of the public who attended each of the ten public hearings, and was provided to anyone who otherwise contacted the MTA requesting information regarding the public hearings.
3. Annexed as Exhibit B is a reduced version of the schematic diagram of the Lawrence Street station, showing the proposed closing of one of the two token booths at that station. The full-size schematic (17" x 11") was posted in the station. This schematic notice is an example of the type of schematic notices that were posted in each of the 177 stations for which token booth closings had originally been proposed. These schematics were bound in a "yellow book" and, like the "accordion" informational material, were made available to members of the public who attended the hearings or otherwise contacted the MTA for information.

Sworn to before me
May 12, 2003


Notary Public

ROGER J. SCHIERA
NOTARY PUBLIC, State of New York
No. 4943788
Qualified in Suffolk County
Commission Expires April 17, 2007



Public Hearing

Notice of Public
Hearings on
Proposed MTA Fare
Increases, Fare
Policy Changes,
Subway Station
Booth Closings, and
Toll Increases



Metropolitan Transportation Authority

ET A

Introduction/Overview

Option A

In November 2002, the MTA published its two-year Financial Plan for 2003 and 2004 in which it projected a combined gross deficit of \$2.8 billion. Numerous internal actions have been identified, including administrative reductions and cost-saving measures such as the closing of some token booths (see details beginning on panel 6 of this brochure) and the elimination of the token, as a means to reduce this deficit to an estimated \$1 billion. This remaining deficit is proposed to be addressed by one of three options described on the next three panels of this brochure, which include combinations of fare and toll increases, service reductions, and/or increased governmental assistance.

Public comments are being solicited on these proposals through a series of hearings throughout the region as noted on the reverse side of this brochure. Comments can also be submitted via email through our website at www.mta.info.

NYC Transit

- Increase the subway, bus, and para-transit base fare from \$1.50 to \$1.75 with an increase in MetroCard® passes such that the average fare would increase by 10% from \$1.04 to \$1.14.
- Increase the one-way Express Bus fare from \$3.00 to \$4.00.
- Reduce weekend bus and subway service by 10% and reduce weekday service by 2%.

Long Island Rail Road/ Metro-North Railroad

- Increase commuter rail fares by 10%.
- Provide discounts from base fare for rail tickets purchased on the web or through Mail&Ride.
- Cut 33 peak and off-peak trains.
- Close certain waiting rooms.
- Reduce frequency of train cleaning.

Long Island Bus

- Increase base fare from \$1.50 to \$1.75 with an increase in MetroCard passes such that the average fare would increase by 10% from \$1.04 to \$1.14.
- Increase Able-Ride paratransit fare from \$3.00 to \$4.00.

Bridges and Tunnels

- Increase tolls by \$0.25 in each direction.

Other

- Obtain increased governmental assistance in 2004 from the State and/or localities within the MTA service area.

Option B

NYC Transit

- Increase the subway, bus, and para-transit base fare from \$1.50 to \$2.00 with an increase in MetroCard passes such that the average fare would increase by 20% from \$1.04 to \$1.25.
- Increase the one-way Express Bus fare from \$3.00 to \$4.00.

Long Island Rail Road/ Metro-North Railroad

- Increase commuter rail fares by 20%.
- Provide discounts from base fare for rail tickets purchased on the web or through Mail&Ride.

Long Island Bus

- Increase base fare from \$1.50 to \$2.00 with an increase in MetroCard passes such that the average fare would increase by 20% from \$1.04 to \$1.25.
- Increase Able-Ride paratransit fare from \$3.00 to \$4.00.

Bridges and Tunnels

- Increase tolls by \$0.50 in each direction.

Other

- Obtain increased governmental assistance in 2004 from the State and/or localities within the MTA service area.

Option C**Proposed Station Booth Closings**

As part of the MTA's internal cost-savings effort, New York City Transit proposes closing certain subway station booths.

- Increase the subway, bus, and para-transit base fare from \$1.50 to \$2.00 with an increase in MetroCard passes such that the average fare would increase by 33% from \$1.04 to \$1.39.
- Increase the one-way Express Bus fare from \$3.00 to \$4.00.

Long Island Rail Road/Metro-North Railroad

- Increase commuter rail fares by 33%.
- Provide discounts from base fare for rail tickets purchased on the web or through Mail & Ride.

- Increase the subway, bus, and para-transit base fare from \$1.50 to \$2.00 with an increase in MetroCard passes such that the average fare would increase by 33% from \$1.04 to \$1.39.
- Increase Able-Ride paratransit fare from \$3.00 to \$4.00.

Bridges and Tunnels

- Increase tolls by \$0.50 in each direction.

