SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

HON. ANTHONY H. PALUMBO Plaintiff, -against- THE NEW YORK STATE SENATE, BRAD HOYLMAN-SIGAL, NEIL D. BRESLIN, ANDREW GOUNARDES, JOHN C. LIU, SHELLEY B. MAYER, ZELLNOR MYRIE, JESSICA RAMOS, SEAN M. RYAN, JAMES SKOUFIS, TOBY ANN STAVISKY, and ANDREA STEWART-COUSINS Defendants.	Index No. Hon. **COMPLAINT**

Plaintiff Hon. Anthony H. Palumbo (hereinafter referred to as "Plaintiff") by and through his undersigned attorneys, submits this Complaint against Defendants The New York State Senate, Brad Hoylman-Sigal, Neil D. Breslin, Andrew Gounardes, John C. Liu, Shelley B. Mayer, Zellnor Myrie, Jessica Ramos, Sean M. Ryan, James Skoufis, Toby Ann Stavisky, and Andrea Stewart-Cousins (hereinafter collectively referred to as "Defendants") and hereby alleges as follows:

NATURE OF THE ACTION

1. On December 22, 2022, after considering the seven nominees put forth by the Commission on Judicial Nomination (hereinafter referred to as the "Commission"), Governor Kathy Hochul nominated Hon. Hector D. LaSalle, Presiding Justice of the Appellate Division, Second Department, for Chief Judge of the New York State Court of Appeals.

2. On January 18, 2023, the New York State Senate Judiciary Committee (hereinafter referred to as the "Judiciary Committee") voted 10-9 against sending Justice LaSalle's nomination to the full Senate for a vote.

3. "It is basic that 'an act of the legislature is the voice of the People speaking through their representatives. The authority of the representatives or the legislature is a delegated authority and it is wholly derived from and dependent upon the Constitution.'" New York State Bankers Ass'n v. Wetzler, 81 N.Y.2d 98, 102 (1993), quoting Matter of Sherrill v. O'Brien, 188 N.Y. 185, 199 (1907).

4. As set forth below, Article VI of the New York State Constitution (hereinafter referred to as the "Constitution") requires that the Senate hold a floor vote to confirm or reject an appointment for the Court of Appeals by the governor. A vote of a mere committee of the Senate—here, the Judiciary Committee—does not satisfy the constitutional requirement of advice and consent. The Constitution does not delegate that authority to a committee.

5. Pursuant to the Constitution, the entire 63-member Senate must be given the opportunity to vote on Justice LaSalle's nomination. Consequently, Plaintiff seeks a declaratory judgment that the Senate be required to bring Justice LaSalle's nomination to the floor for a vote.

THE PARTIES

6. Plaintiff Hon. Anthony Palumbo (hereinafter referred to as "Sen. Palumbo") is a New York State Senator representing the 1st Senate District, which is located in Suffolk County and covers the Towns of East Hampton, Southold, Shelter Island, Southampton, Riverhead, and parts of the Town of Brookhaven. Sen. Palumbo is a resident of New Suffolk, New York and serves as the ranking member of the Judiciary Committee. He voted to advance the nomination to the full Senate without recommendation.

7. Hon. Hector D. LaSalle (hereinafter referred to as "Justice LaSalle") currently serves as the Presiding Justice of the Appellate Division, Second Department. On December 22, 2022, Justice LaSalle was nominated by Governor Kathy Hochul to be the Chief Judge of the Court of Appeals.

8. Defendant The New York State Senate is one of the two houses of the New York State Legislature. Pursuant to the Constitution, it is responsible for, *inter alia*, voting on gubernatorial nominees, including the Chief Judge of the Court of Appeals.

9. Defendant Brad Hoylman-Sigal is a New York State Senator representing the 47th Senate District. Defendant Hoylman-Sigal is the committee chair of the Judiciary Committee and voted not to advance the nomination to the full Senate.

10. Defendant Neil D. Breslin is a New York State Senator representing the 46th Senate District. Defendant Breslin is a member of the Judiciary Committee and voted not to advance the nomination to the full Senate.

11. Defendant Andrew Gounardes is a New York State Senator representing the 26th Senate District. Defendant Gounardes is a member of the Judiciary Committee and voted not to advance the nomination to the full Senate.

12. Defendant John C. Liu is a New York State Senator representing the 16th Senate District. Defendant Liu is a member of the Judiciary Committee and voted not to advance the nomination to the full Senate.

