

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARGARITA LÓPEZ 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,

v.

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

Defendants.
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**DECLARATION OF JOHN
MANNING REGAN, SR. IN
SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTIVE RELIEF**

Index No. CV 04-1129 (JG).

JOHN MANNING REGAN declares as follows:

1. I submit this declaration in support of Plaintiffs' motion for a preliminary injunction. Specifically, as a former candidate for the Republican Party's Supreme Court nomination in the 7th Judicial District upstate, my experience with the current selection rules demonstrates the extraordinarily severe burdens placed on challenger candidates and party voters by those rules.

Background

2. I am a forty-year resident of Rochester, New York, within the 7th Judicial District and Fourth Judicial Department.

3. I graduated from the University of Toronto in 1953. I served in the U.S. Navy for over three years, from June 1953 until October 1956. I then graduated from Villanova University Law School in June 1959. In 1964 I received a Masters in

Law from Yale Law School. I was admitted to the New York Bar in 1959 and am presently a practicing attorney in good standing.

4. From 1959 to 1981, I practiced criminal and civil law in Rochester, New York. I handled numerous cases before the New York Supreme Court, the Fourth Department Appellate Division, the New York Court of Appeals, the U.S. District Court, the Second Circuit Court of Appeals, and the United States Supreme Court.

5. In 1967, I served as counsel to the Judiciary Committee at the 1967 New York State Constitutional Convention in Albany. In 1974, Governor Carey appointed me to the New York Gubernatorial Commission on Judicial Reform chaired by Cyrus R. Vance. That Commission proposed numerous judicial reforms that were enacted, including gubernatorial appointment of the Judges of the Court of Appeals and central administration of the state courts.

6. In 1981, I won election to the City Court of Rochester, a full-time State trial court that handles civil cases up to the sum of \$25,000, criminal violations and misdemeanors, and all pre-indictment proceedings in felony cases.

7. The process by which I was elected to Rochester City Court is relevant. I had been active in Democratic politics from 1960 until 1975, serving as Counsel to the Monroe County Democratic Committee from 1965 to 1970. I was also the Democratic candidate for Monroe County District Attorney in 1972. During the 1974 gubernatorial election, however, the Monroe County Democratic organization supported Mario Cuomo for governor while I supported Hugh Carey. When Carey won the Democratic Primary and was later elected governor, a permanent rift between me and the Monroe County Democratic leaders ensued. As a result, my efforts to secure a judicial

nomination from them thereafter from 1976 through 1980 were unavailing. In 1981, I announced my intention to run as a candidate in the primary election for the Democratic nomination for City Court Judge. The Monroe County Democratic Party leaders endorsed a different candidate in the primary election. The Conservative Party nominated my opponent in the Democratic primary election, assuming that he would win because he was backed by the Democratic leadership. The Democratic voters of Rochester, however, nominated me in the primary election. The Republican Party, with whom I had always maintained cordial relations, also nominated me as their City Court candidate. As a result, I ultimately became the Democrat and Republican candidate in the general election, winning it easily. My success also agitated the Conservative Party Chairman, whose political memory has been eternal.

8. I served as Rochester City Court Judge for slightly more than ten years. In 1985, I changed my party affiliation from Democrat to Republican, but, of course, did not involve myself in politics, nor seek any other political office. In 1991, I ran for re-election to the City Court as an incumbent Republican. I lost in a close contest to the Democratic candidate because the number of Republican voters in the City had seriously declined over that ten-year period.

9. In 1992, after I left the bench, the newly-elected Monroe County Executive, a Republican named Bob King, appointed me to serve in the Monroe County Attorney's Office. In that capacity, I represented principally County law enforcement agencies in legal proceedings, labor contract negotiations, and applications for public safety appropriations from state and federal governments.

Running for Supreme Court

10. In 1992, 1993 and 1994 I pursued my party's nomination for Supreme Court for the 7th Judicial District. In 1994, Supreme Court Justice Richard Rosenbloom, a Democrat elected in 1980, was seeking reelection. None of the other Republican contenders for the nomination had prior experience as a full-time judge, and Justice Rosenbloom was very able and popular, so there was a need for strong Republican candidate. Voters in the Seventh Judicial District have always been solidly Republican, but Justice Rosenbloom's election in 1980 resulted from the fact that he garnered substantial Republican votes in his victory. It was important to avoid a repetition of that scenario, and these circumstances indicated that the Party would favor my candidacy over weaker candidates.

11. Over the years from 1980 to 1994, certain political patterns had emerged that affected Republican nominations for Supreme Court, particularly from 1990 onward. The Republican power base had concentrated in the County government, both its Legislature and its Executive. The Democratic power base had concentrated in the City government, both its Council and its Mayor. The Conservative Party nomination often affected the balance of political power in the County, *e.g.*, four or five County legislature seats turned on which candidates had the Conservative Party's support. To maintain control of the County Legislature, the Republican Party Chairman had brokered an agreement whereby the Conservative Party Chairman would have control over Republican Supreme Court nominations in exchange for Conservative Party support for the Republican Chairman's chosen candidates for the County Legislature. Consequently, Republican candidates for Supreme Court had to obtain the support of the Conservative Party Chairman in order to be considered for the Republican Party's nomination. That

Conservative chairman was the same person who had opposed me for City Court in 1981. In addition, the Republican Party County Chairman was new as of 1990 and, unlike the situation in 1981, I had no familiarity or association with him largely because, as a sitting judge, I had not engaged in any political activity whatsoever in more than ten years.