Prospect Avenue (R315)
Simpson Street (R317)

15th Street-Prospect Pk (N541)

18th Avenue (N550)

22nd Avenue-Bay Pkwy (D11)

25th Street (C17)

59th Street (C22)

86th Street (C26)

95th Street (C28)

Avenue N (N554)

Bedford-Nostrand Avenues (N418)

Bergen Street (N531 & N533)

Bergen Street (R618)

Brighton Beach (E31)

Carroll Street (N534)

Church Avenue (N545)

Clinton-Washington Avenues (N112A)

Church Avenue (B15)

Court Street (C1)

Ditmas Avenue (N547)

Flatbush Avenue (R646 & R647)

G

Flushing Avenue (N414A)

G

Franklin Avenue (N113)

G

Ft. Hamilton Pkwy (D4)

F

Ft. Hamilton Pkwy (N544)

F

Graham Avenue (H14)

J

Grand Street (H16)

J

Greenpoint Avenue (N403)

J

Halsey Street (H30)

L

High Street (N101)

C

Hoyt Street (R605)

C

Kings Highway (B23)

O

Kings Highway (N558)

C

Kings Highway (N118)

R

Lawrence Street (C4)

L

Lorimer Street (H12)

J

Marcy Avenue (J2)

J

Myrtle-Willoughby Avenues (N416)

G

Myrtle-Wyckoff Avenues (H27)

L

BROOKLYN

15th Street-Prospect Pk (N541)

18th Avenue (N550)

22nd Avenue-Bay Pkwy (D11)

25th Street (C17)

59th Street (C22)

86th Street (C26)

95th Street (C28)

Avenue N (N554)

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Church Avenue (N545)

Clinton-Washington Avenues (N112A)

Church Avenue (B15)

C

Church Avenue (N547)

L

Dimas Avenue (N547)

L

Flatbush Avenue (R646 & R647)

L

Flushung Avenue (N414A)

L

Franklin Avenue (N113)

L

Ft. Hamilton Pkwy (D4)

L

Ft. Hamilton Pkwy (N544)

L

Graham Avenue (H14)

L

Grand Street (H16)

L

Greenpoint Avenue (N403)

L

Halsey Street (H30)

L

High Street (N101)

L

Hoyt Street (R605)

L

Kings Highway (B23)

L

Kings Highway (N558)

L

Kings Highway (N118)

L

Lawrence Street (C4)

L

Lorimer Street (H12)

L

Marcy Avenue (J2)

L

Myrtle-Willoughby Avenues (N416)

L

Myrtle-Wyckoff Avenues (H27)

L

New Utrecht Avenue (D6).....	N	G	
Newkirk Avenue (R644).....	2	7	
Nostrand Avenue (N117).....	C	R	
Ocean Pkwy (B34).....	Q	R	
Prospect Avenue (C15)	R	E	
Rockaway Avenue (N123B).....	C	7	
Sheepshead Bay (B28).....	Q	4	
Union Street (C11).....	R	2	
Utica Avenue (N120A).....	C	F	
Utica Avenue (R625).....	4	F	
West 8th Street (G15).....	C	C	
16th Street (R303).....	3	4	
125th Street (N25).....	A	46th Street (R520).....	7
125th Street (R305).....	3	63rd Drive (N330C).....	R
135th Street (N22 & N23).....	C	67th Avenue (N332).....	R
135th Street (R307).....	3	71st-Continental Av (N333 & N333B).....	E
137th Street (R175).....	1	74th Street-Broadway (R525).....	7
145th Street (R177).....	1	80th Street-Hudson (N130).....	F
157th Street (R179).....	1	111th Street (N138).....	2
168th Street (N12).....	A	169th Street (N340).....	F
175th Street (N11).....	A	179th Street (N342).....	F
207th Street (N11).....	A	Northern Blvd (N319).....	C
Broad Street (A84 & A85).....	T	Parsons Blvd (N339).....	F
B'way-Lafayette Street (N519A).....	F	Parsons-Archer (N607).....	E
Canal Street (N90).....	A	Queens Plaza (N310).....	E
Canal Street (R120).....	1	Rockaway Blvd (N135).....	A
Chambers Street (A69 & A71).....	J	Roosevelt Avenue (N323).....	E
Chambers Street (N9).....	A	Steinway Street (N314).....	G
Christopher Street (R126).....	4	Sulphur Blvd (N338).....	F
Cortlandt Street (A51, A52, & A53).....	R	Union Tpk (N335).....	E
Delancey Street (N526).....	C	Vernon Blvd-Jackson Av (R503 & R506).....	7
East Broadway (N52R).....	1	Woodhaven Blvd (J32).....	P
Franklin Street (R118).....	1	Woodhaven Blvd (N329A).....	P
Fulton Street (A81 & A82).....	1		
Fulton Street (R208).....	4		
Grand Central (R237B).....	6		
Houston Street (R121, R122, & R124).....	1		
Lexington Avenue (N305A).....	C		
Prince Street (A42).....	R		
Rector Street (A55).....	R		
Rector Street (R102).....	1		
Rocketeller Center (N501A).....	F		
Second Avenue (N521).....	F		
Spring Street (N87).....	C		
Spring Street (R216).....	R		
Times Square (R153).....	S		
Union Square (A33).....	P		
Wall Street (R203A & R204A).....	1		
QUEENS			
33rd Street (R517).....	7		
36th Street (N311).....	G		

Fare Increase Information — MTA Long Island Rail Road and MTA Metro-North Railroad
For detailed information about proposed fare increases and zone changes for MTA Long Island Rail Road and MTA Metro-North Railroad, visit the MTA website, www.mta.info.

