

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

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In the Matter of the Application of NEW YORK PUBLIC  
INTEREST RESEARCH GROUP, INC., CITY PROJECT,  
INC., and COMMON CAUSE/NY,

Index No. \_\_\_\_\_/99

Petitioners,

**VERIFIED PETITION**

for a Judgment pursuant to Article 78 of the Civil Practice Law  
and Rules,

-against-

PETER VALLONE, as Speaker of the New York City Council;  
THE NEW YORK CITY COUNCIL; RUDOLPH GIULIANI,  
as Mayor of the City of New York; and the CITY OF NEW  
YORK,

Respondents.

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Petitioners, NEW YORK PUBLIC INTEREST RESEARCH GROUP, INC., CITY  
PROJECT, INC., and COMMON CAUSE/NY, respectfully allege upon information and belief,  
unless otherwise specified, as follows:

**Introductory Statement**

1. The object of this lawsuit is to obtain an order vacating and annulling Local Law 38  
of 1999 which goes into effect on November 12, 1999, on the grounds that it was adopted by the City  
Council and approved by the Mayor in violation of N.Y. Municipal Home Rule Law § 20, the Charter  
of the City of New York, and the Rules of the New York City Council. N.Y. Municipal Home Rule  
Law ("MHRL") § 20(4) requires a proposed local law to be introduced in accordance with the rules

of procedure adopted by the City Council and then to be in its "final form" and on the desks of Council members at least seven days (excluding Sunday) prior to its adoption. To adopt a local law more rapidly, the Mayor must issue a "message of necessity" and the Council must adopt the proposed law by a two-thirds majority vote.

2. On June 30, 1999, Local Law 38 was introduced in the New York City Council as "Preconsidered Int 582" and was adopted on the same day by a divided Council without the Mayor issuing a "message of necessity." (A copy of Local Law 38 is annexed as Exhibit A.)

3. Prior to June 30, two "drafts" of a so-called "Preconsidered Int" were the subject of two public hearings before the Housing and Buildings Committee of the New York City Council, one on June 21 and the other on June 24. Both proposals elicited criticism from the New York City press and unanimous condemnation from physicians and lead poisoning prevention experts. Some experts asked the Council to delay action, to allow them time to review the drafts and to offer their comments. Others warned of the likely adverse health effects from lead poisoning if either draft were to become law. Even the Comptroller of the City of New York asked the Council to delay until his office had an opportunity to examine the financial impact of the proposals.

4. On June 24, the Housing and Buildings Committee, on a five to two vote, recommended the latter of the two drafts to the full Council for consideration.

5. On June 30, Preconsidered Int 582 was introduced at a stated meeting of the Council and was adopted at the same meeting by a vote of 15 Members opposed and 36 Members in favor.

### **Parties**

6. Petitioner NEW YORK PUBLIC INTEREST RESEARCH GROUP, INC. ("NYPIRG") was formed in 1973 as a not-for-profit, non-partisan group established to effect policy

reforms while training students and other New Yorkers to be advocates. NYPIRG is New York State's largest organization that works on issues such as environmental preservation, consumer protection, issues affecting public health, including lead poisoning, and good government reforms. Among the reforms pursued by NYPIRG in the City Council are opening up the Council to cable casting its sessions on the city-owned cable television network; promoting Council oversight of the performance of city agencies; making Council service full-time by restricting the amount of outside income Council members can earn; promoting Council oversight of "off-budget" city-funded public authorities and corporations; pressing for reforms to reduce unfair advantages of incumbency and provide public resources to promote lively and competitive Council races; requiring city agencies to more aggressively seek to register voters; and encouraging the Council to serve as an effective check and balance on city agencies and the mayoralty in the wake of the new powers granted to the City Council under the 1989 charter revision.

7. Petitioner CITY PROJECT, INC., is a member-based, nonprofit organization that promotes sound fiscal and management policies for City government to ensure efficiency, equity and quality. Through analysis, education and advocacy, City Project serves as the fiscal voice for a livable New York.

8. Petitioner COMMON CAUSE/NY is a member-based organization with 25,000 New York State members. COMMON CAUSE/NY promotes restoring ethics in government, curbing the influence of lobbyists and special interest money, and making government more open and accountable. Among the reforms pursued by COMMON CAUSE/NY are campaign spending limits in the New York City elections and the computerization of campaign contributions.

