

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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SENATOR ELIZABETH O'C. LITTLE, SENATOR  
PATRICK GALLIVAN, SENATOR PATRICIA  
RITCHIE, SENATOR JAMES SEWARD, SENATOR  
GEORGE MAZIARZ, SENATOR CATHARINE  
YOUNG, SENATOR JOSEPH GRIFFO, SENATOR  
STEPHEN M. SALAND, SENATOR THOMAS  
O'MARA, JAMES PATTERSON, JOHN MILLS,  
WILLIAM NELSON, ROBERT FERRIS, WAYNE  
SPEENBURGH, DAVID CALLARD, WAYNE  
McMASTER, BRIAN SCALA, PETER TORTORICI,

*Plaintiffs,*

-against-

NEW YORK LEGISLATIVE TASK FORCE ON  
DEMOGRAPHIC RESEARCH AND  
REAPPORTIONMENT, and NEW YORK STATE  
DEPARTMENT OF CORRECTIONS,

*Defendants.*

-and-

MICHAEL BAILEY, ROBERT BALLAN, JUDITH  
BRINK, TEDRA COBB, FREDERICK A. EDMOND  
III, MELVIN FAULKNER, DANIEL  
JENKINSROBERT KESSLER, STEVEN  
MANGUAL, EDWARD MULRAINE, CHRISTINE  
PARKER, PAMELA PAYNE, DIVINE PRYOR,  
TABITHA SIELOFF, AND GRETCHEN STEVENS,

*Defendants-Intervenors.*

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

ROBERT L. MEGNA, being duly sworn, deposes and says:

**AFFIDAVIT OF  
ROBERT L. MEGNA**

Index No. 2310-11

Hon. Eugene P. Devine,  
J.S.C.

1. I am Budget Director of the New York State Division of the Budget (the "Division"), and I have served in such capacity since May, 2009. From January 2008 until I became Director of the Budget, I served as the Commissioner of Taxation and Finance for the State of New York. During my career, I have also worked as the Chief of the Economic and Revenue Unit of the Division and as the Director of Fiscal Studies at the Ways and Means Committee of the New York State Assembly, amongst other positions.

2. As Director of the Budget, I exercise all of the powers and duties conferred upon me by New York State law. Among other responsibilities, I am vested by Executive Law Section 180 with the duty to assist the Governor in formulating the Executive Budget and coordinating and supervising the State's expenditures and fiscal operations. As Budget Director I oversee the formulation and drafting of the various types of bills related to New York State's budget.

3. I make this affidavit in opposition to the Plaintiffs' motion for summary judgment and in support of Defendants' motion for summary judgment.

4. To begin, Article VII, § 3 states "At the time of submitting the budget to the legislature the governor shall submit a bill or bills containing all the proposed appropriations and reappropriations included in the budget and the proposed legislation, if any, recommended therein." Accordingly, Article VII, § 3 distinguishes between (1) "a bill or bills containing all the proposed appropriations and reappropriations included in the budget," and (2) "the proposed legislation, if any, recommended

therein". The first category generally constitutes what are called "appropriation bills,"<sup>1</sup> and the second category constitutes what are generally called "Article VII bills" or "non-appropriation" bills. (For purposes of simplicity I shall refer herein to the second category of bills as "non-appropriation bills").

5. Article VII, section 3 does not limit the "proposed legislation" that the governor may submit (non-appropriation bills) to revenue measures. Therefore, in addition to revenue measures, non-appropriation bills may and do every year contain proposals that require changes to permanent law, and proposals that do not relate exclusively to a specific budget year appropriation.

6. Article VII, § 4 places limitations on the Legislature's ability to alter appropriation bills<sup>2</sup>. However, those limitations exclusively apply to an appropriation bill; by contrast, non-appropriation bills can be--and often are--freely amended by the Legislature just as any other general bill can be amended, provided that such amendments do not alter an appropriation bill.

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1 The Division's website defines "appropriation" as a statutory authorization against which expenditures may be made during a specific State fiscal year, and from which disbursements may be made, for the purposes designated, up to the stated amount of the appropriation.

2 Article VII, section 4 states in relevant part: "The legislature may not alter **an appropriation bill** submitted by the governor except to strike out or reduce items therein, but it may add thereto items of appropriation provided that such additions are stated separately and distinctly from the original items of the bill and refer each to a single object or purpose." (emphasis added).

7. Article VII, § 6<sup>3</sup>, referred to by the Plaintiffs as the "anti-rider clause," also has been raised as an issue in this litigation. Like § 4 of Article VII, § 6 of Article VII is applicable only to appropriation bills, and not to non-appropriation bills.

8. Chapter 57 of the Laws of 2010 was a non-appropriation bill, and does not contain an appropriation. Accordingly, the Legislature was free to amend it and, in fact, did amend it.

9. Attachment A to this Affidavit is a non-appropriation bill (S. 6610-A/A.9710-A) that was submitted by the Governor, which includes all of the Governor's amendments to his original submission pursuant to the 30-day amendment process described in Article VII, section 3 of the State Constitution. This bill does not contain the provisions set forth in Part XX of Chapter 57 of the Laws of 2010 (referred to by Plaintiffs as "Section XX").

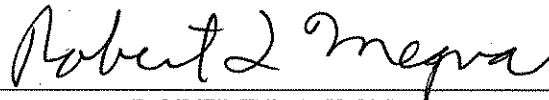
10. Attachment B to this Affidavit is S.6610-C/A.9710-D, which contains amendments made by the Legislature at its discretion to the bill submitted by the Governor set forth in Attachment A. The amendments made by the Legislature to the Governor's non-appropriation bill submission included the addition of Part XX, as shown in Attachment B. This was the non-appropriation bill that ultimately was voted into law as Chapter 57 of the Laws of 2010.

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<sup>3</sup> That clause states, in relevant part: "No provision shall be embraced in **any appropriation bill** submitted by the governor or in such supplemental appropriation bill unless it relates specifically to some particular appropriation in the bill, and any such provision shall be limited in its operation to such appropriation." Article VII, § 6 (emphasis added).

11. Plaintiffs also claim that Part XX was contained within "a budget extender that appropriated funds to permit the State government to continue operating." Compl., ¶ 96. That claim is incorrect: As stated above, Chapter 57 of the Laws of 2010 was not an appropriation bill, nor were there provisions within that legislation that appropriated any funds. In fact, all appropriation bills for State fiscal year 2010/2011 had already been enacted prior to the enactment of Chapter 57 of the Laws of 2010 (which was signed by the Governor on August 11, 2010).

Dated: Albany, New York  
August 12, 2011



ROBERT L. MEGNA

Sworn to before me on the  
12<sup>th</sup> day of August 2011



Notary Public

SYLVIA MLYNARSKA  
Notary Public - State of New York  
No. 01ML6134668  
Qualified in Albany County  
My Commission Expires October 3, 2013

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