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March 22, 2006

Honorable John Gleeson
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Margarita Lopez Torres v. New York State Board of Elections, 04 CV 1129 (JG)*

Dear Judge Gleeson:

We represent the New York County Democratic Committee and write in response to the March 17, 2006 letter of Kent Yalowitz, Esq., regarding plaintiffs' proposal for the appropriate petitioning requirements for primary elections for Supreme Court Justices.

While we believe that this issue is premature in view of the stay of the Court's January 27, 2006 Order, we reiterate that El. L. 6-136 states on its face that it applies to *all* primaries. Plaintiffs assert that application of this provision to a primary to select party nominees for the office of Supreme Court Justice would have unintended consequences and anomalous results. Plaintiffs, however, have failed to produce any evidence or legal authority to support their proposition that El. L. 6-136 was not intended to apply to elections for Supreme Court Justice. In fact, Plaintiffs cannot produce such evidence or authority because the legislative history of the statute does not support their conclusion.

A review of the statute's history shows that El. L. 6-136 directly derived from the election law in existence when Supreme Court Justices were nominated through the primary process from 1911 through 1921. A copy of the historical and statutory notes for El. L. 6-136 set forth in McKinney's Consolidated Laws of New York Annotated is attached as Exhibit 1. A review of the law in force at that time demonstrates that, as with El. L. 6-136, the legislature applied the same statutory scheme equally to Supreme Court candidates and candidates for other offices. A copy of this predecessor statute to El. L. 6-136 is attached as Exhibit 2. Thus, there is no basis for Plaintiffs to assert that El. L. 6-136 should not apply to primaries for Supreme Court Justice.

Notably, the revised signature requirements set forth in the chart in Mr. Yalowitz' March 17 letter are, on a percentage basis, far less than the requirements demanded of candidates seeking party nominations for Supreme Court Justice in 1911. Indeed, the number of signatures is significantly fewer than the number Plaintiffs initially asserted in their original submissions on this issue. Further, the signature requirements contained in Mr. Yalowitz' March 17 letter are a far cry from

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the numbers that the Court expressed concern about during the February 14, 2006 conference before the Court – numbers that, for example, were in the order of 8,500 signatures for the 9th Judicial District. (Feb. 14, 2006 Tr. at 5).

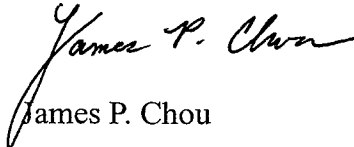
Lastly, we respectfully reiterate our concern that the Court is exceeding the scope of its judicial function by considering the validity of a duly enacted statute not on constitutional grounds but based upon its view of fairness. Our concern is premised upon this Court's statement in the February 14 conference:

I don't see why [N.Y. El. L. § 6-136] needs to be demonstrated to be unconstitutional. The question is equitable relief. The question here is what is fair.

(February 14, 2006 Tr. 8). We respectfully disagree that this Court may exercise its equitable powers to effectively invalidate a constitutional statute because the Court believes it to be unfair. Under basic principles of federalism and separation of powers, the issue of fairness (apart from a constitutional analysis) is for New York's legislature to determine. Indeed, Plaintiffs have not provided a single case that would support the unprecedented equitable remedy that they have asked this Court to issue with respect to signature requirements.

Accordingly, we respectfully request that the Court refrain from deciding this matter until the Second Circuit has rendered a decision on Defendants' appeal. In the alternative, should the Court be inclined to determine this issue at the present time, we respectfully submit that El. L. 6-136 applies to primaries for the office of Supreme Court Justice and that the Court so find.

Respectfully submitted,


James P. Chou

cc: **All Counsel of Record (via email)**

EXHIBIT 1

DESIGNATIONS AND NOMINATIONS**§ 6-136**

Art. 6

or judicial district convention or member of the state committee or assembly district leader or associate assembly district leader need not exceed the number required for member of assembly, and to designate a candidate for the position of district delegate to a national party convention need not exceed the number required for a petition for representative in congress.

