

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

----- X	:	
MARGARITA LÓPEZ TORRES, et al.	:	
	:	
Plaintiffs,	:	INDEX NO.
	:	CV 04-1129 (JG)
- against -	:	
	:	
NEW YORK STATE BOARD OF ELECTIONS, et al.	:	
	:	
Defendants.	:	
	:	
	:	
----- X	:	

**DECLARATION OF DAVID SIFRE RELATING TO
MOTION FOR PRELIMINARY INJUNCTIVE RELIEF**

DAVID SIFRE declares as follows:

1. I am an attorney at the firm of Stroock & Stroock & Lavan LLP, counsel for Defendant-Intervenors, the Associations of Justices of the Supreme Court of the State of New York and of the City of New York, and Justice David Demarest, individually, and as President of the State Association. I am familiar with the facts and circumstances of this matter. I submit this declaration in opposition to Plaintiffs' Motion for Preliminary Injunction.

2. Attached hereto as Exhibit 1 is a true and correct copy of the declaration of Honorable Joseph M. Sise.

3. Attached hereto as Exhibit 2 is a true and correct copy of the declaration of Honorable Phyllis B. Gangel-Jacob.

4. Attached hereto as Exhibit 3 is a true and correct copy of the affirmation of Ernst H. Rosenberger who interviewed Justice Schlesinger before she left the country on vacation.

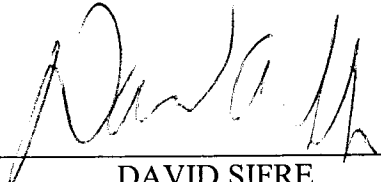
5. Attached hereto as Exhibit 4 is a true and correct copy of the [proposed] declaration of Honorable Alice Schlesinger.

6. Attached hereto as Exhibit 5 is a true and correct copy of the cited portions of the deposition transcript of Mary Geissman.

7. Attached hereto as Exhibit 6 is a true and correct copy of the cited portions of the deposition transcript of C. Alfred Santillo.

Dated: New York, New York

August 13, 2004



DAVID SIFRE

EXHIBIT 1

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

----- X
MARGARITA LÓPEZ TORRES, et al. :

Plaintiffs, : **INDEX NO.**

- against - : **CV 04-1129 (JG)**

NEW YORK STATE BOARD OF ELECTIONS, et al. :

Defendants. :

: :
: :
----- X

**DECLARATION OF JOSEPH M. SISE RELATING TO
MOTION FOR PRELIMINARY INJUNCTIVE RELIEF**

JOSEPH M. SISE declares as follows:

1. I am a Supreme Court Justice, Fourth Judicial District, of the State Supreme Court, Montgomery County.
2. Upon information and belief, based upon the New York State Board of Elections County Enrollment totals available at http://nysboewww01.elections.state.ny.us/enrollment/county/county_mar04htm, and based upon the census data available from <http://quickfacts.census.gov/qfd/states/36000.html>, the eleven counties making up the Fourth Judicial District have a voter enrollment and population as follows:

County	Republican	Democratic	Population (2000 Census)
Saratoga	67,934	32,376	200,635

Schenectady	32,589	35,031	146,555
St. Lawrence	25,755	23,268	111,931
Warren	22,896	9,524	63,303
Washington	18,348	8,931	61,042
Clinton	17,380	16,837	79,894
Fulton	17,995	7,180	55,073
Essex	14,427	6,589	38,851
Montgomery	12,340	11,333	49,708
Franklin	11,578	10,199	51,134
Hamilton	3,499	1,011	5,379
Total	244,741 Republicans	162,279 Democrats	865,505 Population

3. Based upon the 2000 Census, there are 18,976,457 people living in the State of New York, and 865,505 living in the eleven counties making up the Fourth Judicial District. Thus, my district comprises nearly 5% of New York State's population.

4. The Fourth Judicial District is located in the northeast sector of the state and, upon information and belief, is geographically, the largest of New York State's judicial districts, constituting 26% of the state's land mass. It borders Canada in the north, Vermont in the east, and extends south to and includes Schenectady County. Travel from one end of the district to the other takes four hours with the greatest part of the drive taking one through rural mountain areas on secondary roads. The most heavily populated of the counties, Schenectady and Saratoga, are adjacent to each other and are

located in the southern end of the district. At the northern end of the district, sit the counties of St. Lawrence, Franklin and Clinton.