12. All contenders for the Republican nomination in 1994 were advised to appear before the Republican committees in the towns, villages and the city. All of us did so over a three-month period from May through early July. The committees supported me overwhelmingly, but the exercise was a charade. In late June the Republican Party Chairman advised me that the Conservative Party Chairman was supporting a part-time, Town of Pennfield Justice, who had been in office less than two years, Robert J. Lunn. Lunn had very limited judicial experience and was not well known at all among voters or Republican Party members within the Judicial District. I protested the selection, but the Chairman indicated that he controlled the judicial convention delegates in the District and "that's all that matters." This was the established and palpable truth, and my only recourse was to assemble a group of delegates who would run against the organization delegates and vote for me at the convention. Despite the difficulties discussed below, I decided to try to organize a challenge by running supportive delegate candidates in the September election.

13. Subsequently, I contacted many of the Republican Party county committee members from each of the Assembly Districts within the 7th Judicial District to determine their level of support for my candidacy. In those meetings, they indicated their desire to support my candidacy. However, because the Republican and Conservative Party chairmen did not support me and because the current nominating

system did not allow me, personally as a candidate, to petition onto any ballot, the support of these committee members and other rank-and-file party members could not be easily translated into a real opportunity to earn my party's nomination for Supreme Court. They indicated that they had no choice but to serve as delegates when asked and to back the Party Chairman's choice of nominee at the convention.

14. The idea of running these supportive committee people as delegates who would defy the County Chairman, nominate me from the floor, and support me at the judicial convention was thus not a realistic option. The barriers to organizing such campaigns were insurmountable in the first instance because almost all committee persons had a relative, or were themselves, employed in a government job for which they owed loyalty to the Party Chairman. Even if nothing else were required, recruiting the necessary number of delegates and alternate candidates alone would have been an impossible task. To have any realistic opportunity to compete for the nomination at the convention, I would have had to recruit over 55 people to represent the 11 Assembly Districts that were within my Judicial District in whole or in part, each of whom would have had to be willing to contribute significant energy, time, and money to run as delegates and win a campaign *against the county Republican Party's leaders' candidates* for the elusive satisfaction, if successful, of voting for me at a single Judicial convention, and thereby jeopardizing their political future.

15. Having extensive experience conducting political campaigns and even petitioning efforts, I tested the feasibility of running slates of delegate candidates in each AD. In June, I hired an experienced petitioning lawyer to run a petitioning drive to place such delegate candidates on the ballot. With his help, I then tried to recruit delegate

candidates but quickly realized that it would be impossible. I phoned and met with scores of potential delegates, but could not convince any of them to run against their party's candidates. Accordingly, despite significant support among Republican Party members, I simply could not overcome the practical barriers to recruiting such a large number of willing delegate candidates.

16. The timetable to gather and file petitions in primary elections is less than six weeks. To cover the geographical area of all Assembly Districts in the Seventh Judicial District and gather 500 signatures, at a minimum, from registered Republicans in each Assembly District who have not previously signed a designating petition for judicial delegates, is impossible unless one has several dozen people to work full-time at gathering such signatures. Wealthy candidates for President or Senator with national fundraising campaigns can afford that kind of payroll expense, but ordinary judicial candidates like myself certainly could not.

17. To confront these problems, and also to address the obstacle that the name of the candidate in a Judicial District delegate election cannot appear on the ballot – that is, the delegates run as individuals, not pledged to a specific candidate – I held a strategy conference with my election lawyer, family members, and close supporters.

18. In that conference we developed a last-ditch strategy that was effectively doomed from the start. Because of the severe barriers to running delegates in all of the Assembly Districts, we were forced to petition only in the six Assembly Districts entitled to the greatest number of delegates based on their high number of Republican voters. We decided to run the candidate myself, and three of my children, as

delegates in all six Assembly Districts, because all of us were residents of the Seventh Judicial District and had the REGAN surname. These decisions meant that we had to gather a statutory minimum of 3,000 signatures spread equally over six Assembly Districts. In addition, four of the Assembly Districts chosen were multi-county Assembly Districts, that is, the boundaries of those districts crossed one or more county lines. For those districts, the Election Law mandates that the designating petition be filed with the State Board of Elections. N.Y. Elec. L. § 6-144.

19. For Rochester City Court, I had been required by law to gather 1,000 signatures within the City to appear on the ballot as a Republican or Democratic Party primary election candidate. By contrast, for Supreme Court, the law required me to gather at least 500 signatures for each slate of delegate candidates in each AD. As a general rule, moreover, to avoid being thrown off the ballot through legal challenges by one's opponent, it is necessary to gather at least 2-3 times as many signatures as the statutory minimum requires. Thus after our conference, even with our pared-down list of Assembly Districts, we realized it was necessary to get about 9,000 signatures in an area sixty miles East-West and eighty miles North-South.