MTA Bridges and Tunnels — Toll Increases and E-ZPass™ Discounts
MTA Bridges and Tunnels will continue to offer discounts to E-ZPass tag holders. For additional information about proposed toll increases and discounts, visit the MTA website, www.mta.info.

 Registration to speak will be open until 8 p.m. on the dates of the hearings. You may speak on any financial plan proposal at any of these public hearings. Verbal testimony is limited to three (3) minutes for each speaker.

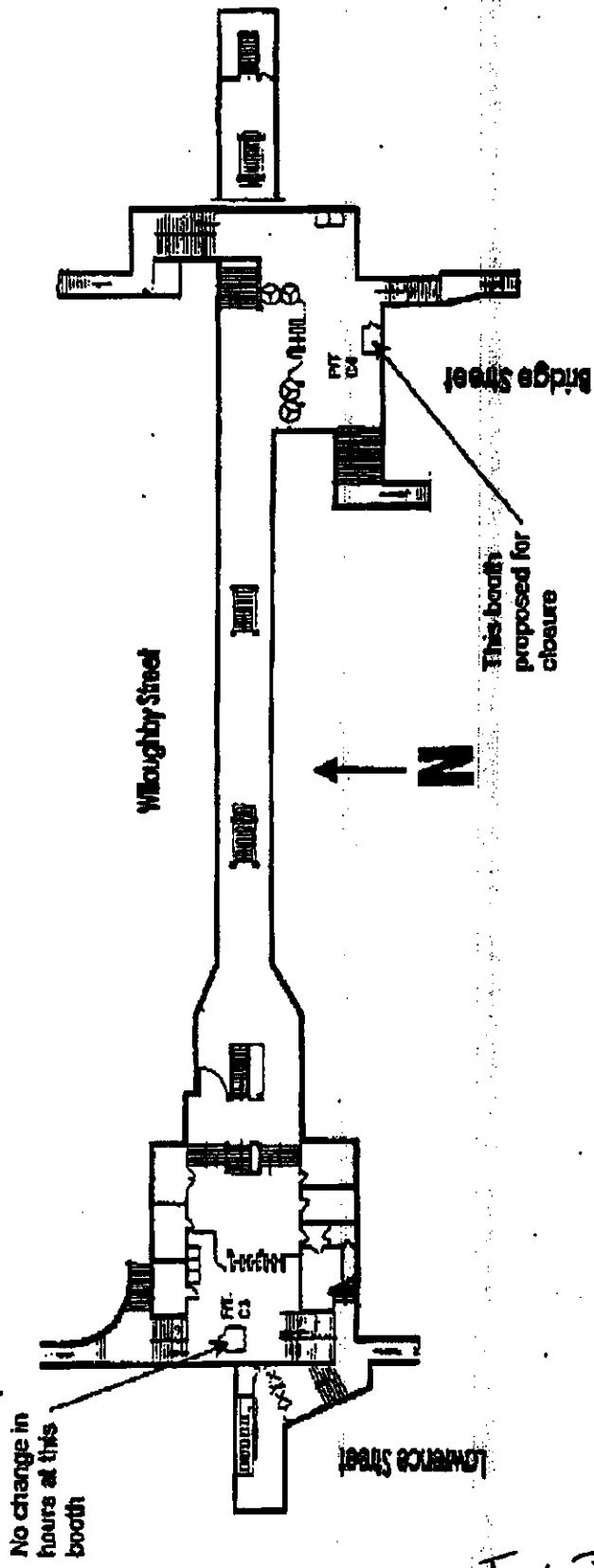
For more information on the MTA Financial Plan, or to register to speak in advance of the public hearings, please contact: Douglas Sussman, Deputy Director, MTA Government and Community Relations, 347 Madison Avenue, New York, NY 10017, 212-878-7483.

Customers may also comment on the MTA Financial Plan on the MTA website, www.mta.info. All public hearing locations are accessible to the mobility-impaired. Interpreter services will be available for the hearing-impaired.

Lawrence Street

New York City Transit

Borough: Brooklyn



Current Operation

- C3: 24 hour agent approximately 212 feet from C4
- C4: Part-time agent 4:00 pm to 6:30 pm Mon-Fri
- Access hours: 7:20 am to 9:20 pm Mon-Fri, 7:00 am to 10:00 pm Sat, Sun & Hol.

- Existing equipment:
2 MVM's, 2 HEET's, 2 HXT's

Proposed Operation

- Close part-time booth C4
- Close related turnstiles
- Automated access: 24 hours, all days

<input checked="" type="checkbox"/>	Part-time agent booth		High Entrance/Exit Turnstile (HEET)
<input type="checkbox"/>	Full-time agent booth		High Exit Turnstile (HXT)
<input type="checkbox"/>	Stairway		MetroCard Vending Machine (MVM)

 Lawrence Street 