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Lead Counsel for the Plaintiffs

* Admitted pro hac vice for this case
on May 7, 2008 by order of the Honorable
Laura T. Swain, District Court Judge.

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

OGNIBENE, et al.,

Plaintiffs,

-against-

PARKES, et al.,

Defendants.

C.A. No. 08 CV 01335 (LTS) (TDK)

NOTICE OF MOTION

**PLAINTIFFS' NOTICE OF MOTION TO
PARTIALLY VACATE STAY OF PROCEEDINGS**

PLEASE TAKE NOTICE that upon the accompanying *Memorandum of Law in Support of Plaintiffs' Motion to Partially Vacate the Stay of Proceedings*, the Plaintiffs Tom Ognibene, Yvette Velazquez Bennett, Viviana Vazquez-Hernandez, Martin Dilan, Marlene Tapper, Robert Perez, Fran Reiter, Sheila Andersen-Ricci; Martina Franca Associates, LLC, Reiter/Begun Associates, LLC, Denis Gittens, Oscar Perez, the Kings County Committee of the New York State Conservative Party, and the New York State Conservative Party, move before the Hon. Laura Taylor Swain, United States District Judge, on August 15, 2011, or at such time as the Court shall direct, at the United

States Courthouse, 500 Pearl Street, New York, New York to lift the previously entered stay of proceedings as to Counts XI, XII, XIII, and XIV of their Amended Complaint. In support of their motion, Plaintiffs state as follows:

1. On February 2, 2009, this Court granted summary judgment against Plaintiffs on Counts II, III, IV, VII, VIII and IX of their Amended Complaint. (Doc. 98.) Plaintiffs appealed, (Doc. 100), and sought a stay of proceedings as to the remaining counts in the Amended Complaint pending resolution of their appeal. (Doc. 103.) On April 2, 2009, this Court granted Plaintiffs' motion to stay, and entered an order transferring the case to the Court's suspense docket pending the outcome of the appeal. (Doc. 107.)

2. On June 28, 2011, the Supreme Court handed down its decision in *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, --- S.Ct. ----, 2011 WL 2518813 (Jun. 28, 2011). In *Bennett* the Supreme Court declared unconstitutional a trigger provision similar to the ones challenged in Counts XI, XII, XIII, and XIV of the Amended Complaint. In the judgment of counsel, *Bennett* resolves all of the outstanding issues concerning Counts XI, XII, XIII, and XIV in favor of Plaintiffs. Plaintiffs, therefore, seek to have the stay of proceedings lifted as to those counts, so that they may seek judgment in their favor on those counts pursuant to Fed. R. Civ. Pro. 54(b).

3. Joe La Rue, counsel for the Plaintiffs, contacted Mr. Jon Pines, counsel for Defendant City of New York, by telephone on July 14, 2011 and sought Mr. Pines' support for this motion. Mr. Pines indicated that, while he could not offer his support at this time, he also was not certain that the City would oppose it. Rather, he was unsure at this time what the City's response will be.

PLEASE TAKE FURTHER NOTICE that opposition papers, if any, are to be served within fourteen days pursuant to Local Rule 6.1(b).

Dated: July 20, 2011

Respectfully Submitted,

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Certificate of Service

I hereby certify that a copy of the foregoing has been served on counsel for the Defendants and Amici in the way described:

SERVED BY ECF:

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Dated: July 20, 2011

/s/ Joe La Rue

Joe La Rue