13. Defendant Shelley B. Mayer is a New York State Senator representing the 37th Senate District. Defendant Mayer is a member of the Judiciary Committee and voted not to advance the nomination to the full Senate.

14. Defendant Zellnor Myrie is a New York State Senator representing the 20th Senate District. Defendant Myrie is a member of the Judiciary Committee and voted not to advance the nomination to the full Senate.

15. Defendant Jessica Ramos is a New York State Senator representing the 13th Senate District. Defendant Ramos is a member of the Judiciary Committee and voted not to advance the nomination to the full Senate.

16. Defendant Sean M. Ryan is a New York State Senator representing the 61st Senate District. Defendant Ryan is a member of the Judiciary Committee and voted not to advance the nomination to the full Senate.

17. Defendant James Skoufis is a New York State Senator representing the 42nd Senate District. Defendant Skoufis is a member of the Judiciary Committee and voted not to advance the nomination to the full Senate.

18. Defendant Toby Ann Stavisky is a New York State Senator representing the 11th Senate District. Defendant Stavisky is a member of the Judiciary Committee and voted not to advance the nomination to the full Senate.

19. Defendant Andrea Stewart-Cousins is the President Pro Tempore and Majority Leader of the New York State Senate, representing the 35th Senate District. Defendant Stewart-Cousins signed the letter to Governor Hochul purporting to reject Justice LaSalle's nomination.

JURISDICTION AND VENUE

20. This Court has jurisdiction pursuant to, *inter alia*, CPLR §§ 301 and 302. Defendants are each a citizen of the State of New York.

21. Venue is proper pursuant to CPLR § 503 because Plaintiff Anthony Palumbo resides in this County.

FACTUAL ALLEGATIONS

The Constitution

22. New York enacted its first state constitution on April 20, 1777 after the Constitutional Convention of 1776-1777, replacing the colonial charter. Subsequent constitutions were adopted in 1821, 1846, and 1894. A ninth constitutional convention was held in 1938 at which significant amendments to the 1895 constitution were proposed and, after a popular vote held on November 8, 1938, largely adopted.

23. Article VI of the Constitution, concerning the judiciary, was adopted in November 1961, repealing and replacing the previous Article VI, which was adopted in November 1925.[1]

24. Article VI, section 1(a) provides that "[t]here shall be a unified court system for the state. The statewide courts shall consist of the court of appeals, the supreme court including the appellate divisions thereof, the court of claims, the county court, the surrogate's court and the family court, as hereinafter provided."

25. Section 2, entitled "Court of appeals; organization; designations; vacancies, how filled; commission on judicial nomination," prescribes, *inter alia*, the process by which Court of Appeals vacancies are filled.

26. Subdivision 2(a), as amended in 1977, dictates the composition of the Court and term limits for the judges: "[i]t shall consist of the chief judge and the six elected associate judges now in office, who shall hold their offices until the expiration of their respective terms, and their successors, and such justices of the supreme court as may be designated for service in

[1] The 1938 vote to amend Article VI failed. *Votes cast for and against proposed constitutional conventions and also proposed constitutional amendments*, https://www.nycourts.gov/history/legal-history-new-york/documents/Publications_Votes-Cast-Conventions-Amendments.pdf

said court as hereinafter provided. The official terms of the chief judge and the six associate judges shall be fourteen years."

27. Subdivisions c through g, governing the appointment of judges to the Court of Appeals, were adopted after a November 8, 1977 popular vote and further amended in November 2001.

28. As detailed below, subdivisions 2(c) – (f) are replete with mandatory language: the commission "***shall*** consist of twelve members" who ***shall*** be appointed by specific appointing authorities, (d)(1) (emphasis added); whenever a vacancy occurs, "the commission ***shall*** consider the qualifications of candidates and . . . ***shall*** prepare a written report and recommend to the governor persons who are well qualified," (d)(4) (emphasis added); and "[t]he Governor ***shall*** appoint, with the advice and consent of the Senate, from among those recommended by the judicial nominating commission . . . whenever a vacancy occurs in the court of appeals," (e) (emphasis added).

29. Subdivision 2(c) mandates that the legislature create the Commission, which serves to "evaluate the qualifications of candidates for appointment to the court of appeals and to prepare a written report and recommend to the governor those persons who by their character, temperament, professional aptitude and experience are well qualified to hold such judicial office." Subdivision 2(c) further requires the legislature to "provide by law for the organization and procedure of the judicial nominating commission."

