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 MARGARITA LÓPEZ TORRES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTIVE RELIEF**

Index No. CV 04-1129 (JG)

MARGARITA LÓPEZ TORRES declares as follows:

1. I am a Judge of the Civil Court of the City of New York for Brooklyn, and a Plaintiff in this case. I submit this declaration in support of Plaintiffs' motion for a preliminary injunction.

**Background**

2. I am originally from Mayagüez, Puerto Rico, but have lived most of my life in Brooklyn.

3. From my graduation from Rutgers University School of Law in 1979 until I joined the Civil Court in 1992, I was a legal services attorney and attorney for the City of New York. I served as the Deputy General Counsel of Children and Family Services for the Human Resources Administration, where I headed the citywide

legal department which represented the Child Welfare Administration in all matters, including cases of child abuse and neglect. Before that, I was the Director of Family Law at Brooklyn Legal Services Corp., where I supervised the unit that represented parents in Family Court in child abuse/neglect, custody, foster care review, termination of parental rights, and other proceedings, and also represented victims of domestic violence. I also served as an Assistant Corporation Counsel for the City, and as a Managing Attorney of MFY Legal Services. I have also been an adjunct professor of law in the Women's Rights Litigation Clinic at Rutgers University School of Law and a lecturer on ethics at the Practicing Law Institute. As a member of the City Bar Association's Committee on the Legal Needs of the Poor, I coauthored a report on the need to ensure adequate interpreter services in the courts.

4. I am a registered voter enrolled in the Democratic Party and have voted regularly in Brooklyn for over 30 years.

**Running for Civil Court with the County Party Leaders' Support**

5. In 1992, after many years of practicing in state courts representing both disadvantaged families and individuals and City agencies, I became a candidate for a countywide seat on the Civil Court of the City of New York in Brooklyn. I sought to become a judge to use my legal experience and commitment to justice to provide impartial, independent, and fair-minded justice to the litigants who came before me.

6. Unlike Supreme Court justices, judges of the Civil Court are elected through a direct primary election in September and a general election in November. Democratic candidates can petition directly onto the primary election ballot by gathering at least 4,000 signatures from voters anywhere in the borough. N.Y. Elec.

L. § 6-136. In my election, the Kings County Democratic County Committee endorsed me for a vacancy on the Civil Court that did not involve a contested primary election. I was elected by the voters of Brooklyn in the general election in November of 1992.

7. I was the first Latina elected to the Civil Court in New York City, and have now served longer than all but two other judges on the Civil Court in Brooklyn.

**Hiring a Court Attorney for the First Time and Losing Party Leaders' Support**

8. All judges of the Civil Court are provided funding to hire one court attorney, an attorney who serves as a permanent law clerk. Given the large caseload in our court, I rely heavily upon my court attorney to conduct legal research, to conference cases with attorneys, to assist in writing opinions and orders, and to handle the operations and scheduling of cases that come before me. In short, I would not hire a court attorney who did not have significant legal experience, proven skills in legal research and writing, a strong work ethic, and a commitment, like my own, to providing justice in my courtroom.

9. With these principles in mind, shortly after I won my election to the Civil Court (but before my induction ceremony) I began my search for qualified applicants to serve as my court attorney. During this process, I received a letter from an official of the Democratic Party in Brooklyn, in which he forwarded only one resume of an attorney whom he indicated in his cover letter I was to interview for the position of court attorney. Although the applicant did not appear to have the requisite experience for the job, I both interviewed him and spoke with a listed reference to determine whether he was, in fact, qualified for the position. His listed references included a state court judge for whom he had worked, who told me that the applicant had spent too much of his time

on the telephone on political matters while at work and that she did not recommend him. After a careful review of his application, I determined that he was not the right person to serve as my first court attorney.

10. The attorney whom I ultimately hired for the position had practiced for almost twenty years as a legal services attorney, and I was familiar with his abilities as he had once been my co-worker at MFY Legal Services, Inc. He had tremendous legal experience, judgment, integrity, and work ethic. After several years as an outstanding court attorney, he is now an Administrative Law Judge for the State of New York.