5. Currently, in the Fourth Judicial District, Saratoga and Schenectady Counties, which have the largest populations, have three and two Supreme Court Justices who are residents of and are sitting in those counties respectively. With the exception of Hamilton County, population of 5,379, every other county in the Fourth Judicial District has one Supreme Court Justice who sits in that county and who resides in that county.

6. In the past, when a vacancy in the Supreme Court for the Fourth Judicial District occurs (for example, by way of retirement or death), the local county committee from the affected county has put forth a candidate who then goes forth seeking the nomination at the judicial convention slated by law to be held in the fall. Specifically, she or he campaigns throughout the district seeking support from the delegates elected to attend the judicial convention. There is no assurance that the candidate will not face opposition at the convention in the event the candidate has not garnered enough support needed for nomination. The overwhelming majority of Supreme Court Justices in the Fourth Judicial District have judicial experience prior to their being nominated by their parties.

7. I was the County Court Judge of Montgomery County and had extensive experience as a prosecutor before taking the bench when I sought nomination as a candidate for Justice of the Supreme Court for the November 3, 1998 election. I was born and raised in Montgomery County and my wife and I have chosen to raise our

family there. As a natural consequence of Montgomery County having less than one-fifth the registered Republicans of Saratoga County, it is clear that if candidates are forced to run in a district wide primary election, candidates from Montgomery County would likely lose to candidates from Saratoga, leaving my county without a possibility of having a Supreme Court Justice who resides within the county. Indeed, if a district-wide primary were required for the major party nomination, it is very unlikely that any Supreme Court Justice in the district could win in a primary unless that candidate resided in Saratoga or Schenectady Counties.

8. In May of 1998 when Hon. James N. White of Montgomery County decided not to seek reelection as a Supreme Court Justice, I sought the endorsement of the Montgomery County Republican Committee to seek the nomination at the convention. The Committee was comprised of approximately ninety-six members representing the five Wards of the City of Amsterdam, and the ten towns which make up Montgomery County. Another county-level judge also sought the endorsement from the committee for his candidacy. Both he and I campaigned diligently throughout Montgomery County for the endorsement of the Republican County Committee. In a closely contested process over a two month period of time, during which both candidates put forth before individual committee members their experience and ideas outlining why they were seeking endorsement, the committee formally met and endorsed my candidacy. My opponent and friend remains the Surrogate Judge for Montgomery County.

9. Having been endorsed by my own county committee, I went forth, worked hard, covered thousands of miles, and successfully garnered enough support to receive the nomination of my party at the judicial district convention. I thereafter went on

to campaign against the candidate nominated at the Democratic Judicial Convention and won the election to become a Supreme Court Justice.

10. Because of the geographic vastness and the disparity of population in the eleven counties of the Fourth Judicial District, the judicial convention system is most appropriate. Indeed, if a primary system were in place, the cost of such a process would serve as an all but insurmountable barrier for all but the most "well-heeled" candidates. In addition, because the Counties of Saratoga and Schenectady have such dense populations compared to the other counties of district, their candidates would assuredly dominate the elections for the state supreme court.

11. Moreover, the judicial nominating convention system is the most beneficial process to best serve the people of the Fourth Judicial District. Currently, the people of all but one of the counties making up the Fourth Judicial District have a Supreme Court Justice resident in that county (Hamilton County, which has a population of only 5,379 does not). Thus the people throughout the district have a judge available on a regular basis presiding in that county, able to handle all emergency applications that arise in that county.


12. It is clear that in order for people to have faith in their judicial system, they must have ready access to the courts, or judges. To that end, I am aware from personal experience over the last nine years sitting on the bench in Montgomery County, that it is of critical importance that Supreme Court Justices live in or near the county they serve. Practically speaking, if a Supreme Court Justice resides in Schenectady and had to travel three hours in good weather to St. Lawrence County,

before the court could convene to hear an application, justice will be delayed. Ready access to the Supreme Court will be denied. In the absence of the judicial convention system, Supreme Court Justices in the Fourth Judicial District and the people they serve, would be separated by the geographic vastness of the district and thus, judicial access would be severely hindered.

13. It is with these facts and experiences in mind that I submit this affidavit for the purposes of this Court.

I declare under penalty of perjury that the foregoing is true and correct upon information and belief.

