

SUPREME COURT : STATE OF NEW YORK
COUNTY OF ALBANY

LEE BORDELEAU
DANIEL BUCZEK
DEBBIE BUCZEK
ELEANOR M CORCORAN
KENNETH SCHOLZ
MEL THOMPSON
DAPHNE THOMPSON
ROY SCHERRER
COHOCTON WIND WATCH LTD.
JOHN F. TUBRIDY
TIMOTHY JOLDOS
JACOB KERN JR.
MICHAEL KUZMA
DONALD A. PERRY
CHARLES SACKETT
CRYSTAL DEGENHART
DAVE BAILEY
GREG SWITALA
KENNETH P WILLARD
CLIFF CARLSON
RICHARD NAYLON
BOB CONFER
DAVID MANTHIE
SONYA DUSZA
JEFFERY P DANINGBURG

ROBERT SOMMERS
DONALD G. HOBEL
PAUL V. HURLEY
SANDRA L. MASTERSON
ANTHONY J. MANNA
GINNY ROBER
JAMES L. LESCZYNSKI JR.
DOUGLAS W. HALL
KATHLEEN F TORRENCE
WAYNE D. CARLISLE
ROBERT OZZIMO
PAUL O'NEILL
ERIK O'NEILL
JIM BREM
PAULETTE PETERSON
STEVEN MATIASZ
RUS THOMPSON
JUL THOMPSON
BURR DEITZ
DAVE HAND
MICHAEL REBMANN
RAY ROBERTS
RICHARD A. COOPER
ANTHONY MATUSZAK
MIKE WALSH

Plaintiffs,

VERIFIED COMPLAINT

Index No. 6582-08
Date filed and index No. purchased
August 4, 2008

-against-

The STATE OF NEW YORK,
The NEW YORK STATE ASSEMBLY,
The NEW YORK STATE SENATE,
DAVID PATTERSON, individually and as Governor of the State of New York,
DEAN SKELOS, individually and as Majority Leader and Temporary President of the New
York State Senate,
SHELDON SILVER, individually and as Speaker of the New York State Assembly
THOMAS P. DINAPOLI, individually and as Comptroller of the State of New York

AIDA BREWER, individually and as Treasurer of the State of New York,
LAURA L. ANGLIN, individually and as Budget Director of the State of New York,
ADVANCED MICRO DEVICES INC.
AMERICAN AXLE & MANUFACTURING, INC
DELPHI HARRISON
INTERNATIONAL BUSINESS MACHINES CORPORATION
BASS PRO SHOPS OUTDOOR WORLD, LLC
WEST GENESEE HOTEL ASSOCIATES, d/b/a, Hyatt-Regency Buffalo
NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a Empire
State Development Corporation
EMPIRE STATE DEVELOPMENT CORPORATION
ERIE CANAL HARBOR DEVELOPMENT CORPORATION,

Defendants.

“The very magnitude of the illegality cannot serve as its shield.”

--Honorable Matthew Jasen¹

Plaintiff LEE BORDELEAU, by his attorney, JAMES OSTROWSKI, for his complaint, and on behalf of the co-plaintiffs, alleges as follows:

1. This is an action pursuant to the New York State Constitution, the common law, CPLR 3001 and State Finance Law § 123-b for an injunction against the defendants to bar them from distributing or receiving state funds in violation of the New York State Constitution, and for declaratory and other relief.

THE PARTIES

2. On information and belief, the individual plaintiffs are New York state residents, voters and taxpayers residing as indicated in Appendix “A”.

¹ *Wein v. State of New York*, 39 NY2d 136, 159 (1976).