11. In January of 1993, while attending what is commonly referred to as "judge school" for new judges, I received a message that Mr. Norman wished to speak with me. When I called him, he was polite but extremely upset that I had not hired the person whose resume the Party had sent to me. He told me that I did not "understand the way it works." He explained that attorneys work hard for the Democratic Party's political clubs to get candidates elected and that the court attorney job is a way to reward them. He expressed that I had obtained my Civil Court judgeship "for nothing." I told him that I had interviewed the person whom the County Democratic Organization had forwarded to me but found him unqualified for the position, and had already hired another person as my court attorney. He responded by demanding that I "unhire" him and hire either the original party-backed applicant or another attorney whom the party would find for me. I replied that I could not do that. In response, Mr. Norman told me that some day I would want to become a Supreme Court justice and that the party leaders would not forget this. He reiterated that I had been given my position "for nothing" and "as a gift" and that the party leaders would remember my refusal to hire their applicant

and that without the "County's" support my nomination for Supreme Court "will not happen."

12. Similarly, at a Christmas party that same winter, Assemblyman Vito Lopez confronted me angrily about my failure to hire the party's referral. He told me that it was an embarrassment to him and "made him look bad" because he had supported me in my campaign for Civil Court and in return I was refusing to show my appreciation by hiring the person referred by "County." He called me ungrateful and demanded that I "make it right" by hiring the person whom the party had forwarded. I told him that I could not do that, that I needed to have the most qualified person -- and someone that I felt I could rely on.

**Assemblyman Lopez' Offer**

13. In or around June, 1995, I received a phone call from a friend who indicated that she was relaying a message from a close associate of Assemblyman Lopez. It was conveyed to me that Mr. Lopez' wanted me to hire his daughter, who had recently finished law school, as my court attorney, and that in exchange he would "make it happen" for me to be selected for a Supreme Court vacancy that was opening up and had been designated for a Latino by the county party leadership. Subsequently, in about September 1995 I received a phone call from another source who conveyed the same request.

14. I told both persons that I could not fire a highly qualified court attorney in order to hire a recent law graduate. Assemblyman Lopez' daughter was ultimately hired by another Civil Court Judge in Brooklyn who subsequently was nominated and elected to the Supreme Court a few years later. Mr. Lopez has not

supported me in any of my efforts to obtain the Democratic Party's nomination for Supreme Court, and in fact was the main supporter of a candidate who ran against me when I sought re-election to the Civil Court in 2002.

**The 1997 Supreme Court Elections**

15. In 1997, I decided to seek my party's nomination for Supreme Court. I contacted party officials to indicate my interest in being considered by the judicial screening committee for Supreme Court that Mr. Norman had established to consider and approve candidates for judgeships.

16. In late July of 1997, I contacted Mr. Norman to request a meeting to discuss my candidacy. He told me to come to Junior's Restaurant in Brooklyn for a breakfast meeting with him on August 22, 1997, which I did.

17. In that meeting, I indicated to him that I intended to seek the Democratic Party's nomination for Supreme Court. In response, he reiterated to me that my failure to hire as my court attorney the people chosen by the party leadership had been a "serious breach of protocol." I told him that since I was at that point between court attorneys, that I would be prepared to consider an application referred by him if the applicant was qualified. He indicated that the way it worked was that I needed to get the support of the "Latino" district leaders.

18. In August of 1997, several Democratic elected officials in Kings County approached me directly and indirectly to see if I would be willing to be considered for nomination to the Supreme Court at the judicial convention. I agreed to be considered for nomination.

19. On September 15, 1997, while I was on the bench in court, I

received an urgent phone call from Mr. Norman. He insisted and demanded that I remove my name, in writing, from consideration for Supreme Court. He told me that if I did not do so I would never be supported for Supreme Court, that to run in an open convention was "not the way it works" and that it would be a direct challenge to him. He urged that I carefully consider my decision. I replied that I was under the impression that we lived in a democracy and that I had a right to participate in the judicial convention as a candidate.