(L.1976, c. 233, § 1; amended L.1977, c. 171, § 1; L.1991, c. 90, § 27; L.1992, c. 79, § 15; L.1993, c. 418, § 1; L.1994, c. 659, § 42; L.1996, c. 200, § 19.)

Historical and Statutory Notes**Legislation**

L.1991, c. 90, amendment:

Subd. 2, par. (c). L.1991, c. 90, § 27, eff. May 3, 1991, redesignated former par. (c) as pars. (c) and (c-1) and in par. (c) added requirement of 1500 signatures for elections in municipal court districts.

Subd. 2, par. (c-1). L.1991, c. 90, § 27, eff. May 3, 1991, redesignated portion of former par. (c) as par. (c-1) and in par. (c-1) as so redesignated made signature requirement apply to city council districts from which members other than president are elected rather than to councilmanic districts from which members other than president and at-large members are elected according to New York city charter, and lowered such signature requirement from 1500 to 900.

L.1992, c. 79, amendment:

Subd. 1. L.1992, c. 79, § 15, eff. Jan. 1, 1993, reduced minimum number of required signatures on certain petitions to 15,000 or 5% of enrolled voters, whichever is less, from 20,000 or 5% of enrolled voters, whichever is less.

Subd. 2, par. (a). L.1992, c. 79, § 15, eff. Jan. 1, 1993, decreased number of signatures required on petitions for any office to be filled by all voters of the city of N.Y. to 7,500 from 10,000.

Subd. 2, par. (b). L.1992, c. 79, § 15, eff. Jan. 1, 1993, decreased number of signatures required on petitions for any office to be filled by all voters in any county or borough within the city of N.Y. to 4,000 from 5,000.

L.1993, c. 418, amendment:

Subd. 2, par. (c-1). L.1993, c. 418, § 1, eff. July 21, 1993, substituted requirement of 900 signatures for offices in

New York City filled by voters of any city council district for requirement of 900 signatures for offices in New York City filled by voters of any city council district from which members other than council president are chosen.

L.1994, c. 659, amendment:

Subds. 1, 2. L.1994, c. 659, § 42, in subd. 1 and opening par. of subd. 2 inserted "(excluding voters in inactive status)".

Amendment by L.1994, c. 659 eff. Jan. 1, 1995, but all necessary forms shall be prepared and printed far enough in advance to be available on that date, and any rules or regulations necessary for implementation shall be promulgated by that date, pursuant to L.1994, c. 659, § 55, set out as a note under Election Law § 5-211.

L.1996, c. 200, amendment:

Subd. 1. L.1996, c. 200, § 19, eff. June 25, 1996, made technical corrections.

Derivation

Election Law of 1949, c. 100, [§ 136 subs. (6), (7)]; added L.1971, c. 424, § 1; amended L.1973, c. 837, § 1.

Election Law of 1949, c. 100, [§ 136]. Said § 136 was added L.1971, c. 424, § 1; amended L.1973, c. 837, § 1; L.1974, c. 744, § 1. It was from a prior § 136 which was amended L.1950, c. 257, § 4; L.1952, c. 465, § 6; L.1954, c. 746, § 3; L.1957, c. 554, § 2; L.1967, c. 716, § 5; L.1970, c. 118, § 3, and repealed by L.1971, c. 424, § 1.

Election Law of 1922, c. 588, [§ 136].

Election Law of 1909, c. 22, [§ 48], added L.1911, c. 891.



EXHIBIT 2

2. Notice of meetings. Except as hereinafter provided, notice of the time, place and purpose of every meeting to be held to designate candidates shall be duly mailed to each member of the committee at his post-office address not less than fifteen days before the day fixed for such meeting. Each such notice shall be filed not less than ten days before the day fixed for such meeting in the office in which designations by the committee of candidates are required to be filed.