30. Subdivision 2(d) prescribes specific qualifications for the members of the Commission: of the twelve members, "four shall be appointed by the governor, four by the chief judge of the court of appeals, and one each by the speaker of the assembly, the temporary president of the senate, the minority leader of the senate, and the minority leader of the

assembly." It also, *inter alia*, dictates that no member of the Commission can be a sitting judge or elected official, hold office in a political party, or be eligible for judicial appointment for one year after the term elapses and sets forth term limits for its members. Subdivision 2(d)(4) further requires that "[t]he commission shall consider the qualifications of candidates for appointment to the offices of judge and chief judge of the court of appeals and, whenever a vacancy in those offices occurs, shall prepare a written report and recommend to the governor persons who are well qualified for those judicial offices."

31. Subdivision 2(e) sets forth the governor's role in the nomination process as follows:

> [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 or associate judge, as the case may be, whenever a vacancy occurs in the court of appeals; provided, however, that no person may be appointed a judge of the court of appeals unless such person is a resident of the state and has been admitted to the practice of law in this state for at least ten years. The governor shall transmit to the senate the written report of the commission on judicial nomination relating to the nominee. (emphasis added).

32. Subdivision (f) is particularly instructive. Subdivision (f) addresses interim appointments, which are made "[w]hen a vacancy occurs in the office of chief judge or associate judge of the Court of Appeals and the Senate is not in session to give its advice and consent to the appointment to fill the vacancy."

33. Subdivision (f) directs that in that situation, the "Governor shall fill the vacancy by interim appointment," after which that appointment "shall continue until the senate ***shall*** pass upon the governor's selection." There is no provision for referring the candidate for interim appointment to any Senate committee. In other words, the Senate is required to act upon that interim appointment.

34. The balance of the provision makes plain that, in context, "pass" necessarily means a vote of the full Senate. It states that "[i]f the senate confirms an appointment, the judge shall serve a term as provided in subdivision a of this section commencing from the date of his or her interim appointment," whereas "[i]f the senate rejects an appointment, a vacancy in the office shall occur sixty days after such rejection." A mere committee of the Senate, including the Judiciary Committee, is not empowered to "confirm" or "reject" a gubernatorial appointment.

35. Moreover, if the Senate were not required to hold a floor vote on an interim appointment, the appointee's term would continue in perpetuity, including, depending on the age of the nominee, beyond the 14-year term prescribed by subdivision 2(a).

36. Consequently, according to the plain language of the Constitution, the Senate is required to hold a floor vote on an interim appointment.

37. It is axiomatic that courts are required to read the Constitution as a whole, with each provision interpreted to "harmonize with and give effect to the general scope and design of the instrument[]." People v. Fancher, 50 N.Y. 288, 291 (1872); see also Ass'n for Prot. of Adirondacks v. MacDonald, 253 N.Y. 234, 238 (1930) ("The words of the Constitution, like those of any other law, must receive a reasonable interpretation, considering the purpose and the object in view."). It is also well-settled that legislative rules cannot trump constitutional or statutory obligations. Silver v. Pataki, 96 N.Y.2d 532, 542 (2001); Matter of King v. Cuomo, 81 N.Y.2d 247, 251 (1993); Saxton v. Carey, 44 N.Y.2d 545, 551 (1978).

38. It would be unreasonable for interim appointments to require a floor vote where an in-session appointment would not. Thus, to reconcile the two provisions, an in-session appointment must also require a floor vote.

39. Such an interpretation would also incentivize governors to make interim appointments, knowing, at least, the nomination would be entitled to a floor vote and could not be summarily rejected by a committee.

40. The constitutional requirement of seven judges would also be imperiled if a Senate committee were free to deny the Governor's nominee a floor vote on a whim. Specifically, if the Senate were not required to hold a floor vote on an in-session appointee, and the nomination were not withdrawn for a period of time, 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. In an extreme case, if the Senate thrice failed to hold a full floor vote on three separate nominees, the Court would fall below its constitutionally required five-member quorum. Art. VI, § 2(a).

