

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----)
HON. ANTHONY H. PALUMBO)

Index No.

Plaintiff,)

Hon.)

-against-)

**AFFIRMATION OF URGENCY OF
JAMES M. CATTERSON**

THE NEW YORK STATE SENATE, BRAD
HOYLMAN-SIGAL, NEIL D. BRESLIN,
ANDREW GOUNARDES, JOHN C. LIU,
SHELLEY B. MAYER, ZELNOR MYRIE,
JESSICA RAMOS, SEAN M. RYAN, JAMES
SKOUFIS, TOBY ANN STAVISKY, and
ANDREA STEWART-COUSINS

Defendants.)
-----)

James M. Catterson, an attorney duly admitted to practice law before the Courts of the State of New York, affirms the truth of the following under penalty of perjury pursuant to CPLR § 2106:

1. I am a member of Pillsbury Winthrop Shaw Pittman LLP, attorneys for Plaintiff Hon. Anthony H. Palumbo (hereinafter referred to as “Plaintiff”) in the above-captioned proceeding. I respectfully submit this affirmation of urgency in support of Plaintiff’s complaint, which seeks (1) a declaration that Article VI of the New York State Constitution requires a full floor vote on a judicial nomination to the Court of Appeals, (2) a declaration that Section 68 of the Judiciary Law requires a full floor vote on a judicial nomination to the Court of Appeals, and (3) a declaration that Public Officers Law § 7 requires a letter from the President of the Senate.

2. The urgency of this matter is evident, given the constitutional prescription of seven judges of the Court of Appeals and the New York State Senate’s constitutional and statutory obligations.

3. The facts related to the underlying case are set out at length in the complaint.

4. The Chief Judge seat has been empty for over five months, after former Chief Judge Janet DiFiore resigned under the cloud of an ethics investigation, effective on August 31, 2022.

5. In short, on December 22, 2022, in accord with constitutionally prescribed process and in response to the list of seven nominees put forth by the Commission on Judicial Nomination, Governor Kathy Hochul nominated Justice LaSalle as Chief Judge of the New York State Court of Appeals.

6. On January 18, 2023, the Judiciary Committee of the New York State Senate voted 10-9 against recommending Justice LaSalle's nomination to the full Senate. Consequently, Justice LaSalle's nomination has neither been confirmed nor rejected in accordance with the procedures required by the New York State Constitution, Judiciary Law, and Public Officers Law.

7. To date, the Clerk of the Court of Appeals has not issued a certificate of vacancy, and, consequently, there is a clear and immediate controversy causing uncertainty and instability at the highest level of the New York State court system.

8. As set forth more fully in the complaint, the failure to send the nomination for a full floor vote violates Article VI of the New York Constitution and the Judiciary Law.

9. Article VI specifically mandates that the Court of Appeals comprise seven judges: "the chief judge and six elected associate judges." Art. VI, § 2(a).

10. If the Senate were not required to hold a floor vote on an appointee, and the nomination were not withdrawn for a period of time, as here, the Court would have six judges, fewer than the seven judges required by the Constitution—or perhaps even fewer if the process were to repeat itself.

11. It is axiomatic that a six-member Court is prone to, and inevitably will result in, deadlock. Such deadlock requires a seventh justice to be vouched from the Appellate Division in by Acting Chief Judge Anthony Cannataro, which would both give Judge Cannataro— or any acting Chief Judge— undue influence in the outcome of the cases and potentially require litigants to reargue any such deadlocked cases.

12. Article VI of the Constitution and Judiciary Law Section 68 both make plain that nothing short of a vote of the entire Senate fulfills the body’s constitutional obligations.

13. Article VI specifically provides that “[t]he governor shall appoint, with the advice and consent of the senate, from among those recommended by the judicial nominating commission, a person to fill the office of chief judge.”

14. As set forth more fully in the complaint, “advice and consent” requires a vote of the entire sixty three-member Senate, not the nineteen members of the Judiciary Committee.

15. Moreover, the Constitution plainly requires that any interim appointment—*i.e.*, one put forth by the Governor when the Senate is not in session—must be “pass[ed]” upon by the full Senate. It would undoubtedly create an absurd result and invite mischief to require a full floor vote for interim appointees but not in-session appointees.

16. Additionally, section 68 of the Judiciary Law, which was enacted contemporaneously with the amendments to Article VI of the Constitution to implement its mandates, similarly requires that “[t]he senate shall confirm or reject [the governor’s] appointment no later than thirty days after receipt of the nomination from the governor.” Judiciary Law § 68(4).

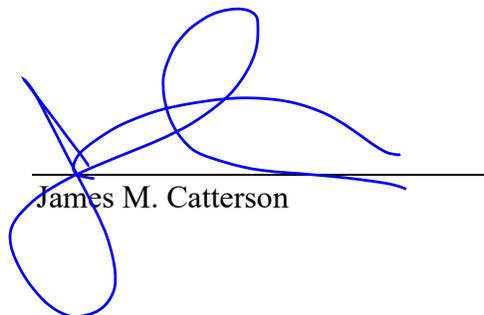
17. It cannot be the case that a small subset of senators can determine the next Chief Judge of the Court of Appeals, particularly where the size of the Judiciary Committee is a matter of Senate rules rather than any statutory or constitutional obligations.

18. Accordingly, for the reasons set forth above, as well as in the Complaint, Plaintiff respectfully requests that the Court immediately set an expedited briefing schedule and decide this case on an expedited basis, as set forth in the order to show cause.

19. No hearing is required, as this case presents pure questions of law under the New York State Constitution, Judiciary Law, and Public Officers Law.

20. No prior application has been made for the relief sought herein.

Dated: February 9, 2023
New York, New York

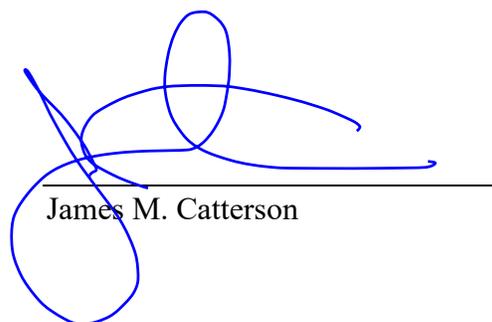


James M. Catterson

WORD COUNT CERTIFICATION

Pursuant to Rule 17 of the Uniform Rules for the Supreme Court and County Court, 22 NYCRR 202.8-b(b), I, James M. Catterson, certify that the foregoing Affirmation of Urgency complies with the word count limit, as it contains 859 words based on Microsoft Word's word processing software.

Dated: New York, New York
February 9, 2023



James M. Catterson