3. COHOCTON WIND WATCH LLC is a limited liability company devoted to protecting the rights of New York citizens against the encroachments of wind companies that seek to take their land through eminent domain and seek special tax breaks and subsidies at their expense.
4. Their members consist of many state taxpayers and their group has a special interest in this case as its goal is to outlaw cash grants to all private business firms including wind companies.
5. On information and belief, each individual plaintiff pays either state sales or income taxes or both.
6. The plaintiffs have standing pursuant to State Finance Law § 123-b and the state constitution.
7. The STATE OF NEW YORK is a state of the United States operating under the New York State Constitution.
8. The New York State Legislature is the state's lawmaking body created by the constitution and made up of the STATE ASSEMBLY and the STATE SENATE.
9. DAVID PATERSON is the Governor of the State of New York.
10. DEAN SKELOS is the Majority Leader and Temporary President of the New York State Senate.
11. SHELDON SILVER is the Speaker of the New York State Assembly.
12. THOMAS P. DINAPOLI is the Comptroller of the State of New York.
13. AIDA BREWER is the Treasurer of the State of New York.
14. LAURA L. ANGLIN is the Budget Director of the State of New York.

15. THOMAS P. DINAPOLI, AIDA BREWER, and LAURA L. ANGLIN, while not decision-makers in the legislative process, are necessary parties to this action among other reasons because they have control over certain of the funds at issue in this case.
16. ADVANCED MICRO DEVICES INC. is a Delaware for-profit private corporation doing business in New York.
17. AMERICAN AXLE & MANUFACTURING, INC. is a Delaware for-profit private corporation doing business in New York.
18. DELPHI HARRISON is a foreign corporation authorized to do business in New York with offices in Lockport, New York.
19. INTERNATIONAL BUSINESS MACHINES CORPORATION is a private, for profit New York corporation.
20. BASS PRO SHOPS OUTDOOR WORLD, LLC is a Missouri limited liability company doing business in New York.
21. WEST GENESEE HOTEL ASSOCIATES, d/b/a, Hyatt-Regency Buffalo, is a limited liability partnership doing business in New York.
22. NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a Empire State Development Corporation, is a not for profit New York corporation and an agency of the State of New York.
23. EMPIRE STATE DEVELOPMENT CORPORATION is a not for profit New York corporation and an agency of the State of New York.
24. ERIE CANAL HARBOR DEVELOPMENT CORPORATION, is a not for profit New York corporation, a subsidiary of the NEW YORK STATE URBAN

DEVELOPMENT CORPORATION and an agency of the State of New York with offices in Buffalo, New York.

FACTUAL ALLEGATIONS

ILLEGAL GIFTS TO PRIVATE FIRMS

25. Prior to 1846, the State of New York provided large loans and grants to private business allegedly for economic development.
26. When many of these projects failed, state taxpayers were left with a fiscally unstable state government and much higher taxes to pay off loan guarantees.
27. To remedy this problem, the state constitution was amended in 1846 to ban loans to private firms.
28. The voters approved the amendment, 221,528 to 92,436.
29. In 1874, the provision was expanded to include a ban on giving the money of the state to private firms.
30. That provision, with slight modifications over the years, became what is now Article VII, § 8, paragraph 1 which states:

“The money of the state shall not be given or loaned to or in aid of any private corporation or association, or private undertaking; nor shall the credit of the state be given or loaned to or in aid of any individual, or public or private corporation or association, or private undertaking, but the foregoing provisions shall not apply to any fund or property now held or which may hereafter be held by the state for educational, mental health or mental retardation purposes.”
31. Paragraphs 1, 2 and 3 of § 8 set forth various exceptions to the general rule banning gifts of state funds to private organizations.

32. None of those exceptions authorizes the gift of state funds for “economic development,” whether those gifts are made directly by the state or through intermediaries.
33. In 1967, a Constitutional Convention whose delegates included eminent legal scholars recommended approval of a new constitution with this substantial revision of the above provision:
- “The state . . . may grant to any person, association or private corporation in any year or periodically by contract, or loan its money for economic and community development purposes. . . the legislature may enact general or special laws for economic and community development purposes. Proposed Constitution, Article X, §12(b), (c).
34. The voters defeated the proposed constitution 3,487,513 to 1,327,999.
35. In the years that have passed, state officials have acted as though the 1967 amendment had become law.
36. For some time, it has been the practice of the State to openly, notoriously and proudly give away state funds for “economic development” and other unauthorized purposes such as promotion of agriculture.
37. The current state budget lists the following unlawful appropriations:
- American Axle—Tonawanda Forge--\$1,000,000
 - Delphi Harrison--\$25,000,000
 - Excell Partners--\$750,000
 - “an international computer chip research and development center”--\$300,000,000 (on information and belief, the intended beneficiary of this grant is Advanced Micro Devices, Inc.).
 - Rochester Rhinos Soccer Stadium--\$5,000,000

