

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

In the Matter of the Application of
NEW YORK CITY COALITION TO END LEAD
POISONING, *et al.*

Petitioners-Plaintiffs

for a Judgment pursuant to Article 78
and § 3001 of the Civil Practice Law
and Rules

-against-

PETER VALLONE, as Speaker of the New
York City Council; *et al.*

Respondents-Defendants.

Index No. _____/99

**AFFIRMATION OF MATTHEW J. CHACHÈRE
IN SUPPORT OF
PETITION AND MOTION FOR PRELIMINARY INJUNCTION**

MATTHEW J. CHACHÈRE, an attorney admitted to practice in
New York State, hereby affirms the following as true under penalty
of perjury:

1. I am of counsel to Kenneth Rosenfeld, Esq., Northern
Manhattan Improvement Corporation Legal Services, attorneys for
petitioners-plaintiffs in this action. I make this affirmation in
support of the Petition and Motion for Preliminary Injunction
Notice. This affirmation is based upon my own personal knowledge
and identifies the following documents submitted as exhibits in the
above-captioned action, including documents that are part of the
record in the underlying proceeding in the City Council, matters of

public record, and law submitted in support of this Petition and Motion. Each of these items attached are true copies of the documents identified as an Exhibit:

Exhibit Description

- Ex. 1. Negative Declaration.
 - 1-a. Notice of Negative Declaration
 - 1-b. Notice of Lead Agency Designation
 - 1-c. Environmental Assessment Statement checklist
 - 1-d. Environmental Assessment Statement narrative (Attachment 2)

- Ex. 2. New York City Council Resolution 883 and Memorandum regarding Background and Analysis.

- Ex. 3. Cover Letter from Tirzah Nasser, Counsel to the Committee on Housing and Buildings, to the Mayor's Office of Environmental Coordination.

- Ex. 4. Report of the Infrastructure/Human Services Division of the City Council, June 24, 1999 (June 25 version).

- Ex. 5. Letter from Lynn R. Goldman, M.D., to Speaker Peter Vallone, cc to Department of Health Commissioner Cohen, June 9, 1999.

- Ex. 6. Letter from Bruce P. Lanphear, M.D., to Department of Health Commissioner Neal Cohen, June 14, 1999.

- Ex. 7. Letter from Stephen M. Levin, M.D., to Speaker Peter Vallone, June 28, 1999.

- Ex. 8. Letter from Barry S. Levy, M.D., to Speaker Peter Vallone and Department of Health Commissioner Cohen, June 13, 1999.

- Ex. 9. Letter from Paul Mushak, Ph.D., to Department of Health Commissioner Neal Cohen, cc to Speaker Peter Vallone, June 10, 1999, and Statement of Dr. Paul Mushak on the Vallone/Spigner Lead Paint Bill and NYC Childhood Lead Poisoning -- A Health and Science Expert Review (June 28, 1999).

- Ex. 10. Letter from Herbert L. Needleman, M.D., to Department of Health Commissioner Neal Cohen, June 10, 1999.
- Ex. 11. Letter from Patricia A. Nolan, M.D., to Speaker Peter Vallone, June 6, 1999.
- Ex. 12. Letter from Sergio Piomelli, M.D., to Speaker Peter Vallone, June 14, 1999.
- Ex. 13. Letter from Dr. Susan Redline, to Department of Health Commissioner Neal Cohen, June 28, 1999.
- Ex. 14. Letter from J. Routt Riegard, M.D., to Speaker Peter Vallone, June 18, 1999.
- Ex. 15. Letter from John Rosen, M.D., to Department of Health Commissioner Neal Cohen, June 14, 1999.
- Ex. 16. Letter from Victor W. Sidel, M.D., to Speaker Peter Vallone, June 15, 1999.
- Ex. 17. Letter from Bailus Walker, Ph.D., to Speaker Peter Vallone, June 11, 1999.
- Ex. 18. Letter from Bailus Walker, Ph.D., to Mayor Rudolph Giuliani, June 16, 1999.
- Ex. 19. Letter from Bailus Walker, Ph.D., to Speaker Peter Vallone, June 23, 1999.
- Ex. 20. Letter from Lynne A. Weikart, Executive Director, The City Project, to City Council Speaker Peter Vallone, June 3, 1999.
- Ex. 21. Letter from Dennis Rivera, President, 1199/SEIU (Service Employees International Union) National Health and Human Service Employees, AFL-CIO, CLC, to Speaker Peter Vallone, June 3, 1999.
- Ex. 22. Letter from Don Ryan, Executive Director, Alliance to End Childhood Lead Poisoning, to Speaker Peter Vallone, regarding the May 28 draft bill, June 6, 1999.
- Ex. 23. Letter from Nick Farr, Executive Director, National Center for Lead-Safe Housing, to Speaker Peter Vallone, regarding the May 28 draft bill, undated (June 1999).