9. Respondent PETER VALLONE is the Speaker of the New York City Council. The

Speaker has the authority to call the meetings of the Council and also has the authority to establish the agenda for each stated meeting of the Council. Rules of the Council, Chapter 1, § 1.0 and Chapter II, § 2.10. The Speaker is the recipient for all local laws and resolutions that may be proposed to the Council for action. Rules of the Council, Chapter VI, § 6.00. The Speaker is also the Majority Leader of the Council. Rules of the Council, Chapter IV, § 4.00.

10. Respondent NEW YORK CITY COUNCIL is the legislative body of the City of New York created under Chapter 2 of the Charter. The City Council has the “power to adopt local laws which it deems appropriate, which are not inconsistent with the provisions of this charter or with the constitution or laws of the United States or this state ....” New York City Charter, Chapter 2, § 28.

11. Respondent RUDOLPH GIULIANI is the Mayor of the City of New York. The Mayor has the authority to issue a message of necessity under New York Municipal Home Rule Law (“MHRL”) § 20(4) and the duty to act upon local laws or resolutions of the City Council under MHRL § 20(5).

12. Respondent CITY OF NEW YORK is a domestic municipal corporation and political subdivision of New York State.

### **Jurisdiction**

13. This Court has jurisdiction to review the action of the City Council pursuant to Article 78 of the CPLR.

### **Venue**

14. Petitioners designate New York County as the place of trial and venue is proper, pursuant to CPLR § 504, because the principal office of the Speaker of City Council, the City Council, the Mayor and the City of New York are located in New York County.

## **Facts**

15. Under the caption of "Messages & Papers from the Mayor," there was no "message of necessity" or any other message or paper from the Mayor regarding "Preconsidered Int 582."

16. On January 7, 1998, the City Council adopted Rules of the Council to govern Council proceedings for the 1998 to 2001 legislative session. (A copy of the Rules of the Council is annexed as Exhibit B.)

17. On June 30, 1999, "Preconsidered Int 582," was introduced in the City Council as a proposed local law. The Agenda of that date, for the Council's stated meeting, referred in several places to "Preconsidered Int 582" under the following captions:

- a. "Reports of Standing Committees," which listed a "Report of the Committee on Housing & Buildings" on Preconsidered Int 582;
- b. "General Order Calendar" which listed Preconsidered Int 582; and
- c. "Introduction and Reading of Bill" which listed Preconsidered Int 582, indicating that the bill is to be referred to the Committee on Housing and Buildings.

(A copy of the Agenda of the City Council on June 30, 1999, is annexed as Exhibit C.)

18. Pursuant to § 2.10 of the Rules of the Council, respondent PETER VALLONE, as Speaker of the City Council, is required to compile an Agenda for each stated meeting of the Council, which shall include messages from the Mayor and a listing of "introductions" of local laws.

19. On June 30, 1999, a stated meeting of the City Council was held.

20. Among the matters considered by the Council was "Preconsidered Int 582," which was the subject of bitter and heated debate.

21. During the course of the debate, the Council members voted on four amendments that were offered for consideration by different Council members. The votes on each reflected sincere

concern about the validity of the bill under consideration.

22. With regard to the June 30 stated meeting, respondent RUDOLPH GIULIANI did not issue a message of necessity pursuant to MHRL § 20(4).

23. When the final vote was taken, 15 Council members voted against the proposed local law and 36 members voted in favor of it.

24. On July 15, 1999, respondent RUDOLPH GIULIANI held a public hearing on Preconsidered Int 582, at which time he signed the bill into law.

**As and For a Cause of Action**

25. The respondents PETER VALLONE and the NEW YORK CITY COUNCIL, by adopting Local Law 38 on June 30, 1999, which was introduced on the same day, without the Mayor issuing a message of necessity, and respondent RUDOLPH GIULIANI, by approving such local law on July 15, 1999, have actually and substantially violated MHRL § 20, the Charter of the City of New York, and the Rules of the City Council.

**WHEREFORE**, petitioners respectfully request this Court to grant judgment pursuant to Article 78 of the Civil Practice Law and Rules:

1. vacating and annulling Local Law 38 of 1999; and
2. granting such other, different, and further relief as may seem just and proper in the circumstances.

Dated: New York, New York  
October 26, 1999,

Respectfully submitted,

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ANDREW GOLDBERG, ESQ.  
BRIAN L. FLACK, ESQ.  
9 Murray Street, 3rd Floor  
New York, New York 10007  
Tel 212-349-6460  
Attorneys for Petitioners

VERIFICATION

STATE OF NEW YORK    )  
                                  )  
COUNTY OF NEW YORK )    SS.:

Chris Meyer, being sworn, deposes and says:

I am the Executive Director of the New York Public Interest Research Group, Inc., a petitioner in this lawsuit which is a corporation formed under the laws of the State of New York. I have read the foregoing Petition and know the contents thereof, and the same is true to my own knowledge, except as to matters alleged upon information and belief, and as to those matters I believe them to be true. This verification is made by me because the above party is a corporation and I am an officer thereof.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows: information contained in public documents and affidavits attached to this petition.