- New York state apple growers association--\$750,000
 - New York wine and grape foundation---\$980,000
 - Long Island Wine Council--\$25,000
 - Bronx Business Alliance--\$153,000.
 - Peconic River Sportsman's Club, Inc.--\$3,000.
38. There are well over 100 grants to chambers of commerce, groups that supposedly espouse the principles of free private enterprise.
39. On information and belief, recently a candidate for state legislature in Upstate New York approached a chamber of commerce official for support and was told the group could not support him as they were getting state money from the incumbent.
40. This anecdote illustrates the corrupting influence of corporate welfare in our extraordinarily non-competitive political system.
41. It has also been reported that the Hyatt Hotel in Buffalo (WEST GENESEE HOTEL ASSOCIATES) and INTERNATIONAL BUSINESS MACHINES CORPORATION (IBM) will be receiving large grants from the state budget or from state funds.
42. Though we cannot find such grants in the current state budget and two freedom of information requests to state agencies were ignored, these grants are apparently in that category of grants that are not disclosed in the state budget. (See, paragraphs 57-68 below.)
43. For many years, BASS PRO OUTDOOR WORLD, LLC has been seeking state aid to construct a sporting goods store in downtown Buffalo.

44. Prior deals fell through but clearly contemplated millions of dollars of state aid.
45. A state agency, the ERIE CANAL HARBOR DEVELOPMENT CORPORATION has repeatedly and recently announced its intent to aid Bass Pro in building a new store on the site of the abandoned Memorial Auditorium once the building is demolished.
46. The EMPIRE STATE DEVELOPMENT CORPORATION announced the following grants to private firms in the last four months:
- Frederick Goldman, Inc.-- \$150,000
 - Unifrax I LLC--\$1,500,000
 - \$230,000 - Jamaica Chamber of Commerce
 - \$150,000 - Business Outreach Center Network, Inc.
 - \$100,000 - The Chamber of Commerce in the Borough of Queens
 - Revonate Manufacturing LLC--\$125,000
 - Breton Industries--\$200,000
 - Dunkirk Specialty Steel--\$500,000.
 - Reserve Supply of Central New York, Inc.--\$100,000
 - Marathon Boat Group--\$90,000
 - BSD, LLC--\$97,500
 - Panattoni Development Corporation of New Jersey----\$97,500
 - Klein Steel Service Inc.-- \$100,000
 - Nationwide Precision Products--\$80,000
 - 3 Kids Corp of Middletown - \$187,500 (Middletown)
 - County Draperies, Inc - \$150,000 (Middletown)

- Hannay Reels, Inc. - \$525,000 (Westerlo)
 - American Packaging Corporation--\$150,000
 - Pall Corporation--\$500,000
 - Stella D'oro--\$175,000
 - Starline USA, Inc.--\$275,000
 - \$437,500 to the Bank of New York Mellon Corporation (Onondaga County)
 - \$1.5 million to Sitel (Steuben County)
 - \$325,000 to Kirtas Technologies (Ontario County)
 - Knowlton Technologies, Jefferson County – \$425,000
 - Marietta Corporation, Cortland County – \$575,000
 - \$50,000 to CASP LLC. of Penn Yan (Yates County)
 - \$25,000 to Viking Cives Corporation of Harrisville (Lewis County)
47. On information and belief, these grants are merely illustrative of many more provided in recent years and many others in the process of being considered for approval, all such grants totaling many hundreds of millions of dollars.
48. In 1921, Judge Andrews wrote for the Court of Appeals about the ban on gifts and loans to private firms: “They . . . represent the triumph of efforts to prevent improvidence, to make useless pressure from special interest groups, to safeguard the credit of the state, and the interests of the people as whole.”²
49. Predictably, the results of the flagrant disregard of the constitutional ban on gifts to private firms are precisely that set of evils the original ban was designed to prevent:

² *People v. Westchester County National Bank*, 231 NY 465, 474 (1921).

