

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

KIMBERLY HURRELL-HARRING; JAMES ADAMS;
JOSEPH BRIGGS; RICKY LEE GLOVER; RICHARD
LOVE; JACQUELINE WINBRONE; LANE
LOYZELLE; TOSHA STEELE; BRUCE
WASHINGTON; SHAWN CHASE; JEMAR JOHNSON;
ROBERT TOMBERELLI; CHRISTOPHER YAW;
LUTHER WOODROW OF BOOKER, JR.; EDWARD
KAMINSKI; JOY METZLER; VICTOR TURNER;
CANDACE BROOKINS; RANDY HABSHI; and
RONALD McINTYRE, on behalf of themselves and all
others similarly situated,

**ANSWER TO SECOND
AMENDED COMPLAINT**

Index No. 8866-07

Devine, J.

Plaintiffs,

-against-

THE STATE OF NEW YORK, GOVERNOR DAVID
PATERSON, in his official capacity, THE COUNTY OF
ONONDAGA, NEW YORK, THE COUNTY OF
ONTARIO, NEW YORK, THE COUNTY OF
SCHUYLER, NEW YORK, THE COUNTY OF
SUFFOLK, NEW YORK and THE COUNTY OF
WASHINGTON, NEW YORK,

Defendants.

Defendants State of New York and Governor Paterson, by their attorney, Andrew M.

Cuomo, Attorney General of the State of New York, David L. Cochran, Assistant Attorney

General, of counsel, answer the second amended complaint as follows:

1. As to the allegations contained in paragraph 36 of the second amended complaint, admit that the State capitol is in Albany, New York, respectfully refer the Court to the applicable State and Federal constitutional authority for a complete description of the State of New York's duties, and deny knowledge or information sufficient to respond to the remaining allegations contained in the paragraph.

2. As to the allegations contained in paragraph 36(a) of the second amended complaint, admit that David Paterson is the Governor of the State of New York, respectfully refer the Court to the applicable constitutional, statutory, regulatory and administrative authority for a complete description of the Governor's duties and responsibilities and deny knowledge or information sufficient to respond to the remaining allegations contained in the paragraph.

3. Denies knowledge or information sufficient to form a belief as to the truth of and, thereby, denies paragraphs 2, 4, 6, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 41, 43, 44, 45, 46, 47, 48, 49, 50, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 97, 98, 99, 100, 101, 102, 103, 104, 105, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 120, 121, 122, 123, 124, 127, 128, 129, 130, 131, 132, 133, 136, 137, 138, 139, 140, 141, 144, 145, 146, 147, 148, 149, 150, 153, 154, 155, 156, 157, 158, 159, 162, 163, 164, 165, 166, 167, 170, 171, 172, 173, 174, 175, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 192, 193, 194, 195, 196, 197, 198, 199, 200, 203, 204, 205, 206, 209, 210, 211, 212, 213, 214, 215, 216, 219, 220, 221, 222, 223, 224, 227, 228, 229, 230, 231, 232, 235, 236, 237, 238, 239, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 253, 254, 264, 265 and 266 of the second amended complaint.

4. Denies the allegations contained in paragraphs 1, 3, 5, 7, 8, 9, 10, 11, 12, 13, 15, 42, 51, 52, 67, 68, 80, 81, 95, 96, 106, 107, 118, 119, 125, 126, 134, 135, 142, 143, 151, 152, 160, 161, 168, 169, 176, 177, 190, 191, 201, 202, 207, 208, 217, 218, 225, 226, 233, 234, 240, 241, 252, 255, 256, 257, 258, 259, 260, 261, 262, 263, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312,

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5. As to paragraph 414 repeats and reiterates the responses to paragraphs 1 through 413 as if fully set forth herein.

6. As to paragraph 416 repeats and reiterates the responses to paragraphs 1 through 415 as if fully set forth herein.

7. As to paragraph 418 repeats and reiterates the responses to paragraphs 1 through 417 as if fully set forth herein.

8. Denies each and every allegation of the complaint not specifically responded to above.

DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

9. Plaintiffs cannot seek declaratory relief in a civil action relating to ongoing criminal cases.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

10. The court lacks subject matter jurisdiction. CPLR 3211(a)(2).

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

11. Plaintiffs lacks standing to challenge the matters that they are attempting to challenge. CPLR 3211(a)(3).

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

12. Plaintiffs have raised these same claims in another pending court action. CPLR 3211(a)(4).

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

13. This action is barred by the principles of *res judicata* and collateral estoppel. CPLR 3211(a)(5).

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

14. Plaintiffs' claims are moot. CPLR 3211(a)(7).

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

15. The claims that plaintiffs make in this action are not justiciable. CPLR 3211(a)(7).

AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE:

16. The complaint fails to state a cause of action. CPLR 3211(a)(7).

AS AND FOR A NINTH AFFIRMATIVE DEFENSE:

17. Plaintiffs has failed to name or obtain jurisdiction over necessary parties and the court should not proceed in the absence of an indispensable party. CPLR 3211(a)(10).

AS AND FOR A TENTH AFFIRMATIVE DEFENSE:

18. The issue raised by the plaintiffs is not ripe for judicial review.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE:

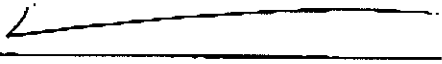
19. Respondent hereby asserts a defense under *Mount Healthy City School District Board of Education v. Doyle*, 429 U.S. 274 (1977), which prevents recovery against a defendant whose decision was in part motivated by some wrongful consideration where the defendant can

show that even in the absence of the wrongful consideration, it would have reached the same decision.

WHEREFORE, Defendants the State of New York and Governor David Paterson respectfully request that the relief requested in the second amended complaint be denied, that the second amended complaint and this action be dismissed and that defendants be awarded costs and disbursements or, together with such other relief as may be just.

Dated: Albany, New York
September 30, 2008

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