Dated: New York, New York
August 12, 2004



JOSEPH M. SISE

EXHIBIT 2

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

----- X	:	
MARGARITA LÓPEZ TORRES, et al.	:	
Plaintiffs,	:	INDEX NO.
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NEW YORK STATE BOARD OF ELECTIONS, et al.	:	
Defendants.	:	
	:	
	:	
----- X	:	

**DECLARATION OF PHYLLIS GANGEL-JACOB RELATING TO
MOTION FOR PRELIMINARY INJUNCTIVE RELIEF**

PHYLLIS B. GANGEL-JACOB declares as follows:

1. I am an Associate Justice, Appellate Term - First Department, of the New York State Supreme Court. I was first elected to the New York City Civil Court in 1984 and to the Supreme Court, New York County, in 1994. My current term expires in 2006.

2. Prior to becoming a judge, I was in private practice from 1966 until 1984. I first worked for a law firm where I was the only woman lawyer; as a result, I handled most of the divorce work that came to us. When I opened my own practice, a substantial majority of my work consisted of matrimonial and family law matters, but I was a general practitioner and worked in most civil law fields.

3. In the 1980's I decided I wanted to become a judge. My experience in practice led me to apply for a Family Court judgeship, a position for which the Mayor of New York

makes the appointments. I appeared twice before mayoral screening committees for this position, but two years passed without any action on my application. I was ultimately asked to appear before the Mayor as a candidate in 1984, but by that time I was a declared candidate for the Democratic nomination for county-wide Civil Court Judge.

4. In 1983 I asked the advice of James McManus, a local Democratic District Leader. At this point, I had never before considered running for election to any public office. I was and had been a registered voter, but I was not enrolled in a political party and had never been active in party politics. Indeed, I had little specific knowledge of how the political system worked in respect of nominating and electing judges.

5. McManus had someone in his club send me an application for the 1983 Democratic screening panel, which was then accepting applications for local and county-wide Civil Court vacancies. I applied and was interviewed by the panel and was one of a large group reported out by the panel as "highly qualified." The panel's decision was based on my application, my interview and the panel's own investigations.

6. The next six weeks were an exciting and informative time; I had truly not known anything about running for a judgeship. I had to learn the party structure, with its voluntary local clubs and non-paid but elected District Leaders. Since I had elected to run for Civil Court county-wide in New York County (Manhattan), I went to many political clubs during those weeks, from the one tip of Manhattan to the other. I met club members, District Leaders, and other candidates for local or county-wide judgeships. I spoke to the members of each club, often several in a single night, and answered the questions they asked. I did some hard thinking about what being a judge would mean, and I thought equally hard about the difficulties and expense of running for nomination.

7. At a well-attended meeting of District Leaders for all of Manhattan, I recognized that I did not have enough support to run, and I withdrew from contention. I had met a lot of people interested in judicial elections, and I had begun to learn about the system. I went into the screening panel for the following year, 1984, and again I came out of the panel. I felt that I had measured myself, and I thought I could both be a good judge and I could win an election.

8. Candidates reported out of the screening panel in 1984 (three for every vacancy, whether local or county-wide) had to choose the vacancy for which they were seeking nomination. There was only one county-wide vacancy, and only one candidate, Antonio Brandveen, had said that he was running countywide. I, too, believed my best chance was in running for the county-wide position. The New York county leader, Herman "Denny" Farrell, was already supporting Mr. Brandveen's candidacy. Nevertheless, I had garnered the support of a substantial number of Democratic clubs, and I decided that I should run, even if I had to face a contested primary. I did run, and I ran against the weight of the County Leader's organization.

9. Although I had never been active in party politics before, I had been very involved in community and national issues over many years preceding this time, and I found that many people whom I knew from these activities were also active in party judicial politics and stood ready to support me--at least two or three people in every political club that I visited, and in some clubs many more. I canvassed for signatures to go on the ballot; I visited every club and other venue I could find, including dinners arranged by many friends. Day after day I stood at subway entrances and bus-stops, supermarkets and other likely sites, being introduced or introducing myself to potential voters and distributing my printed literature. I sent out one mass mailing and many specialized ones; and just before the primary election, I bought time on a

number of local radio stations. The total cost of my 1984 contested Civil Court primary campaign exceeded \$100,000, of which less than \$30,000 came from family and friends. The rest came from my personal funds. I won the primary and the Democratic party nomination by a substantial margin. In November, I went on to win the general election, and I became a Civil Court judge in January 1985. A few years later I was appointed to sit, by designation, as an Acting Supreme Court Justice.