- high taxes
 - enormous debt
 - a rising deficit
 - economic stagnation, and
 - a state government dominated by special interest groups and oblivious to “the interest of the people as a whole.”
50. To quote Judge Andrews again, “The crushing load of taxation . . . now as then threatens our future. . . “ *Id.* at 474.
51. A perusal of the State Board of Elections website reveals that recipients of state grants tend to be heavy political contributors.
52. For example, a Delphi PAC, on information and belief, related to the defendant DELPHI HARRISON, made numerous donations to candidates in recent years.
53. Paul L. Snyder, on information and belief, the managing partner of WEST GENESEE HOTEL ASSOCIATES, made these donations in recent years:
- 500.00 16-JUN-08 CITIZENS FOR SAM HOYT
 - 250.00 27-APR-07 CITIZENS FOR SCHIMMINGER
 - 5,000.00 14-FEB-08 COLLINS FOR OUR FUTURE
 - 200.00 20-JUL-06 COMMITTEE TO ELECT MAZIARZ STATE SENATE
 - 150.00 08-AUG-06 FRIENDS OF MARK SCHROEDER
 - 150.00 24-MAY-07 FRIENDS OF MARY LOU RATH
 - 500.00 18-JUN-06 MARC A. COPPOLA FOR STATE SENATE
 - 500.00 29-NOV-07 NYS SENATE REPUBLICAN CAMPAIGN COMMITTEE
 - 1,000.00 23-JUN-08 PATERSON FOR GOVERNOR, INC.
 - 1,000.00 11-JUL-08 SENATOR VOLKER CAMPAIGN COMMITTEE
 - 600.00 10-AUG-06 SENATOR VOLKER CAMPAIGN COMMITTEE
 - 500.00 04-OCT-06 SENATOR VOLKER CAMPAIGN COMMITTEE
 - 1,000.00 22-JAN-08 SENATOR VOLKER CAMPAIGN COMMITTEE
54. American Axle gave well over a dozen donations.

55. Governor Paterson recently stated: “In the beginning of May, our budget director projected our New York State deficit over the next three years at \$21.5 billion – that was a record. But things have changed. That number has now erupted to \$26.2 billion – a staggering 22 percent increase in less than 90 days.”
56. Enforcing the constitutional ban on gifts to wealthy private firms is now more than just a legal and moral necessity; it is a *fiscal* necessity.

IMPROPER APPROPRIATION OF FUNDS

57. Article VII, § 7 of the constitution requires that funds paid out of the state treasury be limited to those authorized by “appropriation by law” that “distinctly specif[ies] the sum appropriated, and the object or purpose to which it is to be applied. . . .”
58. However, at numerous places in the state budget, language is used to the effect that the money appropriated will be spent according to some future agreement by the Governor, Speaker and Majority Leader or other officials.
59. Such provisions not only violate the constitution but also promote secrecy, concentrate enormous financial power into the hands of a few, and reduce public accountability for appropriations such as cash grants for wealthy corporations.
60. This language appears at page 751 of the TRANSPORTATION, ECONOMIC DEVELOPMENT AND ENVIRONMENTAL CONSERVATION BUDGET:³
- “The funds made available through this appropriation shall be utilized for the payment of the costs of eligible projects in accordance with a memorandum of understanding entered into between the governor, the majority leader of the senate and the speaker of the assembly, or their designees.”

³ S. 6805—D; A. 9805—D.