20. In the end, my name was never even proposed at the judicial convention for nomination.

**The 1998 Supreme Court Elections**

21. In the following year, I once again sought nomination to the Supreme Court.

22. As I did the year before, I applied to and was interviewed by the Kings County Judicial Screening Committee.

23. On September 22, 1998, I telephoned the then-chair of the Screening Committee, Mr. Jerome Karp, to request the results of the committee's evaluation of my candidacy. Mr. Karp refused to divulge this information to me, rather, he told me that the results of the screening committee's evaluations were confidential and were only provided to the County Committee Chairman, Mr. Norman.

24. Accordingly, I twice wrote to Mr. Norman requesting the results of the Screening Committee's evaluation of my qualifications, and, receiving no response, I called him several times and left several messages. He did not respond to my letters or to my calls.

25. Without any access to the Democratic County Committee's endorsement, I considered whether there was any other way to obtain my party's nomination for Supreme Court. The idea of running delegates who would defy the County Chairman, nominate me from the floor, and support me at the convention was not a realistic option by any stretch of the imagination. The burdens and barriers to organizing such campaigns are truly insurmountable. Recruiting the necessary delegate and alternate candidates – over 300 people who must be drawn from each of the 24 Assembly Districts in the Judicial District and must be willing to contribute massive amounts of energy, time, and money to run and win a campaign *against the county party's operation* for the questionable satisfaction, if successful, of voting for me at a single lunchtime convention – is impossible even if nothing else were required. But that is just the beginning.

26. Even if I were somehow able to recruit this massive group of delegate candidates from across Brooklyn and Staten Island – which I could not – I would still have to raise sufficient funds and establish a sufficiently effective organization in every Assembly District to get them on the ballot and get elected *against the county party's candidates and operation.* I do not know precisely how much such an effort would cost, but based on my experience successfully running a countywide campaign to retain my Civil Court judgeship in 2002 against the county party leaders' candidate (see below), I know that it would be an impossibly expensive and burdensome task.

27. For Civil Court, I was required by law to gather 4,000 signatures to appear on the ballot as a Democratic Party candidate for this countywide office. By contrast, for Supreme Court – an office that covers only Brooklyn and Staten Island – I

would be required to gather at least 500 signatures for each of the slates of delegate candidates in each AD, *i.e.*, 12,000 signatures as a statutory minimum. As general rule, however, 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. If I were unable to run full slates in each Assembly District, moreover, I would have to gather signatures separately for individual delegate candidates.

28. In each Assembly District, and for each delegate candidate or slate of candidates, I would have had to run separate campaigns. Moreover, instead of the relatively easy task of convincing voters to support presidential delegates based on which presidential candidate they will, in turn, support, I would have to educate voters through expensive literature and extensive communications that they should support certain delegate candidates because they will support a specific 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, distinct from any mailings or other unpaid media produced by the candidates themselves. For Supreme Court, no such press coverage is available. Nor does the ballot itself show the delegate candidates' allegiances to specific Supreme Court candidates in the manner in which the presidential delegate ballots do. There is simply no way I could ever overcome these organizational and financial burdens to place delegate candidates on the ballot, much less ensure that they could win their election.

29. Even if I were successful in getting at least half of the delegates at the convention elected, that impossible feat would still not give me a place on any ballot to be considered by my party's voters or the voters at large. I still would have to

overcome the significant pressure that the county party leaders would inevitably exert on the delegates to support the party-backed candidates rather than me. Unlike the county party leaders, I could not promise any future benefits in exchange for a delegate's support for the party-backed candidates or threaten any loss of opportunities for supporting my nomination. In short, electing delegates would only be half the battle and I do not believe that any challenger Supreme Court candidate could overcome the burdens the current system places on such candidates' efforts to be considered by the voters.

30. Realizing that I had no realistic chance to get on the general election ballot in 1998 without the county party leaders' backing, and that such backing would not be forthcoming, I could not proceed any farther and ended my bid for the nomination.

**The 2002 Elections**

31. While on the bench since 1992, I had served in numerous different courts. Between January 1993 and June 1996 I presided in the Civil Court. From 1996 through May of 1999, and again from 2001 to the present, I was assigned to the Criminal Court and now preside over a criminal trial part. From June of 1999 to 2001, I was assigned to the New York State Family Court where I presided in the child protective, custody and family offense parts. These assignments have given me broad experience as a judge, great pride in serving on the Civil Court, and a strong interest in serving on the Supreme Court to hear the full range of cases.