\_\_\_\_\_  
CHRIS MEYER

Sworn before me this  
\_\_\_\_ day of October, 1999

\_\_\_\_\_  
Notary Public



4. The initial proposal and the drafts that were to follow were referred to as the "Vallone Bill" and the Vallone Bill was the subject of negative criticism in the press. For example, in the New York Post on June 14, under the heading "Vallone Must Pick Kids over Landlords," the Post reported that—

Council Speaker Peter Vallone has a big problem.

Two years ago, he promised landlords he would weaken the laws protecting kids from lead poisoning caused by flaking paint on the walls of slum housing. Last year, while running for governor, he promised tenant groups - and the voters - he would never allow these laws to be weakened. He told me his No. 1 campaign theme was "putting children first." Today, Vallone is trapped between these two conflicting promises.

\* \* \*

Politicians don't like standing up in public and choosing between the landlord lobby, which contributes most of the legislators' campaign money - and poor children, who can't contribute, but tug at the heartstrings. For the last week, the council has been roiled behind the scenes by various drafts of a lead-paint bill landlords want.

\* \* \*

And this Wednesday, Vallone will have a big fund-raiser for his coming campaign for mayor - and landlords are buying up tickets as if it's a lottery. By pure coincidence, Vallone has scheduled a quickie hearing the following morning on the landlords' pet bill, and a rushed final vote is slated for June 29.

\* \* \*

Bronx Democratic Party leader Roberto Ramirez has asked several Bronx members to support the stronger bill. Yesterday, Ramirez told me, "I think the Bronx members will do the right thing for children, as long as Vallone doesn't force them to vote the way he wants by making it a leadership vote."

\* \* \*

(A copy of "Vallone Must Pick Kids over Landlords" is annexed as Exhibit F; also see "Vallone Fends Off Foes in Lead Paint Law Fight," New York Daily News, June 11, 1999, a copy of which is annexed as Exhibit G.)

5. After these initial articles, criticism of the Vallone Bill in the press did not diminish. For example, the Post on June 15 reported, under the headline "Vallone Taking Heat over Lead-Paint Bill," that—

City Council Speaker Peter Vallone came under intense pressure yesterday to rethink a controversial lead-paint bill under fire from his own council members and from two rivals in the race for mayor.

Public Advocate Mark Green and Comptroller Alan Hevesi joined a group of council members yesterday at City Hall to question the Vallone bill and to blast the speaker's apparent rush to bring it to a vote.

The lead-paint bill proposed by Vallone was set to go before a council hearing Thursday - even though it hasn't been officially introduced. "I was confused that a piece of legislation that has not yet been introduced was expected to be the subject of a hearing," said Hevesi. "I don't know why this process is so rushed without having everybody at the table."

Critics charge Vallone caved to the powerful landlords lobby, which opposed a previous bill by Councilman Stanley Michels (D-Manhattan) that included tough standards for lead paint inspection and removal. Green endorsed the Michels bill, calling it "the least onerous and most effective bill to laser beam and cure this problem." Also backing Michels' bill are most members of the council's Black and Latino Caucus, who called yesterday's press conference.

Michels said the speaker's proposal amounts to "a landlord protection bill."

\* \* \*

Aides to Vallone said the hearing is tentatively set for Thursday. But they said a vote won't be taken until later in the month. Vallone spokesman Michael Clendenin said the bill is still being written.

Guillermo Linares, co-chairman of the Black and Latino Caucus, said 90 percent of children poisoned by lead paint in the city are black and Latino. In 1997, there were 1,049 cases of poisoning.

(A copy of "Vallone Taking Heat over Lead-Paint Bill" is annexed as Exhibit H; also see "Peter's Poisoned Pen," Village Voice, June 15, 1999, a copy of which is annexed as Exhibit I and "Surprising Turn in Lead-Paint Hearing," New York Post, June 22, 1999, a copy of which is annexed as Exhibit J.)

6. Although no proposed legislation was introduced in the City Council ahead of time, two "drafts" of so-called "Preconsidered Int" were the subject of two public hearings before the Council's Committee on Housing and Buildings, one on June 21 and the other on June 24. The members of this Committee, however, were bitterly divided over the merits of each proposal. (A copy of the relevant portions of the Hearing Transcript for June 24, 1999, is annexed as Exhibit K.)