10. After some years as a Civil Court judge and an Acting Supreme Court Justice, I decided to seek election to the New York State Supreme Court. The first step in this process was another Independent Screening Panel before which I appeared. I came out of that panel in four successive years. Each time I sought the support of Denny Farrell and of delegates to the New York County judicial convention. Until the last, Mr. Farrell steadfastly refused to support me in these attempts; I was told he had said he would never support me because I had defeated his candidate for Civil Court.

11. Nevertheless, in each of the years I sought the Supreme Court nomination, the level of my support among delegates to each convention increased. This was because I had a good record and consistently came out of Bar Association and the Independent Screening Panels. It was also because I worked aggressively for the position. I developed the acquaintance of a large number of local officials, club members and potential delegates. Eventually I had a large card catalog of delegates, clubs, club officials, and general connections, and I kept in touch. I never ran any candidates of my own for judicial delegate, but as I got to know potential delegates I sought their support. One political club supporting my candidacy ran a slate of delegates competing with the much more established Democratic club in the district, and its candidates won in three or four races out of eight in the Assembly District.

12. As a judge, I was still not active in politics other than in visiting clubs as part of a declared candidacy for election to the Supreme Court. I had become a registered Democrat. During this period, my husband, Bernard E. Jacob, a professor of law at Hofstra Law School, became active in the Lexington Democratic Club, which served the Assembly District in which we lived, and ultimately became a District Leader, one of six supported by the Lexington Democratic Club and representing the party in the Assembly District.

13. In search of the nomination to the Supreme Court, I attended the Supreme Court nominating convention for the years 1989-1992. Twice my name was put in nomination, but in 1990 I withdrew when I realized my support among the 100 or so delegates was not strong enough. A year later, I ran a contested election against Judge Karla Moskowitz, who is now my friend and colleague on the Supreme Court. Judge Moskowitz won by a narrow margin.

14. In the third year I was again a candidate, and for the third consecutive time I came through the Independent Screening Panel as "highly qualified." A substantial number of the delegates from Harlem clubs, usually loyal to Mr. Farrell, decided to support my candidacy over his objection. I had been active in the African-American community for a very long time and in a large number of contexts. In the 1960's I had helped with the logistics of the Freedom Riders and was very active in the Civil Rights movement. By virtue of this work, my personal relationships, and the fact that I had been reported out of four separately constituted Independent Screening Panels in as many years, I earned the Harlem votes.

15. At five o'clock on the evening of the convention, Denny Farrell called me and asked me to withdraw before a contested vote, saying that he would support me the following year. Although I believed I had enough of the votes at the convention to win, I

recognized the value in party harmony. I withdrew for the sake of avoiding another close election and to foster good will among candidates and delegates.

16. At the next convention, in 1993, I worked as aggressively as I had in the past. I proceeded without any opposition from Denny Farrell. My candidacy was adopted by acclamation. Thereafter I was elected to a full term in the general election, for the term I presently hold.

17. I raised no money for any of my annual campaigns for nomination as a Democratic Supreme Court candidate. The cost of my candidacy was approximately \$5000 a year. The main costs were for admissions to clubs and other functions, numerous mailings (almost all of them to the small number of persons who had obtained a sufficient number of signatures to be on the Democratic primary ballot as candidates for judicial convention delegates), and holding traditional meet-and-greet sessions with the likely delegates before the convention.

18. I think my history shows that the process is not 'boss-controlled' and that the judicial delegate process is open and conscientious, and I also believe the convention is reflective of the entire range of Democratic voters in Manhattan. I ultimately got the nomination to Supreme Court through my personal efforts of persuading enough delegates to my cause, which convinced the party leadership that I could win, and ultimately caused the party leadership to not oppose my candidacy. I believe that a Manhattan-wide primary contest (which would be the result of abolishing the convention system) for Supreme Court positions would not add to 'democracy' and would, measured by the cost of my own Civil Court contested primary, cost many hundreds of thousands of dollars and further limit participation.