32. In 2002, I decided to run for Supreme Court again. Unfortunately, once again my path was blocked entirely by the county party leadership.

33. On January 14, 2002, I wrote to Mr. Norman and to Jerome Karp,

the chairperson of Mr. Norman's judicial screening committee, to declare my interest and to seek their guidance as to the nomination process. *See* Exhibit 1. In reply, Mr. Karp wrote to me two days later to "advise that it is not necessary for you to declare your candidacy to me or my Committee. Candidates are only considered by our Committee upon referral of the County Leader [*i.e.*, Mr. Norman]." *See* Exhibit 2. Mr. Norman did not refer my name to his screening committee even for an interview. The county party leaders' decision not to allow me to be considered by the screening committee effectively ended any real possibility for me to obtain a place on the ballot to be considered by the voters.

34. I met with Mr. Norman on February 1, 2002, to discuss my candidacy both for re-election to the Civil Court that year and for nomination to the Supreme Court. He told me that my refusal in 1997 to withdraw my name from consideration was a major issue with him. He also expressed again his displeasure at my failure ever to hire a person connected with the Kings County Democratic Organization.

35. I met with Mr. Norman again on May 2, 2002, along with Mr. Feldman, to discuss my candidacy. Mr. Norman told me that my qualifications were not the issue. He again reiterated that I had been "disloyal" to the party by allowing my name to be considered for Supreme Court without his permission. Mr. Feldman stated his view that he had a problem with my "lifestyle."

36. During the 2002 judicial convention, judicial delegate Paul Bader placed my name in contention for nomination to the Supreme Court from the floor. The effort failed because the overwhelming majority of delegates voted instead for the party-backed candidates for Supreme Court. Still, to my knowledge it was the first time in

recent history that any such nomination challenge was even attempted.

37. Not only did Mr. Norman decline to support my nomination for Supreme Court, but he also chose to have the county party support another candidate against me for my Civil Court seat when it was up for re-election in 2002, a virtually unprecedented action by the County's Democratic Party. During that campaign, I received endorsements from the *New York Times* (see Exhibit 3) and numerous other newspapers, as well as approvals from the major bar associations that considered the race, and I prevailed in the primary election. In the general election, I received more votes than any of the other seven Democratic countywide judicial candidates, and was the only judicial candidate in Brooklyn to receive over 200,000 votes. In fact, I received more votes (200,710) for Civil Court than *any* of the Democratic candidates for *Supreme Court* did in Brooklyn on the same day.

38. The significant support I received among voters – more than the successful candidates for Supreme Court – demonstrated that I should be allowed to be considered by the voters of my party for the Democratic Party nomination for Supreme Court. But under the current judicial convention system, I cannot get on the ballot through petitioning among voters. Unlike Supreme Court, the primary election system for Civil Court allowed me to petition onto the ballot as a Democratic Party candidate and to gather support directly from the voters. In short, my 2002 election showed in stark relief why the current selection system for Supreme Court deprives candidates like myself, who do not have the county party leadership's backing but have significant support among my party's voters, of our right to be considered by the voters of our party and of our Judicial District.

**The 2003 Supreme Court Elections**

39. In January of 2003, I again wrote to Mr. Norman and to Mr. Karp to declare my candidacy for Supreme Court and to request that the screening committee consider my application. I also requested to know whether "the rules, procedures, and criteria of the Committee are set forth in writing, and if so, whether I might obtain a copy of these documents." *See* Exhibit 4.

40. Apparently due to the escalating scrutiny from the press, Mr. Norman and the Kings County Democratic Committee chose to allow the screening committee to interview me. In addition, after almost five months and repeated requests in writing, the screening committee actually developed written "Procedure and Policy" *for the first time* and sent that document to me. *See* Exhibit 5. That document made clear that the only source of candidates considered by the committee was the "County Chairmen [*i.e.*, Mr. Norman and his Republican counterpart, where cross-nominations are contemplated]." *See id.* at 1 ¶ 3.

41. After submitting answers to the screening committee's questionnaire and my curriculum vitae, I interviewed in May of 2003 before its members and was found qualified.