7. For example, the New York Times in "City Council Panel Approves Revised Safeguards Against Lead Paint" reported on June 25 that—

After a long day of public testimony and some tense back-room negotiations, the City Council's Housing and Buildings Committee approved legislation yesterday ....

\* \* \*

The legislation had divided the Council in recent days, with

many of the rank-and-file Democrats calling it too lax and threatening to defy the Council leadership by opposing it. An earlier lead bill, drafted by Councilman Stanley E. Michels of Manhattan, had received wide support from other Council members but was set aside by the Speaker, Peter F. Vallone, in the hopes of reaching a compromise with Mayor Rudolph W. Giuliani ....

\* \* \*

Anticipating the outcome of yesterday's vote, Mr. Vallone praised the bill even as the public hearing dragged on yesterday. "I think it will satisfy the problem that faces the City of New York: How do you make buildings with lead safe for children?" "We're trying to prevent lead poisoning from happening in the first place," he said. "This is a bill to prevent lead poisoning."

The version of the bill approved yesterday was written by aides to Mr. Giuliani and to Mr. Vallone and included several amendments that were added after a 10-hour public hearing on Monday.

\* \* \*

In dissent, Mr. Michels was joined only by Councilwoman Tracy L. Boyland of Brooklyn, whose district includes neighborhoods with some of the city's highest incidences of lead poisoning. Members of the Council's minority caucus criticized the bill sharply in recent weeks, noting that lead poisoning overwhelmingly affects minority children.

But Ms. Boyland, who is black, was the only one of five members of the minority caucus who sit on the Housing and Buildings Committee to defy Mr. Vallone with a "no" vote. Aides to the Speaker had pressured Ms. Boyland throughout the day to support the bill but in the end, she said, she made "a heartfelt vote" despite "extreme pressure." "It would have been suicidal for me to push this forward when I have children dying in my community," she said. Asked if she feared any political consequences, she said: "I voted my conscience on this issue. When I go home, I'll be able to sleep at night."

(A copy of " "City Council Panel Approves Revised Safeguards Against Lead Paint" is annexed as Exhibit L; also see "Council Cowards OK Vallone's Mistake," New York Post, June 25, 1999, a copy of which is annexed as Exhibit M, "Pols Can't Get Lead Out," Daily News, June 25, 1999, a copy of which is annexed as Exhibit N, "Lead Paint Bill Must Die for Kid's Sake," Daily News, June 25, 1999, a copy of which is annexed as Exhibit O, and "Leading the City Astray," Newsday, June 30, 1999, a copy of which is annexed as Exhibit P.)

8. In addition, in an Editorial the New York Times urged the Council to give the bill more review, suggesting at least until October, because it "bend[ed] too far toward freeing landlords of any real liability" and did not give sufficient emphasis to lead contaminated dust hazards. ("Get the Lead Dust Out," Editorial, N.Y. Times (June 21, 1999), a copy of which is annexed as Exhibit Q.) In contrast, in an Editorial the New York Post had issued a public challenge to Council Speaker Peter Vallone by insisting that immediate passage of the bill was a test of his "real leadership." ("The Bravery of Peter Vallone," Editorial, N.Y.Post (June 28, 1999), a copy of which is annexed as Exhibit R.)

9. Not only did health professionals and the New York Times suggest putting off a decision until October 1999, the Comptroller of the City of New York, Allan G. Hevesi, said the same when he testified before the Housing and Buildings Committee on June 21. (A copy of the relevant portions of the Hearing Transcript for June 21, 1999, is annexed as Exhibit S.)

10. From a public health perspective, the proposal received unanimous condemnation from renowned physicians and lead poisoning prevention experts alike.

(Exhibit T.)

11. Indeed, on June 30 passage of Preconsidered Int. 582 was by no means certain. This is best evidenced by the Speaker and the Mayor on the morning of June 30 announcing a hastily proposed \$2 million initiative. (Exhibit U.)

12. Later on June 30, a stated meeting of the City Council was held. Among matters considered by the Council was Preconsidered Int 582, which was the subject of bitter and heated debate. During the course of the debate, the Council members voted on four amendments that were offered for consideration by different Council members. In fact, more Council members voted in favor of the amendments than voted for the final bill, indicating that many had grave concern about the legislation to be enacted. When the final vote was taken, 15 Council members voted against the proposed local law and 36 members voted in favor of it. (A copy of the relevant portion of the Meeting Transcript is annexed as Exhibit V.)

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CATHLEEN BREEN

Sworn to before me  
on October 18, 1999

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Public Notary