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

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

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**OGNIBENE, et al.,**

*Plaintiffs,*

**-against-**

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

**PARKES, et al.,**

*Defendants.*

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**PLAINTIFFS' MEMORANDUM OF LAW  
IN SUPPORT OF PLAINTIFFS' MOTION  
TO PARTIALLY VACATE THE STAY OF PROCEEDINGS**

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## **Factual Background**

In this action, Plaintiffs challenged the constitutionality of various provisions of the New York City Administrative Code. (Doc. 7.) 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.)

## **Argument**

A district court has the inherent power "to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). The decision to grant or lift a stay is within the broad discretion of the court. *See Clinton v. Jones*, 520 U.S. 681, 706 (1997).

In addition, Rule 54(b) of the Federal Rules of Civil Procedure provides that "[w]hen an action presents more than one claim for relief . . . the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties, only if the court expressly determines that there is no just reason for delay." Fed. R. Civ. Pro. 54(b).

Counts XI, XII, XIII, and XIV of Plaintiffs' Amended Complaint challenged the triggering provisions of Code §§ 3-705(7) and 3-706(3). Under these provisions, participating candidates receive additional matching fund contributions or are provided higher expenditure limits based on the amount of expenditures made by their nonparticipating opponent.

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). *Bennett* involved a challenge to an Arizona law that provided matching funds to candidates participating in a public funding scheme based on the amount of expenditures by their nonparticipating opponents. *Bennett*, 2011 WL 2518813 at \*11-12. The Supreme Court held that by granting additional government funding to a candidate based on opposing speech, the matching fund unconstitutionally burdened the First Amendment rights of nonparticipating candidates and independent groups. *Id.* at \*11-12.

Under *Bennett*, Plaintiffs are entitled to judgment in their favor on Counts XI, XII, XIII, and XIV as a matter of law. There is no just reason to delay the Plaintiffs' pursuit of judgment in their favor. Rule 54(b) of the Federal Rules of Civil Procedure therefore counsels this Court to grant their motion to partially vacate the stay of this action and allow them to pursue summary judgment as to Counts XI, XII, XIII, and XIV. It thus serves the interests of justice and judicial economy to lift the stay as to those counts, so that Plaintiffs may immediately seek judgment in their favor on those counts pursuant to Fed. R. Civ. Pro. 54(b).

### **Conclusion**

For the foregoing reasons, the plaintiffs respectfully request that this Court grant their motion to lift the stay the proceedings as to Counts XI, XII, XIII, and XIV of their Amended Complaint.

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:

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Dated: July 20, 2011

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