42. However, once again I did not receive the support of the County leader. I met with Mr. Norman on June 6, 2003. He told me that I did not have sufficient support (although I had gotten more votes than any of the party's other candidates in 2002), and he again reiterated his displeasure at my failure in 1997 to withdraw my name from consideration for Supreme Court. He summed up his concerns by stating that "County" would only support candidates who support "County."

43. On September 4, 2003, I wrote to Jeffrey C. Feldman, the executive director of the Kings County Democratic County Committee, to learn the date, time, and place of the Democratic Party's judicial convention, whether candidates were permitted to address the convention's delegates, and the identity of the Party's judicial delegates. This information is obviously critical for any challenger candidate who is trying to obtain sufficient support among delegates to have any hope of being nominated as the Party's candidate for Supreme Court. I had been seeking this information since March of 2003 from Mr. Feldman but had received no response of any kind.

44. By law, the convention must be held between the third Tuesday and the fourth Monday of September – less than three weeks after my letter to Mr. Feldman – making it virtually impossible for candidates like myself to mount any kind of successful lobbying campaign among delegates who are only selected officially in the September election.

45. I am informed that in 2003 very few of the 305 delegates and alternates selected for the Second Judicial District (covering Brooklyn and Staten Island) actually appeared on the ballot in September; the rest were selected by the party's leaders months earlier and their petitions filed in July. Nonetheless, in response to my letter, Mr. Feldman claimed that the Kings County Democratic County Committee "does not now, nor has it ever, maintained or published such a list [of delegates or delegate candidates]." *See* Exhibit 6 ¶¶ 1, 2. Responding to my request to learn whether candidates may address the convention, Mr. Feldman summarized the convention's openness to challenger candidates like myself who do not enjoy the party's backing:

> While I am neither an attorney nor a graduate of Law School, I suffer from the innocent belief that the floor of the Convention is open, only, to

> elected Delegates and their successors. I am not aware of any Convention in my thirty (30) years of attendance, which permitted a non-accredited member to be accorded the privilege of the floor, prior to it having issued nominations.

In addition, Mr. Feldman added that he had been advised, "just in the last 24 hours, that the Chairman of the Democratic State Committee has scheduled the Convention for Tuesday, September 16, 2003." *Id.* at 2.

46. In other words, the current selection system ensures that challenger candidates like myself are burdened even in the most basic efforts to identify, contact, and persuade judicial delegates that they should consider voting for us rather than the party-backed candidates. To be sure, it is unlikely that any significant number of the delegates – selected as most of them are by district leaders who are loyal to the County Chairman – would consider voting for such challenger candidates. But the current system structurally prevents challenger candidates from having the time, the information, or the access to the convention that are necessary *even just to try* to gain their support.

47. At the Democratic Party's judicial convention in 2003, two delegates again attempted to nominate me for Supreme Court from the floor. Again, the motion did not gain many delegates' votes. The convention instead chose to nominate those candidates endorsed by Mr. Norman and his executive committee.

48. Upon information and belief, on September 18, 2003, shortly after the convention, a Democratic Party District leader, Ralph Perfetto, circulated a letter to the other District Leaders in Brooklyn that purported to explain his vote against my nomination. Although he stated that "Judge Torres is highly qualified," he indicated that he wished to explain "the true reason why I voted as I did":

> Last year I voted for Judge Torres, but this year I checked

> with two judges who were not candidates this year, and four attorneys. They all labeled her an "ingrate." They told me that she courted Vito Lopez to support her for Civil Court, but then decided she didn't need him anymore and denied his daughter a job. I see nothing wrong with a district leader recommending a candidate to a judge or elected official for a position provided they are qualified and work for every dollar they are paid.

See Ex. 7, page 4.

49. During this period, I was approached by the Working Families Party, a minor party in New York State that customarily cross-endorses Democratic candidates. That party invited me to submit my name for consideration to run for Supreme Court on their ballot line as an independent candidate. In the end, the Working Families Party ran a slate of Supreme Court candidates under the banner of restoring judicial integrity to the Supreme Court selection process in Brooklyn. I agreed to run in that slate in the general election because I knew that I could not obtain my own party's nomination to appear on the ballot. Still, I remain a registered Democrat and would like to run as a Democrat.