41. In this context, it is important to remember that "[t]he object of a written Constitution is to regulate, define and limit the powers of government by assigning to the executive, legislative, and judicial branches distinct and independent powers. The safety of free government rests upon the independence of each branch and the even balance of power between the three. Unite any two of them and they will absorb the third with absolute power as a result. Weaken any one of them by making it unduly dependent upon another and a tendency towards the same evil follows. It is not merely for convenience in the transaction of business that they are kept separate by the Constitution, but for the preservation of liberty itself, which is ended by the union of the three function in one man, or in one body of men. It is a fundamental principle of the organic law that each department should be free from interference, in the discharge of its peculiar duties, by either of the others." People ex rel. Burby v. Howland, 155 N.Y. 270, 292 (1898). The balance of power requires fealty to the language of Article VI. Just as the Governor

is required to faithfully defend the Constitution, the Senate is obligated to uphold the same principles as set out in Article VI.

42. Historical practice is also probative of constitutional interpretation. New York Pub. Int. Rsch. Grp., Inc. v. Steingut, 40 N.Y.2d 250, 258 (1976); see also N.L.R.B. v. Canning, 573 U.S. 513, 514 (2014). Since the current version of Article VI was adopted more than forty-five years ago, the Senate has held a floor vote to confirm or reject every single nomination made by a governor, regardless of whether the Senate was controlled by the same party to which the governor belonged.

The Judiciary Law

43. Article 3-A of the Judiciary Law, entitled "Commission on Judicial Nomination," was enacted in 1977 to implement the amendments to Article VI of the Constitution. See White v. Cuomo, 38 N.Y.3d 209, 220 (2022) ("[W]e must look to the plain language, history and purpose of the constitutional provision, as well as relevant precedent, ***contemporaneous statutes***, and dictionary definitions.") (emphasis added and internal citations omitted).

44. Section 68 of Article 3-A sets out, in great detail, the obligations of the Commission, the Governor, and the Senate when a vacancy "occur[s] in the office of chief judge or associate judge of the court of appeals."

45. Subsection 1 details the procedure when a seat becomes vacant by expiration of the judge's term— fourteen years or the last day of December of the year in which the judge reaches the age of 70. It provides, *inter alia*, that the "governor shall make [her] appointment" within a prescribed fifteen-day period after receiving the nominations from the Commission.

46. Subsection 2 governs a vacancy that occurs "other than by expiration of term," *e.g.,* by resignation or death, and similarly requires that the governor "shall make [her]

appointment from among those persons recommended to [her] by the commission no sooner than fifteen days nor later than thirty days after receipt of the commission's recommendations."

47. Subsection 4 further mandates that [t]he senate shall ***confirm or reject*** such appointment no later than thirty days after receipt of the nomination from the governor." Judiciary Law § 68(4) (emphasis added). This applies regardless of whether the appointment was made in session (either after expiration of term or because of resignation or death) or as an interim appointment. As set forth above, "confirm or reject" plainly requires a full vote of the Senate.

48. To allow a vote of ten senators to prevent the nomination from reaching the floor leads to the inevitable conclusion that if the Judiciary Committee was reduced in size by the majority leader with a vote of the caucus to only three members, two senators would effectively control who becomes Chief Judge by the simple expedient of not letting the nomination get to the floor. Further, it would insulate individual senators from any public scrutiny that a full floor vote provides, reducing the process to a small number of senators controlling the outcome. This is the polar opposite of what the Constitution requires.

Justice LaSalle's Nomination

49. Justice LaSalle received his B.A. from Pennsylvania State University and his J.D. from University of Michigan Law School. Prior to his service on the bench, he served as an Assistant District Attorney and later Deputy Bureau Chief in the Suffolk County District Attorney's office, a deputy attorney general in the Claims Bureau of the State Attorney General's office, and in private practice.

50. Justice LaSalle was elected as a Supreme Court justice in the Tenth Judicial District in 2008. In 2014, he was nominated by then-governor Andrew Cuomo to the Appellate

Division, Second Department. In May 2021, he was nominated Presiding Justice of the Second Department.

51. On July 11, 2022, then-Chief Judge Janet DiFiore announced her resignation from the bench effective August 31, 2022. Reports then surfaced that Ms. DiFiore was under investigation by the Commission on Judicial Conduct for improperly interfering in a disciplinary hearing.

52. On August 30, 2022, a group of 20 Senate Democrats, including five named Defendants, wrote a letter to the Commission stating that they would prefer a civil rights lawyer or public defender to replace Ms. DiFiore.

53. On September 1, 2022, Associate Judge Anthony Cannataro was designated Acting Chief Judge of the Court of Appeals.

54. On or about November 16, 2022, pursuant to their statutory and constitutional obligations, the Commission recommended seven nominees to Governor Hochul: Justice LaSalle; Acting Chief Judge Anthony Cannataro; law professor Abbe Gluck; Justice Jeffrey Oing of the First Department; Albany Law School Dean Alicia Ouellette, Edwina Richardson-Mendelson, deputy chief administrative judge for Justice Initiatives; and Corey Stoughton, attorney-in-charge of special litigation and law reform at the Legal Aid Society.