- Ex. 24. Metropolitan Council on Housing and New York State Tenants & Neighbors Coalition, "Why A 'Tiered' Enforcement System for Lead Paint Violations Will Poison More of New York City's Children If the Vallone Lead Bill Is Enacted," June 7, 1999.
- Ex. 25. Testimony of Dr. John Rosen, M.D., before the New York City Council, June 21, 1999.
- Ex. 26. Testimony of Matthew J. Chachere, Northern Manhattan Improvement Corporation, before the Housing Committee of the New York City Council on the "Preconsidered Lead Bill of June 18, 1999" (The Vallone/Spigner/Giuliani Intro), June 21, 1999.
- 26-a. Testimony of Margaret Hamburg, M.D., then Commissioner of the NYC Department of Health, to New York City Council, April 29, 1996.
- Ex. 27. Testimony and Comments of Andrew Goldberg and Cathleen Breen, New York Public Interest Research Group, before the Committee on Housing & Buildings of the New York City Council on the Pre-considered Lead Paint Bill, June 21, 1999. Attachments: Exs. 22, 23, 5, 6, 18, Att. A to I. Mauss Affidavit, 12, 11, 8, 16, and 14 and the following:
- 27-a. NYPIRG Information Sheet No. 1: "The Alliance to End Childhood Lead Poisoning and the National Center for Lead-Safe Housing Conclude that the Vallone Bill Is Unsafe"
- 27-b. "Unofficial Transcripts of Remarks" (transcribed remarks of Comptroller Alan G. Hevesi and Dr. Bailus Walker at City Hall Press Conference, June 14, 1999)
- 27-c. "Race/Ethnicity & Lead Poisoning Statistics in New York City in 1996"
- 27-d. "New Cases of Childhood Lead Poisoning (at or above 20 mcg/dL), by Age, New York City, 1997"
- 27-e. NYPIRG Information Sheet No. 2: "June 30th Is Not the Real Deadline in the Lead Paint Lawsuit" (June 11, 1999)
- 27-f. NYCCELP Factsheet: "Trashing the Urban Myths About Childhood Lead Poisoning and Lead Paint Laws in N.Y.C."
- 27-g. "Five Principles to Protect Children from Lead Poisoning"

27-h. "The [New York] Post Is Wrong!"

- Ex. 28. Testimony of Glenn Pasanen, Associate Director of The City Project, Before the City Council Housing and Buildings Committee on the Preconsidered Intro on Lead Paint, June 21, 1999.
- Ex. 29. Testimony of Marlen Bodden and Judith Goldiner, Legal Aid Society, Before the Council of the City of New York Regarding Lead Poisoning, June 21, 1999.
- Ex. 30. Testimony of Lydia Saltzman, Founder, Parents Against Lead in Schools (PALS), Before the City Council of New York City Committee on Housing re "Sneaky Pete's Miracle Bill," undated (June 21, 1999). Attachments: Exh. 9, 10, and 15.
- Ex. 31. NYS Trial Lawyers Association, *New York City Children Poisoned by Toxic Lead Paint: Personal Stories About the Dangers of Exposure to Toxic Lead Paint* (June 21, 1999).
- Ex. 32. Testimony of Meryl Viener, attorney, before the Housing Committee of the New York City Council on the Vallone Preconsidered Lead Bill of June 18, 1999 (June 21, 1999).
- Ex. 33. Testimony of Jenny Laurie, Met Council on Housing, before the New York City Council Housing & Buildings Committee on the Lead Poisoning Proposal by Speaker Peter Vallone, June 21, 1999.
- Ex. 34. Testimony of Lenora Colbert, 1199 National Health and Human Service Employees Union, Childhood Lead Paint Poisoning Prevention Hearing, June 21, 1999.
- Ex. 35. Alan Hevesi, NYC Comptroller, Testimony on Proposed Lead Paint Legislation to the Council of the City of New York Housing Committee, June 21, 1999.
- Ex. 36. Statement of Council Member Stanley E. Michels on Preconsidered Bill on Childhood Lead Poisoning Prevention, Committee on Housing and Buildings, June 21, 1999.
- Ex. 37. Letter from Don Ryan, Executive Director, Alliance to End Childhood Lead Poisoning, to Speaker Peter Vallone, regarding the revised bill, June 23, 1999.