3. Conduct of meetings. Each meeting of a committee for the purpose of making such designations shall be open to the public. A committee in making designations of candidates for different offices shall make them in the order in which said offices will appear on the ballot at the general election. The procedure governing the meeting of the committee shall be prescribed by the rules and regulations of the party. No subcommittee shall be empowered to make designations unless to fill vacancies except it be composed of at least three members of the county committee from each assembly district within the county.

§ 48. Designation by petition. Every petition for the designation of a candidate for party nomination or for election to a party position shall be in substantially the following form:

I, the undersigned do hereby certify that I am a duly enrolled voter of the party, as herein below specified, and entitled to vote at the next primary election of said party, and I do hereby designate the following named person, or persons, as a candidate, or candidates, for nomination by the party for public office, or offices, or as a candidate or candidates for election to the position, or positions, of the said party to be voted for at the official primary election to be held on the day of, A. D.,, as hereinafter specified, and it is my intention to support at the ensuing primary the candidacy of the person or persons and each of them herein designated by me.

Name of candidate.	Public Office or party position.	Place of residence.
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LAWS OF NEW YORK, 1911.

891.]

[CHAP.

I do hereby appoint [here insert the names of at least three persons] as a committee to fill vacancies in accordance with the provisions of the election law.

In witness whereof, I have hereunto set my hand the day and year placed opposite my signature.

Date.	Name of signer.	Residence.	Election district, town or ward.
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State of New York, } ss.:
County of

On this day of in the year before me personally came (here shall be inserted the names of each and every voter appearing and making oath before the said officer) each of whom was to me personally known and known by me to be the voter whose name and place of residence is subscribed by him to the foregoing certificate and each of the foregoing voters being by me duly and severally sworn did make oath that he is a voter and has truly stated his residence, and that it is his intention to support at the polls the candidacy of the person or persons designated for nomination for public office in the foregoing certificate of designation, if the same are nominated.
(Signature and official title.)

A petition for the designation of candidates for party nomination or for election to party position may designate candidates for nomination for one or more public offices, or for election to one or more party positions, or both.

Petitions for designation of candidates for party nominations or for the election of candidates to party positions shall be signed by at least five per centum of the total enrolled voters of such party within the district, within which such office, or within the unit of representation for which such party position, is to be filled



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and by not less than four per centum of the total vote cast in that political subdivision for the party candidate for governor at the last preceding gubernatorial election.

All papers signed and verified in the manner and form above prescribed for the purpose of designating the same candidate for nomination for the same public office or the same party position shall, when bound together and offered for filing as provided in this chapter, be deemed to constitute one petition with respect to said candidate.

No enrolled voter shall join in designating a greater number of candidates for party nomination for a public office or for election to a party position than the number of persons to be elected thereto. Where an enrolled voter shall sign any petition or petitions designating a greater number of candidates than he is permitted to designate as aforesaid his signatures, if they bear the same date, shall not be counted, and if they bear different dates they shall be counted in the order of their priority of date and only so far as he was entitled to make designations.

§ 49. Filing of designations. 1. Where to be filed. All designations of candidates for offices and for election to party positions to be filled by the voters of any subdivision of the state shall be filed with the officer with whom certificates of nomination for such office or offices are required by this act to be filed. All designations filed in accordance with the provisions of this section shall forthwith be filed by the custodian of primary records in his office and shall be open to inspection as public records at all reasonable hours, and each custodian of primary records shall provide ample and sufficient facilities for keeping said records and making copies of the same.

2. When to be filed. Designations by party committees shall be filed not earlier than the fourth Tuesday and not later than the third Tuesday preceding the primary at which the candidates therein designated are to be voted for; each designation shall be so filed by filing a certificate thereof made by the chairman and secretary of the meeting of the committee at which the designations are made and said certificate shall be accompanied by a complete and accurate record of the proceedings of the meeting of the committee. All designations by petition shall be filed not earlier than the fourth Tuesday and not later than five days after the third Tuesday preceding the primary at which the candidates therein designated are to be voted for. All designations shall at the time