50. The results of the 2003 election demonstrate clearly that third-party candidates who do not enjoy the endorsement of the Democratic Party simply cannot realistically prevail in the Second Judicial District. Despite the endorsement of the Working Families Party's slate by most of the daily newspapers (the *New York Times*, the *Daily News*, the *New York Sun*, and *El Diario*), well-publicized accusations and indictments of wrongdoing involving Mr. Norman and Mr. Feldman in Brooklyn concerning the Kings County Democratic County Committee, and my own receipt of over 200,000 votes for Civil Court just one year earlier, none of the slate's members beat the Democratic Party candidates. Indeed, although I received the most votes among the

six Working Families Party candidates (32,594), I still received only approximately one half as many votes as the Democratic candidate with the fewest votes. Without the Democratic Party's nomination, there is simply no realistic opportunity to prevail in a Supreme Court general election at this time, at least within the Second Judicial District. Gaining ballot status as a minor-party candidate or as an independent does not in any way remedy the burdens and barriers to such access as a Democratic Party candidate in that district.

**<u>The Severe and Irreparable Harms Imposed by the Current Selection System</u>**

51. The current Supreme Court selection system is designed to keep candidates like myself who do not have the backing of their party's county leadership from obtaining any opportunity to get on the ballot. My extensive experience as a Family Court judge, Criminal Court judge, Civil Court judge, and legal services attorney, as well as my demonstrated support among voters across the district, more than qualify me to be considered by the voters of my party and of Brooklyn and Staten Island for Supreme Court. But New York's unique judicial convention system places severe and unjustified burdens on candidates like myself at every turn.

52. Over a period of eight years, I have tried to obtain my party's nomination for Supreme Court based on my qualifications. But for reasons entirely unrelated to those qualifications, party leaders have chosen not to support me for the Democratic Party's Supreme Court nomination year after year. Under the current system, and unlike the Civil Court selection system, there is no path for me to petition directly among voters onto a primary election ballot as a Democratic candidate. Nor is it sufficient, as it is for any and all statewide offices in New York State that use a party

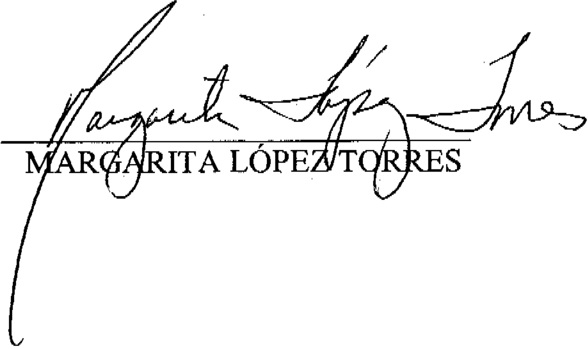
convention as one method to select the party's nominees, to garner 25% of the convention's delegates. Only a majority of the delegates nominates a candidate. As a result, I and my thousands of supporters among the voters of my party have been prevented from getting on the ballot and voting for me, respectively.

53. For this reason, I have decided after much reflection to join this lawsuit as a plaintiff. I believe that only with systemic reform of the current judicial convention system will a more open, less burdensome process develop. Without such relief, neither I nor the hundreds of Supreme Court candidates who are deterred from running for a major party's nomination will be able to get an opportunity to be considered by our party's voters. Nor will the voters and party members in the Democratic Party be allowed to exercise their right to choose from among candidates who have demonstrated a reasonable modicum of support among voters for their party's nomination. I respectfully submit that only a preliminary injunction to produce such reforms will avoid the irreparable and severe harms that the current system has imposed repeatedly, and will continue to impose, upon me and my supporters.

54. I am presently a candidate for Supreme Court for the 2004 elections. If this lawsuit is successful and the system is reformed to allow candidates like myself – *i.e.*, candidates who are well qualified and possess strong support among party voters but do not have the support of the county party leaders – to be selected as candidates and judges by the voters of Brooklyn and Staten Island, I will run again in 2005. If the current system remains in place, I will continue to be unable to obtain ballot status as a result of the severe burdens and barriers discussed in this declaration.

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

Dated: Brooklyn, New York
June 3, 2004



MARGARITA LÓPEZ TORRES