- Ex. 38. New York Public Interest Research Group (NYPIRG), "Bait and Switch" (factsheet on revised bill, undated).
- Ex. 39. New York Public Interest Research Group (NYPIRG), "NYPIRG Opposes Preconsidered Int. No. [Lead Paint] 'The Vallone Bill'" (factsheet on revised bill, undated).
- Ex. 40. Letter from Nick Farr, Executive Director, National Center for Lead-Safe Housing, to Speaker Peter Vallone, regarding the revised bill, June 23, 1999.
- Ex. 41. Testimony of New York City Comptroller Hevesi, presented by First Deputy Comptroller Newman, June 24, 1999.
- Ex. 42. C. Virginia Fields, Manhattan Borough President, Testimony Before the City Council Committee on Housing and Buildings, June 24, 1999.
- Ex. 43. New York City Physician Advocates for Childhood Lead Poisoning Prevention, News Release, "Medical Experts Urge Council to Delay Action" (June 28, 1999).
- Ex. 44. Letter from Joel Schufro, Executive Director, New York Committee for Occupational Safety and Health, to Speaker Peter Vallone, June 29, 1999.
- Ex. 45. Letter from Don Ryan, Executive Director, Alliance to End Childhood Lead Poisoning, to New York City Council Members, June 30, 1999.
- Ex. 46. Cover letter to City Council Members, June 30, 1999. Attachments included Attachment A, Landrigan Affirmation; Attachment A, I. Mauss Affidavit; Exs. 5, 6, 7, 8, 9, 11, 12, 14, 15, 16, 18, 19, 21, 23, 24, 26-a, 27-g, 28, 29, 30 (without attachments), 35, 37-40, 42-45, 46-a, 46-b, 47-57, 58-a, 58-b, 58-c, 58-d, 58-f, 58-g, 58-I, 58-j, 58-k, 58-l, 58-m, and the following:
- 46-a. "What's Wrong with the Vallone Lead Bill" (factsheet).
 - 46-b. Letter from Joseph H. Graziano, Ph.D., to Council member Archie Spigner, Chair of the Committee on Housing and Buildings, February 1, 1999.

- Ex. 47. New York City Coalition to End Lead Poisoning (NYCCELP), "A Rebuttal to the 6/28 'Explanation' of the Vallone Bill Prepared by Council Staff," undated (June 1999).
- Ex. 48. NYC Coalition to End Lead Poisoning (NYCCELP), "Vallone/Spigner Letter of 6/29 Doesn't Make Any Sense!" (factsheet on revised bill, undated).
- Ex. 49. Letter from Ralph Nader to Speaker Peter Vallone, June 28, 1999.
- Ex. 50. Letter from Willie James, President, Transport Workers Union of Greater New York, Local 100, to Speaker Peter Vallone, June 28, 1999.
- Ex. 51. Greater New York Labor-Religion Coalition, Memo of Opposition re: The Vallone Lead Poisoning Paint Bill, undated.
- Ex. 52. Evelyn A. Mauss, Sc.D., Science Consultant, Natural Resources Defense Council, Memo of Opposition to City Council Members, June 30, 1999.
- Ex. 53. Wendy Perron, Executive Director, Physicians for Social Responsibility/NYC, Memo of Opposition to City Council Members, June 28, 1999.
- Ex. 54. Sinergia, Memo of Opposition to City Council Members, "Sinergia Opposes the Lead Bill Which the City Council Will Vote on June 30, 1999," undated.
- Ex. 55. Johnnie L. Cochran, Jr., Esq., "Statement in Opposition to Speaker Peter Vallone's Proposed Lead Paint Bill," June 28, 1999.
- Ex. 56. Fernando Ferrer, Bronx Borough President, News Release, "Borough President Fernando Ferrer to City Council: 'Let's Start Again on Lead Bill'" (June 29, 1999).
- Ex. 57. Letter from Larry B. Seabrook, New York State Senator, to Speaker Peter Vallone, June 28, 1999.
- Ex. 58. Newspaper articles including:
58-a. Frank Lombardi, "Vallone Fends Off Foes in Lead Paint Law Fight," *Daily News* (June 11, 1999).

