

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARGARITA LOPEZ TORRES, STEVEN BANKS, C.
ALFRED SANTILLO, JOHN J. MACRON, LILI ANN
MOTTA, JOHN W. CARROLL, PHILIP C. SEGAL,
SUSAN LOEB, DAVID J. LANSNER, and COMMON
CAUSE / NY,

-Plaintiffs,

-against-

NEW YORK STATE BOARD OF ELECTIONS; CAROL
BERMAN, NEIL W. KELLEHER, HELENA MOSES
DONOHUE, and EVELYN J. AQUILA, in their official
capacities as Commissioners of the New York State Board of
Elections,

-Defendants.

ANSWER

Index No. **04-CV-1129**

The New York State Board of Elections (hereinafter “the Board”), by their attorney, Todd D. Valentine, for their answer to the verified petition:

1. Admit to the allegations contained in paragraphs numbered 21 and 35.
2. Deny the allegations contained in paragraphs numbered 4, 5, 28, 36, 39, 41, 54, 72, 74, 76, 77, 78, 91, 92, 97, 100, 101, 102, 105, 106, 107, 108, 110, 111, 112, 113 and 114.
3. Deny knowledge and information sufficient to admit or deny the allegations contained in paragraphs numbered 7, 33, 44, 45, 46, 47, 48, 49, 53, 55, 56, 58, 61, 62, 63, 64, 65, 66, 68, 69, 70, 71, 75, 90, 93, 95, 96, 98 and 99.
4. Make no response as to paragraphs numbered 22 and 27, as they contain no statement of fact.
5. That the allegations contained in paragraphs numbered 1, 3, 34, 51, 52, 57, 87 and 103 constitute a characterization of the case to which no response is required, but to the extent that an answer

is made, deny knowledge or information sufficient to form a belief in respect thereto.

6. As to the allegations contained in paragraph 6, respectfully refer the Court to the Constitution and laws for an accurate depiction of the contents thereof deny the allegations to the extent that they depart therefrom.

7. As to the allegations contained in paragraphs 2, 23, 24, 25, 26, 32, 37, 38, 40, 42, 43, 50, 59, 67, 80, 81, 82, 83, 84, 85, 86, 88, and 89, respectfully refer the Court to the New York Election Law for an accurate depiction of the contents thereof deny the allegations to the extent that they depart therefrom.

8. Deny the allegations set forth in paragraph 20, and respectfully refers the Court to the New York Election Law for a statement of the powers and duties of the New York State Board of Elections.

9. As to paragraph 10, deny the allegations contained in the sixth and seventh sentences and deny knowledge and information sufficient to admit or deny the allegations contained in the remainder of the paragraph.

10. As to paragraph 11, deny the allegations contained in the fourth, fifth and seventh sentences and deny knowledge and information sufficient to admit or deny the allegations contained in the remainder of the paragraph.

11. As to paragraphs 12, 14, 15, 17, 18 and 19, deny the allegations contained in the fourth sentence of each and deny knowledge and information sufficient to admit or deny the allegations contained in the remainder of the paragraphs.

12. As to paragraph 13, deny the allegations contained in the fourth and sixth sentences and deny knowledge and information sufficient to admit or deny the allegations contained in the remainder of the paragraph.

13. As to paragraph 16, deny the allegations contained in the fifth, sixth and seventh sentences and deny knowledge and information sufficient to admit or deny the allegations contained in the remainder of the paragraph.

14. As to paragraph 29, admit that for political parties to nominate candidates for Supreme Court justice is through the judicial nominating conventions, and deny knowledge and information sufficient to admit or deny the allegations contained in the remainder of the paragraph.

15. As to paragraph 30, admit that delegates to judicial conventions are elected at the fall primary election and that candidates for Supreme Court are nominated by a majority vote of the delegates at the judicial convention, and deny the allegations set forth in the remainder of the paragraph.

16. As to the allegations contained in paragraph 31, respectfully refer the court to the New York Judiciary Law for an accurate depiction of the contents thereof and deny the allegations to the extent that they depart therefrom.

17. As to the allegations contained in paragraph 60 deny the allegations contained in the last sentence and deny knowledge and information sufficient to admit or deny the allegations contained in the remainder of the paragraph.

18. As to paragraph 94 deny knowledge and information sufficient to admit or deny the allegations regarding the amount of votes Judge Lopez-Torres received for Civil Court, and deny the allegations set forth in the remainder of the paragraph.

FIRST AFFIRMATIVE DEFENSE


19. The complaint fails to state a claim upon which relief can be granted

SECOND AFFIRMATIVE DEFENSE

20. The actions and conduct of defendants BERMAN, KELLEHER, DONOHUE and AQUILA as Commissioners of the New York State Board of Elections and employees of the State of New York under their direction or control of the Board in regard to the matters alleged in the petition, at all relevant times have been fully in compliance with all applicable federal and state constitutional provisions, statutes and regulations.

WHEREFORE, defendant respectfully request that judgment be entered dismissing the complaint and granting such other and further relief as this Court may deem just and proper.

DATED: Albany, New York
April 27, 2004



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