

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 JENKINS, ROBERT  
KESSLER, STEVEN MANGUAL, EDWARD  
MULRAINE, CHRISTINE PARKER, PAMELA  
PAYNE, DIVINE PRYOR,  
TABITHA SIELOFF, AND GRETCHEN STEVENS,  
*Defendants-Interveners.*

**AFFIDAVIT OF  
JOSEPH F. PENNISI**

Index No. 2310-11

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

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

JOSEPH F. PENNISI, being duly sworn, deposes and says:

1. I, JOSEPH F. PENNISI, am employed as Secretary to the Senate Finance Committee Minority, in the New York State Senate. I have served in this position since January 2011. Prior to that I was Secretary to the Senate Finance Committee Majority from October 2009 to December 31, 2010. The Secretaries to the Finance Committee are the chief fiscal advisers to their respective conferences. Both secretaries are involved in negotiating the state budget and providing information to Senators and their staffs on the fiscal impact of all proposed legislation. Both secretaries and their staff provide information to their conference members on budget issues.
2. I am fully familiar with the facts and circumstances related to the above-entitled action. I make this affidavit in opposition to the Plaintiffs' verified complaint and their motion for summary judgment, and in support of Defendants' motion for summary judgment in this action.
3. In the above-entitled action, nine New York State Senators, and nine of their constituents, challenge the constitutionality of Part XX of Chapter 57 of the Laws of 2010 ("Part XX"), which was approved by the Legislature and the Governor, and is now codified as New York Correction Law § 71(8) and New York Legislative Law § 83-m(13). This legislation requires that--for purposes of redistricting of the New York Legislature--persons confined to New York State prisons are not to be counted as residing in their prison locations, but instead are to be counted among those in the communities where they lived prior to their incarceration.
4. In Plaintiffs' Second Cause of Action, Plaintiffs seek a declaratory judgment stating that Part XX is void because, according to plaintiffs, it was included in an appropriation bill in

violation of §§ 4 and 6 of Article VII of the New York State Constitution, thereby unconstitutionally restricting the Legislature's authority to modify Part XX. *See* Compl., ¶¶ 95-139. As will be explained below, however, Part XX was contained within a "non-appropriation bill" that the Legislature was able to amend, and, in fact, did amend.

5. Article VII, § 3 distinguishes between (1) "bill or bills containing all the proposed appropriations and reappropriations included in the budget and (2) "the proposed legislation, if any, recommended therein." Article VII, § 3. The first category constitutes what are called "appropriation bills," and the second category constitutes what are generally called "non-appropriation bills" and includes "revenue bills."
6. Appropriation bills have constitutional restrictions imposed upon them that non-appropriation bills do not. Specifically, the "no-alteration clause," contained in Article VII, § 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." Article VII, § 4 (emphasis added). Additionally, Article VII, § 6, often called the "anti-rider 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).

7. Both § 4 and § 6 of Article VII are applicable only to appropriation bills, they are not applicable to non-appropriation bills such as Chapter 57 of the Laws of 2010 which contained Part XX. *See, e.g.,* Compl., ¶¶ 104-05.
8. Part XX was part of a non-appropriation, revenue bill, and therefore, when it came to a vote, the Legislature was free to approve, disapprove, or amend it. Stated differently, the Legislature was completely unencumbered by Article VII, §§ 4 and 6 when it dealt with the legislation that became Chapter 57 of the Laws of 2010.
9. Because a non-appropriation bill like that which contained Part XX did not have any restrictions imposed by Article VII, §§ 4 or 6, it could have been freely amended by the Legislature just as any other general bill could be amended. According to the Senate's Rules in the 2009-2010 session, a general bill in the Senate could have been amended as follows: "A non-sponsor may move to amend a bill at any time prior to the completion of its third reading provided that at least two hours before the time for the Senate to convene, a copy of the proposed amendment or amendments to any bill on the list of bills compiled under subdivision a of section six of this Rule has been served upon the sponsor of the bill, and filed with the Journal Clerk." 2009-2010 Rules of the Senate of the State of New York, Rule IX, § 4. A complete copy of the 2009-2010 Rules of the Senate of the State of New York is attached hereto as **Exhibit A**.
10. In fact, the Legislature approved the legislation that became Chapter 57 of the Laws of 2010 only after it was amended. Attached hereto as **Exhibit B** is a printout of the legislative history of Assembly Bill 9710-D/Senate Bill 6610-C (hereafter "A9710-D/S6610-C"), which is the legislation that became Chapter 57 of the Laws of 2010. This legislative history shows

that, after being referred to the Assembly Ways and Means Committee, A9710-D was amended on February 17, 2010, March 24, 2010, June 26, 2010, and June 28, 2010. Exhibit B. Likewise, in the Senate, after being referred to the Finance Committee, S6610-C was amended on February 17, 2010 and June 26, 2010, and then, after being committed to the Rules Committee, it was again amended on June 26, 2010. *Id.*