61. The same or similar language appears over twenty times in that volume of the budget alone (pp. 234, 235, 745, 765-768, 770-71, 777, 798, 803-4, 806, 823, 831, 839, 841 (3), 842-844, and 846).
62. In certain places in the budget where such language is used, the Majority Leader is replaced by the Temporary President of the Senate.
63. Both offices are currently filled by DEAN SKELOS.
64. All such provisions violate Article VII, § 7 and improperly delegate legislative power away from the Senate and Assembly.
65. Plaintiffs have no adequate remedy or relief in law or in equity, other than the relief herein applied for.
66. There are no administrative remedies that could be exhausted here; such resort would be futile if they did exist; and such exhaustion is not required when the claim is that the acts complained of are clearly unconstitutional.
67. No previous application has been made for the relief sought.
68. Because these are matters of pressing public concern and a calendar preference for resolution of taxpayers' lawsuits is required by the State Finance Law, we ask the Court to grant the annexed order to show cause and order a prompt hearing. See, State Finance Law § 123(c)(4).

FIRST CAUSE OF ACTION—STATE CONSTITUTION—

ARTICLE VII, § 8, paragraph 1

69. The Defendants are giving or receiving or about to give or receive state funds in violation of the state constitutional ban on gifts to private firms or are otherwise necessary parties for the disposition of this proceeding.

70. The Court should enjoin all such expenditures and declare them to be illegal.

SECOND CAUSE OF ACTION--STATE CONSTITUTION—ARTICLE VII, § 7

71. As specified above, the current state budget contains numerous appropriations that violate Article VII, § 7's mandate that funds paid out of the state treasury be limited to those authorized by "appropriation by law" that "distinctly specif[ies] the sum appropriated, and the object or purpose to which it is to be applied. . . ."

72. The Defendants have violated this provision.

73. The Court should enjoin all such expenditures and declare them to be illegal.

THIRD CAUSE OF ACTION--STATE CONSTITUTION—ARTICLE III

74. The Constitution vests all legislative power in the Senate and Assembly.

75. The appropriation of funds is a legislative act.

76. The Senate and Assembly by the aforementioned budget provisions have improperly delegated their legislative powers to other agents and agencies within and without the legislature, worse yet, to *persons unknown*, described as "designees."

DEMAND FOR RELIEF

WHEREFORE, plaintiffs respectfully request that the Court grant the annexed order to show cause and a final judgment granting the relief prayed for herein, including,

1. an order and permanent injunction barring the state defendants from giving state funds to the private defendants or any other private corporation or undertaking similarly situated;
2. an order directing the returns of funds previously transferred to private defendants pursuant to the current state budget or pursuant to action of any public respondent within the last four months, in violation of the state constitution, together with interest;
3. a declaration that it is illegal for any state defendant to transfer state monies to private corporations or firms unless explicitly authorized by one of the three exceptions specified in Article VII;
4. an injunction against any spending resulting from the improper delegation of the legislative power of appropriation to other officials;
5. an injunction against any spending in violation of Article VII, § 7;
6. costs, disbursements and reasonable attorney's fees; and,
7. for such further relief as to the Court may seem just and proper.

Dated: Buffalo, New York
August 4, 2008

JAMES OSTROWSKI
Attorney for Plaintiffs
63 Newport Ave.
Buffalo, New York 14216
(716) 435-8918
jameso@apollo3.com

VERIFICATION

JAMES OSTROWSKI, an attorney at law admitted to practice in this state, affirms under penalties of perjury, that he is attorney for the plaintiffs in this action and that he has read the foregoing complaint and knows the contents thereof, that the same is true to his own knowledge, except as to matters therein stated to be alleged on information and belief, and that as to those matters, he believes them to be true.

He is verifying the complaint because some of his clients are outside the county where he maintains his law office and because the complaint is based primarily on legal and documentary research such as review of the state budget, various constitutional conventions, campaign finance records and internet records of the various defendants and he performed such research himself and is personally familiar with such research.

Dated: Buffalo, New York
 August 4, 2008

JAMES OSTROWSKI