

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TOM OGNIBENE, *et al.*,

Plaintiffs,

- against -

FREDERICK A. O. SCHWARTZ, JR., *et al.*,

Defendants.

**DECLARATION OF  
JONATHAN PINES IN  
OPPOSITION TO  
PLAINTIFFS' MOTION TO  
PARTIALLY VACATE STAY  
OF PROCEEDINGS**

08 CV 01335 (LTS) (TDK)

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**JONATHAN PINES**, an attorney duly admitted to practice law declares under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am an Assistant Corporation Counsel in the Office of the Corporation Counsel, assigned to represent the defendants in this matter.

2. I make this declaration in opposition to plaintiffs' motion to partially vacate the stay of proceedings they initially requested in connection with their appeal to the Second Circuit of this Court's decision granting partial summary judgment in favor of defendants in this action.

3. Plaintiffs cite Rule 54(b) of the Federal Rules of Civil Procedure in support of their motion; however, the thrust of the Rule militates against the relief they seek. In essence, the Rule permits judgment on fewer than all claims asserted in an action "only if the court expressly determines that there is no just reason for delay."

4. As evidenced by the accompanying declaration of Sue Ellen Dodell, General Counsel of the New York City Campaign Finance Board ("CFB"), the CFB is currently reviewing the bonus provisions of the Campaign Finance Act in light of the Supreme Court's

recent decision in *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, \_\_\_ U.S. \_\_\_, 2011 U.S. LEXIS 4992 (June 27, 2011), and will soon be submitting proposed legislative changes to the City Council that will, in all likelihood, substantially alter, if not render altogether moot, plaintiffs' grounds for challenging the bonus provisions.

5. Ms Dodell's declaration additionally makes clear that there is little likelihood that the challenged bonus provisions will be invoked by any candidate prior to the 2013 election cycle.

6. Together, these circumstances suggest that, rather than there being no just reason for delay, there is, to the contrary, no just reason for expedition. Forcing the parties to litigate, and this Court to decide, a motion relating to statutory provisions that will likely be substantially modified by the time of decision, is precisely the kind of waste of resources that the stay of proceedings was intended to avoid.

7. As a consequence, defendants respectfully urge the Court to deny the plaintiffs' application to lift the stay, and to maintain the case on the Court's suspense docket, pending the outcome of plaintiffs' appeal.

Dated: New York, New York  
August 10, 2011

  
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JONATHAN PINES  
Assistant Corporation Counsel