

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, 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 PHILIP C.
SEGAL IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTIVE
RELIEF**

Index No. CV 04-1129 (JG)

PHILIP C. SEGAL declares as follows:

1. I submit this declaration in support of Plaintiffs' motion for a preliminary injunction.

Background

2. I am a resident of Brooklyn, New York, within the 2nd Judicial District.

3. I have been a registered Democratic voter for over 34 years.

4. I am currently in private legal practice as a partner at Segal & Greenberg LLP, specializing in matrimonial law, domestic relations, and civil litigation.

From April 1991 through March 2001, I served as a Judge in New York State Family Court, sitting primarily in Kings County. I continue to serve as a Judicial Hearing Officer in the New York State Unified Court System. Prior to my nomination to the Family

Court bench, I was the Director of the Building Services 32BJ Legal Services Fund, which provides legal services to members of the building workers union, SEIU Local 32BJ. Earlier in my career, I spent seven years as a legal services attorney.

5. I was appointed to the Family Court bench in April 1991 by then-Mayor David Dinkins. I showed myself to be an independent and conscientious member of the Family Court bench. I often felt that the New York City Administration for Childrens Services (ACS) expected Family Court judges to rubber-stamp ACS's decisions about children's welfare. While I often agreed with ACS recommendations, I evaluated these recommendations independently on their merits and did not always concur. I also refused to let the ACS attorneys appearing before me cut corners. For example, I felt that in some instances ACS attorneys did not make diligent efforts to serve parents with process before moving for judicial orders that would affect their parental rights. I always insisted that the attorneys appearing before me follow the letter and spirit of applicable procedural rules in order to ensure fairness to all of the litigants.

6. I also showed myself to be independent in other matters. For example, in Matter of Kittridge, 185 Misc. 2d 876, 714 N.Y.S.2d 653 (Fam. Ct. 2000), I held that ACS was required to provide medical services to an ill parent before seeking to remove her child from her care because of her frequent hospitalizations. This holding angered New York City officials in Mayor Giuliani's administration because of its implications for the level of service that ACS might be required to provide to other parents whose children ACS sought to remove.

7. When my term as a Family Court Judge expired in March 2001, I was not reappointed by Mayor Giuliani. I believe that I did a good job as a Family Court

Judge and that I was not reappointed because of my independence and because I refused to rubber-stamp ACS's recommendations.

My Experiences as a Candidate for Supreme Court

8. In 1994, while serving as a Family Court Judge, I sent a letter to officials of the Brooklyn Democratic Party indicating my interest in seeking the party's nomination for Supreme Court Justice. I was interested in becoming a Supreme Court Justice because I believed that I was a qualified, conscientious, fair-minded, and independent Family Court Judge. Also, during my years of representing poor people and working people as a legal services attorney and as an attorney for union members, in Supreme Court as well as in Family Court, I saw that poor and working people did not always have the litigation resources that they needed and that they were frequently at a disadvantage when litigating against the government. I came to believe that judges do not always understand the problems of poor and working people, and I felt that in some cases, the government had far more influence with judges than other litigants who appeared before them. Because of these experiences, I felt that it was important that the Supreme Court bench should include justices with experience in representing poor and working people who would understand these issues. Because I understood the difficulties that poor and working people face in the courtroom, I was interested in becoming a Supreme Court Justice to bring this experience and understanding to the bench.

9. I was invited to interview with the party's judicial nomination screening committee. To the best of my recollection, Steven D. Cohn, a Democratic Party leader, was present, as were other individuals whose names I do not recall. During the interview, I was asked about my involvement with the local Democratic Party. I told

them that aside from being a lifelong Democrat, I had not been involved with Democratic politics. One of the interviewers told me that one usually must be involved in Democratic politics to be considered for a Supreme Court nomination. Another interviewer asked who my Democratic District Leaders were. The interviewers laughed when I said I did not know. They told me that generally one has to have more experience as a judge before being considered for a Supreme Court nomination. The candidates who were nominated that year for Supreme Court did not, however, possess more judicial experience than I.

10. The committee did not seek information from me in any depth about my judicial record or philosophy, my legal career or experience, or my approach to serving on the Supreme Court if I were to be elected.

11. I had no contact with the committee after that. No one from the committee, or the county Democratic Party, wrote or telephoned me to let me know that my application for the party's endorsement had been rejected.

12. After the Democratic Party's screening committee declined to back my candidacy, I considered but did not attempt to run my own slates of delegates to the judicial nominating convention. I knew that such an effort would involve a tremendous amount of effort and money, and that I would ultimately be unsuccessful in electing a sufficient number of delegates to support me at the nominating convention. I had neither the political connections or experience nor the resources to assemble the kind of petitioning and campaign operation that would have been necessary to recruit and elect delegates and alternates across at least one and probably two large counties and scores of Assembly Districts. I also believed that it would be futile to attempt to convince a


majority of the delegates to the judicial nominating convention to support my candidacy. I did not know how to identify or contact the delegates who were chosen, and understood that I had roughly two weeks to do so and to persuade them to consider supporting my candidacy at the convention. Even a cursory consideration of that daunting task led me to realize that I had no realistic chance to earn my party's nomination.

13. If I had had an opportunity to obtain a place on a primary election ballot by gathering a reasonable number of signatures among voters in Brooklyn, I would have organized such an effort. While I may not have succeeded, I would have had an opportunity to earn my party's nomination by convincing party members to support me based upon my judicial record and legal experience. Under the current nomination system, however, I never was allowed any such opportunity. As a voter, I would like to have the opportunity to vote in meaningful, competitive elections for Supreme Court Justice. Knowing from my own experience as a judge how important it is to allow well-qualified lawyers and judges to be considered seriously for Supreme Court positions, even if they do not have the support of county party leaders, I have suffered as a voter year after year by being shut out of the selection process used to determine my party's candidates. Voters are allowed no voice to show support for a solid candidate who does not have the party leaders' support; instead they must simply rubber stamp the candidates chosen by the county party leaders at the general election in November. For example, I strongly support Judge Margarita López Torres's candidacy for Supreme Court. In fact, I voted for Judge López Torres on the Working Families Party ballot line in the general election for Supreme Court in 2003. But until Judge López Torres and candidates like her are allowed to compete for our party's nomination by garnering support among

registered voters, voters like me will continue to suffer irreparable harm by being deprived of such meaningful choices among candidates. For that reason, I chose to join this lawsuit as a plaintiff to seek reform in the current selection system.

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

Dated: New York, New York
June 2, 2004



PHILIP C. SEGAL