- 58-b. Robert Polner, "Lead-Paint Bill Draws Plenty of Opposition," *Newsday* (June 15, 1999).
- 58-c. Tom Topousis, "Vallone Taking Heat Over Lead-Paint Bill," *New York Post* (June 15, 1999).
- 58-d. J. A. Lobbia, "Peter's Poisoned Pen: Will Vallone Write a Sickening Lead-Paint Bill to Please Landlords?" *Village Voice* (June 15, 1999).
- 58-e. David Herszenhorn, "Bid to Alter Lead Paint Law Splits Speaker and Council," *New York Times* (June 15, 1999).
- 58-f. Editorial, "Get the Lead Dust Out," *New York Times* (June 21, 1999).
- 58-g. David Herszenhorn, "Lead Paint Bill Is Attacked by Democrats," *New York Times* (June 22, 1999).
- 58-h. Jack Newfield, "Surprising Turn in Lead-Paint Hearing," *New York Post* (June 22, 1999).
- 58-I. J. A. Lobbia, "Poisoned Politics: Children Suffer While Peter Vallone Thins Lead-Paint Law," *Village Voice* (June 22, 1999).
- 58-j. Jim Dwyer, "Pols Can't Get Lead Out," *Daily News* (June 25, 1999).
- 58-k. Jack Newfield, "Council Cowards OK Vallone's Mistake," *New York Post* (June 25, 1999).
- 58-l. David Herszenhorn, "City Council Panel Approves Revised Safeguards Against Lead Paint," *New York Times* (June 25, 1999).
- 58-m. Juan Gonzalez, "Lead-paint Bill Must Die for Kids' Sake," *Daily News* (June 29, 1999).
- 58-n. Wilbert A. Tatum, "Lead Paint a Peril for Minority Children," and J. Sambgba Browne, "Get the Lead Out!! City Council Passes Inadequate Lead Bill," *Amsterdam News* (July 1-July 7, 1999).
- 58-o. Marcherie Vazquez, "Concejo Aprueba Controversial Propuesta," *El Diario/La Prensa* (July 1, 1999).

Ex. 59. Contents: Information for Mayor Rudolph Giuliani on Lead Paint Bill (provided at July 15, 1999 hearing on behalf of NYCCELP by Andrew Goldberg), annexing

documents listed, including exhibits identified herein.

- Ex. 60. Office of the Comptroller, Bureau of Audit, "Audit Report on the New York City Department of Housing Preservation and Development's Enforcement of the Housing Maintenance Code, MJ95-098A" (June 30, 1995).
- Ex. 61. Letters between Comptroller Hevesi and Deborah Wright, HPD Commissioner, regarding landlord certifications, January 6, 1995; December 5, 1994; January 19, 1995; February 23, 1995; and June 19, 1995.
- Ex. 62. Alan Hevesi, Comptroller, Opinion Editorial, "New Lead Paint Law Protects Landlords, Not Children," *Amsterdam News* (July 8-July 14, 1999).
- Ex. 63. Independent Budget Office, *Preventing Lead Poisoning in Children: Fiscal Impact of Intro. 205, a Legislative Alternative to Local Law 1* (April 28, 1999).
- Ex. 64. Public Advocate Mark Green, *Lead & Kids: Why Are 30,000 Children Contaminated?* (February 2, 1998), annexed to this Petition and Complaint by Affirmation of Laurel W. Eisner, Esq., General Counsel to Mark Green, Public Advocate for the City of New York.
- Ex. 65. May 28 draft of proposed local law regarding lead paint (City Council)
- Ex. 66. June 7 draft of proposed local law regarding lead paint (City Council)
- Ex. 67. June 18 draft of proposed local law regarding lead paint (City Council)
- Ex. 68. Amended Notice to Council Members of the June 21, 1999 hearing of the Committee on Housing and Buildings (June 17, 1999).
- Ex. 69. Report of the Infrastructure/Human Services Division of the City Council to Council Members, June 21, 1999.