11. In fact, an exchange that took place during a June 28, 2010 Senate Finance Committee hearing provides further proof that the Legislature had amended S6610-C. There, after the bill was announced, Senator John DeFrancisco, the ranking minority member of the Finance Committee, and the majority counsel of the committee, Joshua A. Ehrlich, had the following exchange:

Senator: ". . . This is a revenue bill?"

Counsel: "Yes."

Senator: "That the Governor proposed?"

Counsel: "It's part, it's one, **its an amended version of his original submission.**"

Senator: "Alright, so **it's the legislative version of the revenue bill?**"

Counsel: "Yes."

I have personally reviewed this exchange, which can be seen on the New York Senate's website at <http://www.nysenate.gov/event/2010/jun/28/finances> (emphasis added). The above quotations constitute an accurate transcription of what was said during that committee hearing. In sum, the Legislature did in fact amend the non-appropriation revenue bill at issue here.

12. Also, attached hereto as **Exhibit C** is a copy of the transcript from the Senate debate on August 3, 2010, the date that the legislation at issue passed in the Senate. This transcript shows that when the bill that contained Part XX -- S6610-C/A9710-D -- came to a vote in the Senate, no member of the Senate even requested to offer an amendment to it. Rather, after minimal debate, the matter simply came to an up or down vote, and the measure was passed by the Senate by a vote of 32 to 28. *See* Exhibit C, pp. 7899-7928. Furthermore, as shown above, the legislative history of the bill proves that it was in fact amended several times in both the Assembly and the Senate before final passage. Exhibit B.
13. Additionally, Plaintiffs' claim that Part XX was contained within "a budget extender that appropriated funds to permit the State government to continue operating", Complt., ¶ 96, is simply incorrect. Chapter 57 of the Laws of 2010 was not part of a "budget extender" that was used to fund the State government. There were no provisions within that legislation that appropriated any funds.
14. In fact, the task of authorizing spending by the State government to enable it to operate during the time period at issue here was accomplished by other pieces of legislation. Specifically, Chapter 50 of the Laws of 2010 (S6600-C/A9700-D) authorized spending for Public Protection and General Government Appropriations, and it was signed by Governor Paterson on June 22, 2010. A complete copy of that legislation is attached hereto as **Exhibit D**.
15. Chapter 53 of the Laws of 2010 (S6603-B/A9703-C) authorized spending for Education, Labor and Family Assistance Appropriations, and it was signed by Governor Paterson on

July 2, 2010, while the Governor's line item vetoes were dated July 7, 2010. A complete copy of that legislation is attached hereto as **Exhibit E**.

16. Chapter 54 of the Laws of 2010 (S6604-B/A9704-C) authorized spending for Health and Mental Hygiene Appropriations, and it was signed by Governor Paterson on July 2, 2010, while the Governor's line item vetoes were dated July 7, 2010. A complete copy of that legislation is attached hereto as **Exhibit F**.

17. Finally, Chapter 55 of the Laws of 2010 (S6605-C/A9705-D) authorized spending for Transportation, Economic Development and Environmental Conservation Budget Appropriations, and it was signed by Governor Paterson on June 22, 2010. A complete copy of that legislation is attached hereto as **Exhibit G**.

18. Thus, all of the appropriations for the support of New York State government were passed by the Legislature and approved by the Governor by July 2, 2010, more than a month prior to the date that the Senate voted on S6610-C /A9710-D, the bill that contained Part XX.

19. An examination of exhibits D through G reveals the distinguishing characteristic of an appropriation bill: those bills always include on the right side of the page the dollar amount of the statutory authorization against which expenditures may be made for the purposes designated, up to the stated amount of the appropriation. Chapter 57 of the Laws of 2010, however, does not include this characteristic. That is simply because this legislation was a non-appropriation bill.

Dated: Albany, New York  
August 18, 2011

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s/  
JOSEPH F. PENNISI

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

\_\_\_\_\_/s/\_\_\_\_\_  
Notary Public