20. In each Assembly District, and for each slate of delegate candidates, I had to run separate campaigns because of the geography. I also had to educate voters in each area through literature and advertising that they should support the REGAN delegate candidates because those delegates would support me as a candidate for Supreme Court. In the case of a presidential primary campaign, the burden of such a public education campaign is met largely by the massive press coverage of the presidential race, quite apart from any mailings or other unpaid media produced by the

candidates themselves. For Supreme Court, no such press coverage is available. And without family members running as delegates, advertising or mailings mentioning REGAN would have been ineffective. There was simply no way I could overcome these organizational and financial burdens, so I put my sons (all three of whom are lawyers) on the petitions as delegate candidates. We hoped that if they were elected in more than one Assembly District, they would be allowed to cast delegate votes at the convention that were weighted to reflect that fact.

21. I understood clearly that the Republican organization would challenge my petitions on every conceivable ground. Because of our decision to run the very same delegate candidates in all six Assembly Districts – an obviously high-risk strategy – I anticipated trouble.

22. I filed facially valid designating petitions in the six assembly districts where we chose to circulate petitions. Two sets of petitions were filed in the Monroe County Board of Elections because those two Assembly Districts were entirely within county boundaries. The other four sets of petitions were filed in the office of the State Board of Elections as they were from multi-county Assembly Districts and the law required such petitions to be filed in Albany. Ultimately, the Monroe and Wayne County Boards of Elections ruled that our strategy to run the same delegate candidates in each of the six Assembly Districts was improper and, as a result, we were only successful in placing our four delegate candidates on the September ballot in one Assembly District. Furthermore, despite the Election Law provision that appeared to require a contrary result (N.Y. Elec. L. § 6-144), the State Board ruled that our multi-county Assembly District petitions had been filed in the wrong office. I brought a lawsuit to require that our

delegates be placed on the ballot in all of the six Assembly Districts, but it was dismissed on procedural grounds.

23. This is the only contested delegate race within the 7th Judicial District of which I am aware in the many years I have been in Rochester. Ordinarily, delegates to the judicial conventions are selected by the county party leaders primarily for their loyalty and party service. They run unopposed on the September ballot. Because of my strong support among voters, however, I succeeded in getting the REGAN slate elected as delegates in the one Assembly District in which we were able to get on the ballot. This required a full-time petitioning director and approximately twenty volunteers across the Judicial District who supported my candidacy. It is a testament to the impenetrable barriers to challenger candidates inherent in the current selection requirements that, despite having the campaign experience, resources, and popularity to challenge the party leaders' delegate candidates, I still was unable to secure a realistic opportunity to compete for my party's nomination.

24. At the 1994 Republican Party judicial convention in the 7th Judicial District, I received the delegate votes of only my three sons and myself. As reflected in the minutes of that convention, the vote was so lopsided as to require only a visual count of hands rather than a delegate-by-delegate tally. The candidate supported by the Republican and Conservative Party chairmen, Mr. Lunn, prevailed handily. Mr. Lunn then succeeded in the general election in November over the incumbent, Justice Rosenbloom, by only about 9,000 votes.

25. The 1994 election showed in stark relief how the current selection system for Supreme Court deprives candidates like myself, who do not have the county

party chairman's backing but have significant support among their party's voters, of our right to be considered by those voters in our Judicial District.

The Severe and Irreparable Harms Imposed by the Current Selection System

26. My extensive experience as a City Court judge and as an attorney in both private practice and public service, as well as my demonstrated support among voters, more than qualified me to be considered by the voters of my party for Supreme Court. But New York's judicial convention system placed severe burdens on my candidacy at every turn and precluded any direct voter participation in the candidate selection process.

27. Under the current system, and unlike the City Court selection system that allowed me to earn my party's nomination in a primary election, there was no path for me to petition directly among voters onto a primary election ballot as a named Republican candidate. Nor was it sufficient, as it is for statewide offices in New York State, to garner 25% of the party's state committee to get placed on the primary ballot as a candidate. Only a majority of the judicial convention's delegates nominates a candidate and, unlike those statewide offices, that path is the *only* one onto the general election ballot. As a result, I was prevented from earning a place on the ballot and my supporters among Republican voters were precluded from voting for me at any stage in the process.

28. Only by replacing the current judicial convention system with a system of direct primary elections will the kind of burdens suffered by candidates like myself be prevented. Without such relief, future candidates for Supreme Court who seek their party's nomination will be unable to get any opportunity to be considered by their party's voters. Nor will the voters and party members themselves be allowed to exercise

their right to choose from among those candidates who have demonstrated a reasonable modicum of support among party voters for their party's nomination. Those severe burdens on challengers and on voters should, in my view, be abolished.

I swear under penalty of perjury that the foregoing is true and correct.

Dated: *Carolla Kathleen Carroll*
~~Rochester, New York~~
June *Jul* 2004
27927

John Manning Regan
JOHN MANNING REGAN, SR.