- Ex. 70. City Council Financial Division, "Fiscal Impact Statement," June 21, 1999.
- Ex. 71. Amended Notice to Council Members of the June 24, 1999 hearing of the Committee on Housing and Buildings on Preconsidered Int. and of the changed date of the full City Council Meeting from June 29, 1999 to June 30, 1999 (June 22, 1999).
- Ex. 72. Amended Notice to Council members of the June 24, 1999 hearing of the Committee on Housing and Buildings on Preconsidered Int. and Preconsidered Resolution (June 23, 1999).
- Ex. 73. Report of the Infrastructure/Human Services Division of the City Council to Council Members, June 24, 1999 (June 23 version).
73-a. June 21 (evening) draft of proposed local law regarding lead paint (later designated "Preconsidered Int. No. 582," then adopted as "Local Law 38 of 1999," to be codified at New York City Administrative Code §§ 27.2056.1 *et seq.*
- Ex. 74. Opening Statement, Council member Archie Spigner, Chairperson of Committee on Housing and Buildings, June 24, 1999.
- Ex. 75. Letter from Speaker Peter Vallone and Committee Chairperson Archie Spigner to Council members, June 29, 1999. Attachments:
75-a. "Comparison Chart" (untitled) of proposed local law and Local Law 1 ("Attachment 5")
75-b. "Explanatory Table" (untitled) of proposed local law ("Attachment 6")
- Ex. 76. Letter from Speaker Peter Vallone and Victor Robles, Chair of the Committee on Health, to City Council members, June 30, 1999. Attachment:
76-a. "Early Intervention and Prevention: Council Measures to Create Lead Safe Housing" (a one-page flier).
- Ex. 77. Transcript of Hearing, NYC Council Committee on Housing and Buildings, June 21, 1999.
- Ex. 78. Transcript of Hearing, NYC Council Committee on Housing and Buildings, June 24, 1999.

- Ex. 79. Transcript of New York City Council's Stated City Council Meeting, June 30, 1999.
- Ex. 80. Scott C. Cantone, Esq., Office of the Mayor, "Memorandum in Support" (faxed June 22, 1999).
- Ex. 81. Letter from Neal Cohen, M.D., Commissioner of N.Y.C. Department of Health, to Archie Spigner, Chairperson, City Council Committee on Housing and Buildings, June 23, 1999.
- Ex. 82. Scott C. Cantone, Esq., Office of the Mayor, "The Reasons Why People Who Want to Prevent Lead Poisoning in Children Should Support The Council/Administration Bill" (memorandum released after the June 24, 1999 hearing).
- Ex. 83. Scott C. Cantone, Esq., Office of the Mayor, "The Truth About the Council/ Administration Lead Paint Bill."
- Ex. 84. Notice of July 15, 1999 hearing on proposed local law published in *The City Record*.
- Ex. 85. City Rules of Procedure for Environmental Quality Review ("CEQR"), 43 R.C.N.Y. §§ 6-01 *et seq.*
- Ex. 86. Excerpt of City CEQR Technical Manual, pp. 2-1, 3J-2, 3J-9, 3J-10, 5-13.
- Ex. 87. President's Environmental Justice Executive Order.
- Ex. 88. New York City Charter, Chapter 1, § 8.
- Ex. 89. New York City Charter, Chapter 2, §§ 28, 36, 47.
- Ex. 90. Rules of the Council, Chapters I-VI.
- Ex. 91. New York City Health Code, § 173.14 (Health Code lead paint removal safety standards)
- Ex. 92. New York City Health Code, § 173.13.
- Ex. 93. 24 R.C.N.Y. § 12-03(c) (regarding window guards)
- Ex. 94. Current New York City Administrative Code § 27-2013(h), also known as Local Law 1 of 1982, which

would be replaced by provisions of Local Law 38 of 1999.

