

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 MARY J.
GEISSMAN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTIVE
RELIEF**

Index No. CV 04-1129 (JG)

MARY J. GEISSMAN declares as follows:

1. I am a retired Democratic Party District Leader and the former Chair of the Committee on the Judiciary of the Executive Committee of the Democratic Party of the County of New York. I submit this declaration in support of Plaintiffs' motion for a preliminary injunction.

Background

2. I have been a resident of Manhattan since 1963 and now reside in Manhattan's Upper West Side. I have voted regularly as an enrolled Democrat for more than 30 years in Manhattan.

3. I have also been active in Manhattan politics for more than 30 years. Specifically, I have served as an active member of the Park River Independent

Democrats, a Democratic political club in Manhattan. From 1975 until my retirement in 1987, I served as a District Leader for my Assembly District, located in the West 70s.

4. From 1978 through 1986, I chaired the Committee on the Judiciary of the Executive Committee of the Democratic Party of the County of New York. I attended every Judicial Nominating Convention during that period. Since retiring as Chair of the Committee, I have served repeatedly as a delegate. Through that service, I am very familiar with how the Party's judicial conventions in the First Judicial District are conducted and with the significant barriers placed before any Supreme Court candidate without the party leaders' support who would seek the Democratic Party's nomination.

The Supreme Court Selection Process

5. Based on my extensive experience, as I describe below, in almost all cases the County Chairman exercises complete control over who will obtain the Democratic Party's nomination in the First District and, as a result, who will become a Supreme Court justice.

A. The Independent Screening Panel

6. The first hurdle that a candidate for the Supreme Court must pass is approval by an independent screening panel organized by the Committee on the Judiciary. In my experience, the Party never nominates a candidate who has not been approved by the screening panel. Since 1977, the Party has advertised for candidates to apply to the panel and has considered any applicant who meets the formal requirements to be a Supreme Court Justice.

7. The County Chairman- Assemblyman Herman Farrell, Jr., since

1981- appoints the Committee on the Judiciary from members of the Executive Committee. *See* Rules and Regulations of the Democratic Party of the County of New York, Art. III(7)(a)(ii), attached as Exhibit A. In practice, the County Chairman appoints one of the District Leaders of each Assembly District and the Law Chairs of the Executive Committee.

8. The Committee on the Judiciary chooses a set of organizations and asks the heads of the organizations to appoint members of the screening panel. The organizations may appoint whomever they wish to the panel, although no one may serve on the panel more than once in a three-year period. Some organizations, such as the Columbian Lawyers, were selected because of their close ties to the County Chairman.

9. After the panel is appointed, around June, representatives of the Judiciary Committee meet with the panel to discuss its procedures. When I was Chair, I was always present, and one of the Law Chairs was usually also present. After that meeting, the panel reviews applications and interviews applicants.

10. The county party has a fundraiser about fourteen days before the nominating convention. While the rules only require that the panel make its report not later than 10 days before the election, in practice the report is never filed until after the fundraiser, in order to encourage the candidates to buy tickets. Serious candidates also usually visit various local Democratic Party clubs and buy tickets to their fundraisers as well.

11. The panel recommends two to three candidates per vacancy without ranking or otherwise distinguishing among them. Since 1999, any candidate who has been recommended by two of the last four years' panels is automatically considered

recommended during the four calendar years after the last year the panel approved the candidate. *See* Proposed Amendment to the Rules and Regulations of the Democratic Party of the County of New York, attached as Exhibit B. That change, made by the County Committee at the urging of Chairman Farrell, has significantly increased his control over the nomination process for reasons that are discussed below.

B. The Nomination Process at Judicial Conventions

12. Once the panel has issued its report, a candidate must seek the support of the County Chairman. Candidates are almost never nominated without his support.

13. Each of the candidates whom the panel has reported out is given an appointment with the County Chairman. After these meetings, he indicates which candidates will be selected for nomination and informs the District Leaders, usually through Arthur Grieg.

14. Since 1999, assembling a package has been made much easier for the Chairman because candidates who have been favorably reported by the screening panel twice within the last four years are automatically treated as recommended for the next four years. This allows the Chairman to choose from a larger group of candidates and to negotiate deals that involve, for example, promising nominations to candidates in future years if they withdraw in the current year. In practice, most candidates who do not obtain the Chairman's support withdraw before the convention.

15. Candidates must win a majority of the vote to be nominated. If no candidate receives a majority on the first ballot, a run-off is held between the two candidates who placed highest.

16. Most conventions elect all of the nominees unanimously. Even on the rare occasions when an actual roll call vote is taken, the outcome is generally not in doubt. For example, in 1997, Alice Schlesinger decided to seek the fourth nomination, despite not being part of the County Chairman's package. Her supporters knew that she would not win, but wished to make a statement of support. She was defeated by Joan Madden by a vote of 78 to 49. At times, the County Chairman will have a roll call vote taken to suggest that there's a real question of the outcome, even when it is well-known that the outcome is not in doubt.

C. The General "Election"

17. In most cases, there is no competition at the general election. For voters in Manhattan, general elections for Supreme Court judgeships are not elections in any meaningful sense. Those candidates who obtain the Democratic Party's nomination at the judicial convention go on to become Supreme Court justices. In my experience, there have been no exceptions since 1982, when no Democratic candidates were on the ballot because of a technical error by the Party. There have been no other exceptions in the 30 years that I have been involved in Manhattan politics.

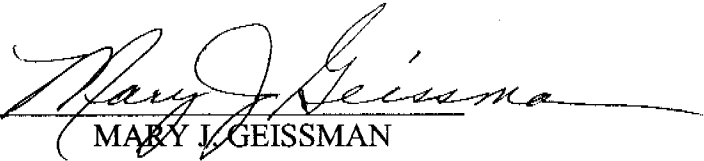
18. On some occasions, the Republican Party in Manhattan simply cross-endorses the Democratic nominees and the voters then literally have no choice among candidates at the general election. On the remaining occasions, the Republican Party runs its own Supreme Court candidates who go down to certain and overwhelming defeat because Democratic voters so outnumber Republican voters in Manhattan.

19. This means that the Democratic Party convention is, for all intents and purposes, the exclusive mechanism for selecting Supreme Court justices in the First

Judicial District. The insurmountable barriers to getting on the ballot through the convention without the county party leadership's support thus deprive not only rank-and-file Democratic Party members, but all voters, of any meaningful choice among candidates for Supreme Court.

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

Dated: New York, New York
June 3, 2004


MARY J. GEISSMAN