

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF ERIE

JOHN RUS THOMPSON,

Plaintiff,

v.

THE STATE OF NEW YORK, NEW YORK STATE  
SENATE, SECRETARY OF THE NEW YORK STATE  
SENATE, ANGELO J. APONTE, IN HIS OFFICIAL  
CAPACITY and NEW YORK STATE COMPTROLLER  
THOMAS P. DiNAPOLI,

Defendants.

**VERIFIED COMPLAINT**

Index No. \_\_\_\_\_

**FILED**  
ACTIONS & PROCEEDINGS

JUN 26 2009

ERIE COUNTY  
CLERK'S OFFICE

Plaintiff, by and through his counsel, Phillips Lytle LLP, for his verified complaint against the defendants, alleges as follows:

**Introduction**

1. This action seeks to vindicate and enforce the constitutional rights of the plaintiff, and those similarly situated with the plaintiff, to equal protection of the law and to due process of law and to prevent the wrongful, unconstitutional and illegal misappropriation, expenditure and disbursement of New York State funds.

2. Under Article III, Section 6 of the New York State Constitution, the members of the New York State Senate are compensated for "services" they are required to perform.

3. Article III, Section 1 of the New York State Constitution requires all members of the New York State Senate to take an oath to faithfully discharge the duties of their office to the best of their abilities.

4. Plaintiff brings this action pursuant to CPLR 3001, as citizen taxpayers under Article 7-A of the New York State Finance Law, and under the common law as individually and directly injured by the wrongful, unconstitutional and illegal payment of money to those members of the New York State Senate who have refused to provide the service required and to faithfully discharge their duties as required under the New York State Constitution.

#### Parties

5. Plaintiff John Rus Thompson resides in Erie County, New York. Mr. Thompson is a New York State taxpayer who, as with all other New York State taxpayers, is entitled to have State tax revenues used only for lawful and constitutional purposes.

6. Upon information and belief, the defendant State of New York ("State") is a state of the United States.

7. Upon information and belief, the New York State Senate is an elected body of the State.

8. Upon information and belief, defendant, Angelo J. Aponte is the Secretary of the New York State Senate and is an officer or employee of the State.

9. Upon information and belief, Thomas P. DiNapoli is the Comptroller of the State and is an officer or employee of the State, and is responsible for payment of salaries to member of the New York State Senate.

Venue

10. Venue is proper in Erie County pursuant to Section 123-c (1) of the New York State Finance Law because disbursements in the form of compensation to New York State Senators who have failed to perform the services required of them are made in this county.

11. Venue in this action is also proper in Erie County pursuant to CPLR 503 because of the residence of the plaintiff and pursuant to CPLR 505(a) as a county in which the defendants maintain facilities and are required to perform services which they have failed to perform.

New York State Finance Law

12. Article 7-A, Section 123-b of the State Finance Law permits citizen taxpayers to seek declaratory and injunctive relief against any actual or threatened illegal or unconstitutional expenditure of state funds and to join in that action any beneficiary of the illegal and unconstitutional act.

13. Article 7-A of the State Finance Law contemplates injunctive relief (State Finance Law Section 123-e(2)) and requires that the action be promptly determined and have preference over all other causes in all courts (State Finance Law Section 123-c(4)). It also provides for reimbursement of the costs and attorneys fees of a successful plaintiff (State Finance Law Section 123-g).

**Factual Background**

14. Members of the New York State Senate are elected to serve the citizens of New York State.

15. As part of their responsibilities, they are required to faithfully discharge their duties to the best of their abilities. (New York State Constitution Art. III § 1).

16. In addition, members of the New York State Senate are entitled to be paid salaries only if they perform the services required of them and satisfy the obligations imposed upon them by law. (New York State Constitution Art. III, § 6).

17. Members of the New York State Senate have willfully refused and have failed to provide the services they are required to provide before receiving compensation in direct violation of their constitutional and statutory duties.

18. Having failed to perform those duties; having failed to appear for legislative sessions as required by law, and having ignored the Governor's directive to appear at special sessions, members of the New York State Senate have violated their constitutional and statutory duties.

19. As a result of the foregoing, members of the New York State Senate may not lawfully receive compensation for their services and New York State and defendants may not lawfully give compensation to those members unless and until they perform those obligations.

**FIRST CAUSE OF ACTION**

20. Paragraphs 1 through 21 are realleged.

21. Article 7-A Section 123-b of the State Finance Law prohibits the State from making any actual or threatened wrongful, illegal or unconstitutional expenditure of State funds, and allows citizen taxpayers to bring suit to enjoin any such conduct.

22. Accordingly, payment of compensation to members of the New York State Senate who have failed to discharge their duties and provide the services required of them under the New York State Constitution and statutes of this state would be unconstitutional and illegal.

23. Payment of any such compensation would be in direct violation of the laws of the State of New York, the oath of office taken by members of the New York State Senate and Article 7-A of the New York State Finance Law.

24. Continued payment of compensation to members of the New York State Senate who have failed to discharge their duties and provide the services required of them by the laws of this State would constitute additional unlawful disbursements of State funds.

25. The defendants, their agents and employees have caused, are now causing, and/or are about to cause the wrongful and illegal and unconstitutional expenditure, misappropriation, misapplication and disbursement of State funds.

26. Defendants, thereby, are illegally disbursing and misapplying State funds. In addition, the defendants, their agents and employees have caused, are now causing, and/or are about to cause the wrongful and illegal and unconstitutional

expenditure, misappropriation, misapplication and disbursement of funds to which plaintiff and others similarly situated have a constitutionally protected property right.

27. Plaintiff has no adequate remedy at law.

28. No previous action has been brought for the relief sought herein.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff respectfully requests that this Court enter judgment as follows:

(a) Declaring that the continued payment of compensation to members of the New York State Senate who fail to faithfully discharge their duties and fail to provide services required under the laws of this State is wrongful, illegal and unconstitutional;

(b) Declaring that neither the State nor any agency of the State nor Defendants, Aponte and DiNapoli may lawfully make any further disbursements to members of the New York State Senate who do not faithfully discharge their duties or provide the services required of them under the laws of this State;

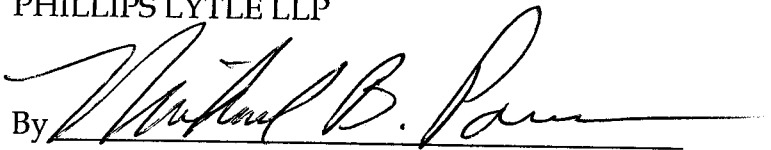
(c) Enjoining the State, agencies of the State or representatives of the State and Defendants Aponte and DiNapoli from making any further disbursements, including salaries, stipends, or compensation of any form, to members of the New York State Senate who do not faithfully discharge their duties or perform the services required of them under the laws of this State;

(d) Granting such other and further relief as this Court deems just and proper, including, but not limited to, awarding plaintiff the costs and disbursements of this action; and

(e) Awarding plaintiff reasonable attorneys' fees in connection with the commencement and prosecution of this action.

Dated: Buffalo, New York  
June 25, 2009

PHILLIPS LYTTLE LLP

By 

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Timothy W. Hoover, Esq.

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