- Ex. 95. New York City Administrative Code, § 27-2115.
- Ex. 96. New York City Administrative Code, § 27-2126.
- Ex. 97. New York City Council, *Proceedings*, Dec. 22, 1981, pp. 1445-47 (enacting Local Law 1 of 1982, codified at § 27-2013(h)).
- Ex. 98. New York City Council, *Proceedings*, June 6, 1972, pp. 785-86 (enacting Local Law 50 of 1972, codified at § 27-2126).
- Ex. 99. Proposed Regulations by the New York City Department of Housing Preservation and Development for implementation of Local Law 1.
- Ex. 100. Proposed Regulations by the New York City Department of Health for implementation of Local Law 1.
- Ex. 101. *NYCCELP v. Koch*, N.Y.L.J. July 21, 1989, at 18, slip op. (Sup. Ct. N.Y. Co. July 6, 1989)(NYCCELP II).
- Ex. 102. *NYCCELP v. Koch*, Order (Sup. Ct. .Y. Co. Aug 2, 1990) (NYCCELP II).
- Ex. 103. *NYCCELP v. Koch*, N.Y.L.J., May 12, 1993, at 29, slip. Op. (Sup. Ct. N.Y. Co. May 4, 1993) (NYCCELP III).
- Ex. 104. *NYCCELP v. Koch*, Order (Sup. Ct. N.Y. Co Mar. 30, 1994) (NYCCELP III).
- Ex. 105. *NYCCELP v. Giuliani*, Decision (Transcript of Proceedings) (Sup. Ct. N.Y. Co. Dec. 14, 1995) (NYCCELP VI).
- Ex. 106. *NYCCELP v. Giuliani*, Order (Sup. Ct. N.Y. Co. May 1, 1996)(NYCCELP VI).
- Ex. 107. *NYCCELP v. Giuliani*, Order (Sup. Ct. N.Y. Co. August 1, 1996)(NYCCELP VII)
- Ex. 108. Stipulation, January 29, 1999, *New York City Coalition to End Lead Poisoning v. Giuliani*, Index No. 42780/85.

- Ex. 109. Letter from New York City Council members Michels, Linares, Clarke, DiBrienza, Eldridge, Freed, Lopez, Perkins, Quinn, Reed, Carrion, Harrison, Marshall, Povman and Rodriguez to Justice Louis B. York, June 23, 1999, re *New York City Coalition to End Lead Poisoning v. Giuliani*, Index No. 42780/85, informing the Justice of their support for an extension of the stay.
- Ex. 110. Letter from New York City Public Advocate Mark Green to Justice Louis B. York, June 23, 1999, re *New York City Coalition to End Lead Poisoning v. Giuliani*, Index No. 42780/85, informing the Justice of their support for an extension of the stay.
- Ex. 111. City of New York Department of Health, Grant Application to the federal Centers for Disease Control, FY 99, Childhood Lead Poisoning Prevention Program #H64/CCH205097-09 (excerpts).
- Ex. 112. City of New York Department of Health, "A Non-Competitive Continuation Application for NYC DoH Provisions of 1997-1998 State and Community-Based Childhood Lead Poisoning Prevention Program & Surveillance of Blood Levels in Children - #H64/CCH205097-08" (excerpts).
- Ex. 113. City of New York Department of Housing Preservation and Development and Department of Health, "Request for Grant Assistance Lead-Based Paint Hazard Control" (to HUD) July 31, 1997 (excerpts).
- Ex. 114. Woolfalk v. New York City Housing Authority, slip op. (Sup. Ct. N.Y. Co. May 12, 1998)

2. Based on the accompanying Petition, memorandum of law, and the supporting exhibits, petitioners-plaintiffs request the court to grant the relief sought and articulated in the accompanying Petition.

3. Preliminary injunctive relief is also required, for the reasons set forth in the accompanying Petition, memorandum of law,

and supporting affirmations, affidavits, and attached exhibits, because Local Law # 38 is slated to go into effect on November 12, 1999, and thus the adverse impacts on children's health in New York City, as set forth in the above pleadings, will begin to be realized after that date.

4. No prior application has been made for the relief sought in the within Petition and Motion.

Dated: New York, New York
October 13, 1999

MATTHEW J. CHACHÈRE