

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL BOTTLED WATER
ASSOCIATION et al.,

Plaintiffs,

vs.

DAVID A. PATERSON, in his official capacity as
Governor of the State of New York, et al.,

Defendants.

No.

**DECLARATION OF ANDREW I. GERBER IN SUPPORT OF
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I, Andrew I. Gerber, hereby declare as follows:

1. I am a member of the bar of the State of New York and an attorney in the firm Kilpatrick Stockton LLP, counsel for Plaintiffs International Bottled Water Association, Nestlé Waters North America, Inc., and Polar Corp. d/b/a Polar Beverages.
2. I submit this declaration based on my personal knowledge in support of Plaintiffs' motion for a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure.
3. This actions concerns recent amendments to the New York State Returnable Container Law ("Bottle Bill"), enacted as part of New York's 2009-2010 budget law. The amended Bottle Bill was signed into law by the Governor on April 7, 2009 and is set to take effect with respect to Plaintiffs on June 1, 2009.
4. As demonstrated by Plaintiffs' memorandum of law and the accompanying declarations, Plaintiffs have shown that they are likely to succeed on the merits of their claim that certain provisions of the recently-amended Bottle Bill violate the Dormant Commerce Clause, Equal Protection Clause, and Due Process Clause of the U.S. Constitution. Plaintiffs

also have shown that they will suffer irreparable harm unless the Defendants are enjoined from enforcing those unconstitutional provisions pending a trial on the merits, that the balance of equities favors Plaintiffs, and that the public interest supports entry of the preliminary injunction.

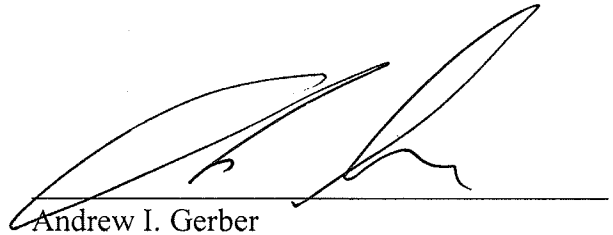
5. Plaintiffs require preliminary injunctive relief before June 1, 2009, the effective date of the amended Bottle Bill, to prevent the immediate, irreparable injury to Plaintiffs described in detail in Plaintiffs' memorandum of law and the accompanying declarations.

6. Plaintiffs thus request that a hearing on their motion for a preliminary injunction be held on an expedited basis so that the Court can render a decision before the amended Bottle Bill takes effect on June 1, 2009.

7. No prior request for the relief sought herein has been made.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Date: New York, New York
May 18, 2009



Andrew I. Gerber