55. On December 22, 2022, Governor Hochul announced Justice La Salle's nomination as the Chief Judge.

56. In the weeks after the nomination and before any Committee hearing took place, several Senators publicly stated that they would not support Justice LaSalle's nomination.

57. In a statement on Twitter, Deputy Majority Leader of the Senate Michael Gianaris wrote "I believe Justice LaSalle represents a continuation of a status quo that sullied the Court's

reputation and ruled inconsistently with NYers values. I will vote 'no' should the nomination be brought to the Senate floor."

58. On January 4, 2023, the Senate passed a resolution expanding the Committee from 15 to 19 members. Three of the new members were Democrats and one Republican.

59. On January 18, 2023, after a nearly five-hour hearing on the nomination, the Judiciary Committee vote to advance the nomination to the full Senate failed 10-9. Two senators—Sens. Luis Sepulveda and Kevin Thomas—voted in favor of the nomination. Seven senators— Sens. Palumbo, Patricia Canzoneri-Fitzpatrick, Andrew Lanza, Jack Martins, Thomas O'Mara, Jamaal Bailey, and Steven Rhoads—voted to advance the nomination without recommendations. Defendants all voted against the nomination.

60. Sen. Palumbo asked for a motion to advance the nomination to a floor vote, but Defendant Hoylman-Sigal (hereinafter referred to as "Sen. Hoylman-Sigal") immediately gaveled the hearing to a close, preventing a floor vote in violation of Article VI of the Constitution.

61. Sen. Hoylman-Sigal, the Judiciary Committee Chair, provided the following comments on the vote:

> I think it's clear in the Constitution that the state Senate is within its powers – as is the state Assembly – to set its own rules on how we proceed with both legislation and nominations and we use a committee process, and that's what we did yesterday. The nominee was rejected, and the full Senate has, as a result, spoken.
>
> Nothing makes it to the floor that doesn't go through the committee first. We have rejected the nominee.

The "we" that Sen. Hoylman-Sigal referred to are the ten Defendant senators described above.

62. Further, Sen. Hoylman-Sigal told WNYC that Democrats would veto any person who attempted to get a judgeship and appears on the Conservative Party line, stating:

"[t]hat's a decision to take a line from a party that is opposed to reproductive health, that is opposed to workers rights, that is opposed to LGBTQ marriage equality." Thus, the ten senators clearly believe that they have the power to impose an unconstitutional litmus test for a Chief Judge candidate put forward by the governor. Further, he must necessarily believe that this litmus test is a substitute for the constitutionally mandated floor vote of the Senate.

63. That same day, Sen. Andrea Stewart-Cousins, President Pro Tempore of the Senate, and Alejandra N. Paulino, Secretary of the Senate, sent a letter to Governor Hochul as follows:

> Please be advised, pursuant to the provisions of section 2 of the Article 6 of the Constitution and the provisions of section 68 of the Judiciary Law, and the provisions of section 7 of the Public Officers Law, that the nomination of the Honorable Hector D. LaSalle has been rejected.

64. Public Officers Law § 7 provides that "[i]f the senate shall reject such nomination [by the governor], the secretary of the senate shall forthwith communicate, by writing, signed by him and by the president of the senate, to the governor the fact of such rejection."

65. It is beyond dispute that Sen. Stewart-Cousins is the President Pro Tempore of the Senate, not the president of the Senate. Consequently, because the Lieutenant Governor, in his role as President of the Senate, did not sign the letter, the letter does not satisfy the requirements of Public Officer Law § 7. Art. IV, § 6. To date, the Clerk of the Court of Appeals has not issued a notice of vacancy.

AS AND FOR A FIRST CAUSE OF ACTION
(For Declaratory Judgment Pursuant to CPLR § 3001)

66. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

67. Article VI of the Constitution requires 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 or associate judge, as the case may be, whenever a vacancy occurs in the court of appeal."

68. Subsection 2(f) requires that the Senate "confirm[]" or "reject[]" an interim appointment to the Court of Appeals made while the Senate was not in session.

69. Based on the plain language of both provisions, the structure of the Constitution, and the absurd result from construing in-session appointments differently than interim appointments, the Constitution requires that a gubernatorial nominee for the Court of Appeals be voted on by the entire Senate.