*Dated New York, New York
August 10th, 2004*

Phyllis B. Gangel-Jacob

Justice Phyllis B. Gangel-Jacob

EXHIBIT 3

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

----- x	:	
MARGARITA LÓPEZ TORRES, et al.	:	
Plaintiffs,	:	INDEX NO.
	:	CV 04-1129 (JG)
- against -	:	
NEW YORK STATE BOARD OF ELECTIONS, et al.	:	
Defendants.	:	
	:	
	:	
----- x	:	

**AFFIRMATION OF ERNST H. ROSENBERGER RELATING TO
MOTION FOR PRELIMINARY INJUNCTIVE RELIEF**

ERNST H. ROSENBERGER, an attorney admitted to practice before this court, affirms the following to be true, under penalty of perjury:

1. I am an attorney at the firm of Stroock & Stroock & Lavan LLP, counsel for Defendant-Intervenors, the Associations of Justices of the Supreme Court of the State of New York and of the City of New York, and Justice David Demarest, individually, and as President of the State Association. I am familiar with the facts and circumstances of this matter.

2. I submit this affirmation in opposition to Plaintiffs' Motion for Preliminary Injunction, together with the draft declaration of Justice Alice Schlesinger. Justice Schlesinger is unable to sign her declaration as she is out of the United States, returning August 23, 2004. As the Court has directed that all opposition papers be submitted by August 13, 2004, I am submitting the

draft declaration on Justice Schlesinger's behalf, as it is based on an interview that took place shortly before she left the United States on vacation.

3. Upon her return on August 23, I intend to submit the draft declaration to Justice Schlesinger for her approval and signature.

Dated: New York, New York
August 12, 2004


ERNST H. ROSENBERGER

EXHIBIT 4

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

----- X	:	
MARGARITA LÓPEZ TORRES, et al.	:	
	:	
Plaintiffs,	:	INDEX NO.
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NEW YORK STATE BOARD OF ELECTIONS, et al.	:	
	:	
Defendants.	:	
	:	
	:	
----- X	:	

**DECLARATION OF ALICE SCHLESINGER RELATING TO
MOTION FOR PRELIMINARY INJUNCTIVE RELIEF**

ALICE SCHLESINGER declares as follows:

1. I am a Supreme Court Justice, First Judicial District, of the State Supreme Court, New York County. I was first elected to the New York City Civil Court in 1984, and then re-elected in 1994. I was appointed to sit, by designation, as acting Supreme Court Justice in 1991, and was elected to the Supreme Court, New York County in November 1999. My current term expires December 31, 2013.
2. Prior to becoming a judge, I was an attorney in the criminal defense division of the Legal Aid Society, and have taught at New York University’s Criminal Law Clinic.
3. After several years as a Civil Court judge and an Acting Supreme Court Justice, I decided to seek election to the New York Supreme Court in 1997. The first step in this process was to appear before an Independent Screening Panel. The rules of the panel provide that it

report out not more than three of the most highly qualified candidates for each vacancy. I came out of that panel successfully.

4. I sought the nomination at the Supreme Court nominating convention in 1997. My name was put up for nomination that year. My opponent at the 1997 nominating convention was Judge Joan Madden, now a colleague on the Supreme Court. Judge Madden prevailed by a vote of 78 to 49 delegates.

5. I did not to seek election to the Supreme Court in 1998, focusing my time and energy towards the 1999 convention, where I hoped to obtain the Democratic Party's nomination for Supreme Court and ultimately win the election.

6. In anticipation of my candidacy for Supreme Court, I contacted those prospective delegates who would be voting at the 1999 convention. When I contacted prospective delegates, I informed them of my intent to seek nomination and sought their support. I never sponsored any candidates of my own to run for judicial delegate, but rather got to know potential delegates, and in turn sought their support.

7. Determining who the primary candidates for delegate will be each year is a straightforward process. There are many people who run for delegate each year, and who have been re-elected numerous times. Furthermore, the names of those individuals seeking election as judicial delegates, and who is opposed and unopposed, are matters of public record filed with the Board of Elections.

8. In addition to contacting likely delegates, I visited various political clubs throughout Manhattan, which comprises the First Judicial District, in order to meet the membership. As with the prospective delegates, I informed the members of each club I visited of my intent to seek election to the Supreme Court in 1999. As I got to know the club members I sought their

support. My determination and concentrated efforts were successful, as I secured the support of several club members and prospective delegates.

9. I again sought the Supreme Court nomination at the convention in 1999. My name was again put up for nomination. This time I came into the convention with the support of approximately twenty-seven delegates. I ultimately obtained the Democratic Party's nomination for Supreme Court, through my own efforts. I did not have the support of the Democratic County Chairman until after it became clear that I had considerable support among the delegates. Thereafter I was elected to a full term in the general election, which term I presently hold.

10. Throughout my candidacy I employed no paid staff. The total cost of my candidacy was approximately \$2000. The main costs were for tickets to dinners and other functions, as well as mailings to likely delegates.

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

Dated: New York, New York

August __, 2004

JUSTICE ALICE SCHLESINGER

EXHIBIT 5

8/4/2004 11:04 AM Geissman, Mary

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK.
3 MARGARITA LOPEZ TORRES, STEVEN BANKS, C. ALFRED SANTILLO, JOHN J. MACR
4 MOTTA, JOHN W. CARROLL, PHILIP C. SEGAL, SUSAN LOEB, DAVID J. LANSNER a
5 CAUSE/NEW YORK

6 Plaintiffs,

7 -against- CV 04-1129

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

11 Defendants.

12 X

13 120 Broadway New York, New

14 August 4th, 2004

15 9:11 a.m.

16
17
18
19 DEPOSITION of MARY GEISSMAN, a Non-Party
20 witness, taken on behalf of the Defendants,
21 pursuant to Notice, held at the above-mentioned
22 time and place before Maria Cirillo, a Notary
23 Public of the State of New York.
24
25

8/4/2004 11:04 AM Geissman, Mary

1 M. Geissman

2 Exhibit C for identification, as of this
3 date.)

4 Q Could you explain to me what you
5 mean by the quote "some organizations, such as
6 the Columbian Lawyers, were selected because of
7 their close ties to the county chairman" closed
8 quote.

9 A Um, one of the years when I was
10 chair of the committee someone on the committee
11 told me or said at the meeting that the Columbian
12 Lawyers needed to be on the panel because the
13 county chair had been asked by I believe it was
14 Bill Fugazy who at that time was a big
15 contributor to the party.

16 MR. FORSTADT: I am sorry, I did not
17 hear that. Can you please repeat that.

18 MR. CREELAN: Can you just read it
19 back.

20 (Previous answer was read back.)

21 Q Is that statement based solely upon
22 that one conversation?

23 A That was one year's selection
24 process, yes.

25 Q And did you say Bill Fugazy was the

8/4/2004 11:04 AM Geissman, Mary

1 M. Geissman

2 one who told you this?

3 A No, no. No, I never met the man.

4 Q What year did this happen?

5 A I would say sometime in the, you
6 know, during my tenure as chair when chairman --
7 when Denny Farrell was the county leader which
8 had to be sometime between '82 and '86.

9 Q Can you narrow the dates beyond
10 that?

11 A No.

12 Q And aside from the statement that
13 you heard someone say, do you have any personal
14 knowledge that the Columbian Lawyers Association
15 was selected because of some close ties to the
16 county chairman?

17 A Um, no.

18 Q Would it be fair to say that
19 because Bill Fugazy had asked the party chairman
20 to put the Columbian Lawyers Association on the
21 panel that the Columbian Lawyers Association did
22 not have a close tie to Denny Farrell but a close
23 tie possibly to Bill Fugazy?

24 MR. CREELAN: Objection.

25 A It is possible.

8/4/2004 11:04 AM Geissman, Mary

1 M. Geissman

2 Q But you don't know one way or the
3 other because you don't have personal knowledge?

4 MR. CREELAN: Objection.

5 A True. I do not have personal
6 knowledge.

7 Q Using the 2003 supreme court panel
8 organizations, are you aware of whether any of
9 those organizations were selected because they
10 have close ties to the party chairman? And when I
11 say "are you aware," I am asking for your
12 personal knowledge.

13 A I know there is at least one
14 individual head of organization who I know has
15 fairly close ties with the county chairman.

16 Q Can you identify that organization?

17 A Catherine Abate.

18 Q Was Catherine Abate an elected
19 official at any point?

20 A Yes.

21 Q Who was Catherine Abate?

22 A Catherine Abate was a state senator
23 and also a district leader.

24 Q Do you know why Community Health
25 Care Network was selected in 2003?

8/4/2004 11:04 AM Geissman, Mary

1 M. Geissman

2 Q Aside from Richard Braun, is there
3 any other candidates that you have personal
4 knowledge of that withdrew their candidacy upon
5 the promise -- withdrawn.

6 Aside from the allegation that
7 Richard Braun withdrew his candidacy in 2002, do
8 you have personal knowledge of any other
9 candidates that allegedly withdrew their
10 candidacies in one year on the promise by the
11 county leader of support in a future year?