70. On January 18, 2023, the Judiciary Committee voted 10-9 refusing to vote Justice LaSalle's nomination out of committee, effectively precluding the nomination from receiving a floor vote.

71. By reason of the foregoing, there is an actual justiciable controversy between Plaintiff and Defendants concerning whether Justice LaSalle's nomination must be considered by the entire Senate that must be resolved by judicial declaration.

72. This case presents a clear and immediate controversy, ripe for adjudication because the nomination has been neither confirmed nor rejected,

73. The declaratory judgment sought herein will serve a practical end by clarifying and stabilizing a disputed legal relationship as to the Judiciary Committee's obligations under the Constitution.

74. Declaratory judgment on these issues would bring finality to the present controversy among the parties, relieve the present uncertainty about the parties' constitutional and statutory obligations, and settle the legal issues involved in the dispute.

75. Accordingly, Plaintiff is entitled to declaratory judgment that Article VI requires a floor vote of the full Senate on a nomination to the Court of Appeals.

AS AND FOR A SECOND CAUSE OF ACTION
(For Declaratory Judgment Pursuant to CPLR § 3001)

76. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

77. Section 68 of the Judiciary Law requires that [t]he senate shall ***confirm or reject*** such appointment no later than thirty days after receipt of the nomination from the governor." Judiciary Law § 68(4) (emphasis added).

78. This provision applies to both in-session and interim appointments and plainly requires a vote of the entire Senate.

79. On January 18, 2023, the Judiciary Committee voted 10-9 refusing to vote Justice LaSalle's nomination out of committee, effectively precluding the nomination from receiving a floor vote.

80. By reason of the foregoing, there is an actual justiciable controversy between Plaintiff and Defendants concerning whether Justice LaSalle's nomination must be considered by the entire Senate that must be resolved by judicial declaration.

81. This case presents a clear and immediate controversy, ripe for adjudication because the nomination has been neither confirmed nor rejected,

82. The declaratory judgment sought herein will serve a practical end by clarifying and stabilizing a disputed legal relationship as to the Judiciary Committee's obligations under the Judiciary Law.

83. Declaratory judgment on these issues would bring finality to the present controversy among the parties, relieve the present uncertainty about the parties' constitutional and statutory obligations, and settle the legal issues involved in the dispute.

84. Accordingly, Plaintiff is entitled to declaratory judgment that Section 68 of the Judiciary Law requires a floor vote of the full Senate on a nominee to the Court of Appeals.

AS AND FOR A THIRD CAUSE OF ACTION
(For Declaratory Judgment Pursuant to CPLR § 3001)

85. Plaintiff repeats and realleges each and every allegation in the foregoing paragraphs as if fully set forth herein.

86. Public Officers Law § 7 requires that "[i]f the senate shall reject such nomination [by the governor], the secretary of the senate shall forthwith communicate, by writing, signed by him and by the president of the senate, to the governor the fact of such rejection."

87. The January 18, 2023 letter to Governor Hochul was signed by Sen. Andrea Stewart-Cousins, the president pro tempore of the Senate.

88. By reason of the foregoing, there is an actual justiciable controversy between Plaintiff and Defendants concerning whether this letter satisfies the requirements of Public Officers Law § 7.

89. This case presents a clear and immediate controversy, ripe for adjudication because the letter purports to reject Justice LaSalle's nomination without satisfying the Constitutional requirements.

90. The declaratory judgment sought herein will serve a practical end by clarifying and stabilizing a disputed legal relationship as to the Senate's obligations under Public Officers Law § 7.

91. Declaratory judgment on these issues would bring finality to the present controversy among the parties, relieve the present uncertainty about the parties' statutory obligations, and settle the legal issues involved in the dispute.

92. Accordingly, Plaintiff is entitled to declaratory judgment that Public Officers Law § 7 requires a letter signed by the President of the Senate—not the president pro tempore.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

(a) On the first cause of action, a declaration that Article VI of the Constitution requires a full floor vote on a judicial nomination to the Court of Appeals;

(b) On the second cause of action, a declaration that Section 68 of the Judiciary Law requires a full floor vote on a judicial nomination to the Court of Appeals;

(c) On the third cause of action, a declaration that Public Officers Law § 7 requires a letter from the President of the Senate;

(d) Granting such further and additional relief as this Court deems just and proper.

Dated: New York, NY
February 9, 2023

Respectfully submitted,

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