12 MR. CREELAN: Objection.

13 A I don't have the personal
14 knowledge.

15 Q If you don't have personal
16 knowledge why did you permit this to be put in an
17 affidavit to be submitted into court?

18 A This does not say -- let me read
19 what this sentence says because it does not say
20 that.

21 Q Okay.

22 A It says it allows the chairman to
23 choose from a larger group of candidates and to
24 negotiate deals that involve, for example,
25 promising nominations to candidates in future

8/4/2004 11:04 AM Geissman, Mary

1 M. Geissman

2 years if they withdraw in the current year. It
3 does not state, per se, that that has happened.

4 Q If you have no personal knowledge
5 that that had ever happened why would you permit
6 it to be put into an affidavit that you are
7 attesting to under oath?

8 MR. CREELAN: Objection. The
9 witness made clear in a number of cases
10 what specifics she was talking and the
11 basis for her knowledge what people have
12 told her. Your characterization whether
13 it is personal knowledge or something
14 else not -- is confusing to the witness.
15 It's assuming a legal conclusion in
16 these questions and it is totally
17 improper. Totally confusing the witness
18 and improper and I object.

19 MR. FORSTADT: Let the record
20 speak for itself.

21 MR. CREELAN: Indeed.

22 Q Did counsel sitting next to you
23 assist you in drafting this affidavit?

24 A Yes.

25 Q I would like to turn your attention

8/4/2004 11:04 AM Geissman, Mary

1 M. Geissman

2 A No.

3 Q Would it be correct to say then
4 that when the screening panel released the names
5 of those candidates that they believed were
6 qualified, those candidates were indeed qualified
7 to be supreme court judges?

8 A Um, yes.

9 Q You never made any objection, did
10 you, to any of the names that the screening panel
11 released as persons who were unqualified, did
12 you?

13 A No.

14 Q So you accepted the screening
15 panel's recommendations as to qualified judges
16 and it would be fair to say then all the nominees
17 of the Democratic Party over all the many years
18 that you were engaged as chair of the committee
19 and also as a convention delegate were people who
20 were qualified to be supreme court judges; is
21 that a correct statement?

22 A I couldn't -- I guess I believe
23 they were.

24 Q I mean I understand there may be
25 some judges that you preferred over others as

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1 M. Geissman
2 candidates but nonetheless each one that was
3 reported out and ultimately nominated was a
4 qualified candidate to be supreme court justice;
5 isn't that correct?

6 A Yes.

7 Q When you testified earlier to the
8 questions Mr. D'Auguste asked you with regard to
9 a fact that it was your belief that the county
10 chairman of the Democratic Party in New York
11 County put together a package of candidates for
12 the position of supreme court; is it correct that
13 you recognized that the candidates that were
14 being recommended were qualified candidates?

15 A Yes.

16 Q Now, I noticed at the end of your
17 affirmation or declaration on page 5 that you
18 observed that in the general election the
19 nomination to the supreme -- the nomination of
20 the Democratic Party to the supreme court is
21 tantamount to election because Republicans don't
22 have sufficient voting strength in New York
23 County to elect supreme court justices; is that
24 correct?

25 A Yes.

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1 M. Geissman

2 civil court, is that correct, even though there
3 is a screening panel?

4 A Practical cases very few people run
5 against screening panel candidates in Manhattan.

6 Q Would I be correct in stating --
7 let's take an example of a personal injury lawyer
8 who has made a great deal of money, and I am not
9 talking about one running for vice president now,
10 I am talking about one running for supreme court
11 or for that matter civil court, could just by
12 virtue of having a vast amount of money be able
13 to mount a viable campaign for the civil court or
14 supreme court regardless or independently of the
15 screening panel; isn't that correct?

16 A Yes.

17 Q And indeed might well win just by
18 virtue of spending a lot of money to attain the
19 office; isn't that also correct?

20 A Yes, possibly.

21 Q Recent example of a mayor, a
22 mayoral candidate who switched parties on the eve
23 of election and through his vast amount of money
24 was able to win an election regardless of his
25 previous experience and qualifications; isn't

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1 M. Geissman

2 that correct?

3 A Um, yes.

4 Q Now, tell me if you seriously
5 support the effort of this lawsuit, what you will
6 say to the judges of the supreme court who are
7 running for re-election and now potentially faced
8 with primaries by lawyers with vast amounts of
9 money who can campaign freely while the judges
10 are restricted by the candidate's judicial
11 ethics, what do you do about that?

12 MR. CREELAN: Objection.

13 A First of all, I am not sure that
14 that is necessarily going to happen. That
15 somebody is going to run against an incumbent
16 judge but if the incumbent judge, if they have
17 done a decent job, will be endorsed by the bar
18 association, by the newspapers and the political
19 party.

20 Q Do you have any notion of the cost
21 involved in a sitting judge running for
22 re-election under the current system by which the
23 parties automatically endorse a judge for
24 re-election?

25 MR. CREELAN: Objection.

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1 M. Geissman

2 A Well, a few thousand dollars.

3 Q Is it fair to say it will be a
4 minimal expense; isn't that correct?

5 A Yes.

6 Q Sitting judges will not have to go
7 out and solicit campaign funds, they don't have
8 to go out and entreat lawyers who appear before
9 them to pay into a campaign fund just to have
10 them re-elected, they won't have to go to
11 political clubhouses and all of a sudden turn
12 themselves into political candidates because the
13 current system automatically provides for their
14 re-election in effect unless there is some
15 egregious conduct on their part while sitting on
16 the bench; isn't that a correct statement of
17 current affairs?

18 A They are sort of expected to go to
19 political fundraisers the year they run for
20 re-election.

21 Q Other than that cost, would you
22 agree that is a minimal cost?

23 A Yes.

24 Q Few thousand dollars?

25 A Yes.

EXHIBIT 6

8/5/2004 8:06 AM Santillo, Alfred C.

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF NEW YORK

3 CV04-1129 (JG)-----x

4 MARGARITA LOPEZ TORRES, STEVEN BANKS, C. ALFREDSANTILLO, JOHN J. MACRC

5 CARROLL, PHILIP C. SEGAL, SUSAN LOEB, DAVID J.LANSNER, and COMMON CAUS

6 Plaintiffs,

7 - against -

8 NEW YORK STATE BOARD OF ELECTIONS; NEIL W.

9 KELLEHER, HELENA MOSES DONAHUE, and EVELYN J.AQUILA, in their official

10 Commissioners of the NEW YORK STATE BOARD OF ELECTIONS,

11 Defendants.

12 -----x

13 August 5, 2004

11:30

14 120 Broadway

15 New York, New York

16

17 EXAMINATION BEFORE TRIAL of C. ALFRED

18 SANTILLO, taken by Defendants, Pursuant to

19 Stipulation and Court Order, held at the

20 above-mentioned time and place, before Dale W.

21 Tice, a Registered Professional Reporter and

22 Notary Public of the State of New York.

23

24

25

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1 SANTILLO

2 Q. The ballot for the Supreme Court
3 justice. In order to be elected a judge. The
4 general election.

5 A. I understand that to be the premise
6 of this action to seek injunctive relief.

7 Q. You think that this lawsuit seeks
8 to allow a candidate to get onto the election
9 ballot for the general election?

10 A. To my way -- you know, I read it
11 and I read it several times. And I believe that
12 that is what it's saying.

13 Q. Do you, yourself, have a concern
14 that minority party candidates simply can never
15 get elected?

16 A. I think there's a certain amount of
17 difficulty in minority candidates getting elected
18 in a system that sort of gives a few more points
19 to people who are mainstream.

20 Q. By definition, you have majority
21 parties and minority parties, correct?

22 A. Yes.

23 MR. CREELAN: Objection.

24 Q. And in a democracy when majority
25 rules, in general, it's easier for a majority

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1 SANTILLO

2 party to win than a minority party, right?

3 MR. CREELAN: Objection.

4 A. I believe what we are saying is we
5 want to see a minority have an equal opportunity
6 to be considered, not necessarily to be elected,
7 but at least to be in equal view.

8 Q. To be considered for the position
9 of Supreme Court justice or to be considered for
10 a party's nomination for Supreme Court justice?

11 A. Well, to be considered for Supreme
12 Court justice.

13 Q. Do you understand that the
14 Republican Party has a judicial convention? Did
15 you have any understanding of that?

16 MR. CREELAN: Objection.

17 Q. Do you know what a judicial
18 convention is?

19 A. I'm not sure, no.

20 Q. Do you know how the Republican
21 Party selects its candidate or candidates to be
22 the nominee for Supreme Court justice?

23 A. I have read it, but not exactly.

24 Q. Can you tell me as best you can, in
25 your own words, how it is that your party selects