

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

-----X

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,

Civil Action No. 04cv1129 (JG)

Plaintiffs,

v.

NEW YORK STATE BOARD OF ELECTIONS;
CAROL BERMAN, 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.

-----X

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TAB 1

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DECLARATION OF ROBERT J. LEVINSOHN

ROBERT LEVINSOHN, having been duly sworn, declares as follows:

1. I am an attorney in good standing licensed to practice law in the state of New York, and I am currently a partner at the law firm of Proskauer Rose LLP.

2. I graduated from Yale University with a B.A. in 1946, and from Columbia Law School with an L.L.B. in 1948. I was admitted to the New York Bar in 1949.

3. I have been involved in judicial politics in the First Judicial District for over 40 years, and have served as a delegate or alternate delegate from what is now the 73rd Assembly District for thirty-four years. Since 1977, I have attended and participated in every Judicial Convention for the selection of Supreme Court justices in the First Judicial District.

Additionally, I have served on the Association of the Bar of the City of New York's Council on

Judicial Administration from 1998 to 2004, and on the Committee on Election Law from 1985 to 1998.

4. I have served as the co-law chair of the New York County Democratic Committee from 1977 to date. Prior to becoming a law-chair of the New York County Democratic Committee, I was the co-law chair successively of the Committee for Democratic Voters (headed by Eleanor Roosevelt, Herbert H. Lehman, and Thomas K. Finletter), and then the New Democratic Coalition, which served as the umbrella organizations for the reform wing of the Democratic Party in New York. I have also been a member of the Lexington Democratic Club, the sole political club in what is now the 73rd Assembly District, for forty-five years.

5. I respectfully submit this Declaration, which I make based on my personal knowledge, in opposition to Plaintiffs' Motion for a Preliminary Injunction.

New York County's Judicial Selection Process for Supreme Court Justices

6. For the purposes of selecting State Supreme Court justices, New York State is divided into twelve judicial districts. Each judicial district is comprised of one or more counties consisting of numerous Assembly Districts. New York County alone, however, comprises the First Judicial District. Pursuant to the New York State Election Law, each major political party in each of the twelve judicial districts in the state is required to hold a judicial convention when selecting nominees for the Supreme Court.

7. Thus, as mandated by N.Y. Election Law § 6-106, the New York County Democratic Party utilizes a party convention to select nominees for the Supreme Court. Under this system, registered Democratic voters in each local Assembly District within the First Judicial District elect delegates and alternate delegates as their representatives to the party convention. The Democratic State Committee determines the number of delegates and alternate delegates

allocated to each Assembly District within each judicial district in proportion to the number of votes cast by voters in the Assembly District for the Democratic gubernatorial candidate in the preceding gubernatorial election pursuant to Election Law § 6-124.

The Independent Screening Panel

8. Under the New York County Democratic Party's rules in effect since 1977, the first step in the process of selecting Supreme Court nominees for the general election in the First Judicial District involves an independent screening panel. The purpose of the independent screening panel is to insure that the most highly qualified candidates for Supreme Court justice are given the opportunity to become the party nominees and run as Democrats in the general election.

9. The independent screening panel is chosen using what is known as a "double blind process" to insure that the judicial screening procedure is truly independent and free from undue political influence. Initially, to promote a diverse representation on the panel and meaningful participation by minority groups, the Judiciary Committee for the New York County Democratic Party (the "Judiciary Committee") invites various community, civic, professional and legal services organizations each to designate one person to serve as a member of the independent screening panel. In 2003, for instance, fifteen organizations selected members of the independent screening panel. A true copy of the list of the organizations invited by the Judiciary Committee in 2003 to participate in the panel process which selected members, and their designees, is attached hereto as Exh. A. Although the Judiciary Committee votes on and selects these organizations, the organizations – not the Judiciary Committee – choose the panel members – hence the first "blind" in the double-blind process. The Judiciary Committee also

chooses a panel administrator who has no vote, but who chairs the meetings of the panel and insures compliance with the rules and guidelines.

10. Once the independent screening panel is in place, the party advertises in the New York Law Journal for potential candidates to submit applications to the panel for its consideration. The Democratic candidates for Supreme Court in the 1st Judicial District are typically individuals who have served as judges of one of the lower courts.

11. The candidates submit their applications directly to the independent screening panel with no input from the party leader or any other political leader – hence the second “blind” of the independent screening process. In other words, the party leader does not act as a gatekeeper with regard to whose applications the independent screening panel considers.

12. After the independent screening panel obtains all of the applications of interested applicants, it begins an exhaustive review process. According to my understanding, the first step is an information-gathering process. Customarily, one of several three-member sub-panels will interview each applicant. The sub-panel will also contact each candidate’s references. Next, each candidate will appear before the full panel for an interview. After the panel completes all of the interviews, it will vote for not less than two and not more than three of the most highly qualified candidates for each open seat for Supreme Court available that year. Invariably, in my experience, three candidates emerge from the panel for each open seat and become eligible for nomination.

13. The contest for the nomination culminates at the annual judicial convention where elected delegates vote for candidates who have emerged from the independent screening panel. The county leader is prohibited under the rules from endorsing or supporting any other candidates. Candidates that fail to emerge from the panel rarely seek delegate support at the

judicial convention. The only such candidate in my recollection who sought support in a year in which the panel did not report the candidate's name was Harold Tompkins, who ran in the 1993 convention and lost. (Judge Tompkins was ultimately nominated in 1998 after having been reported by panels in 1988, 1990, 1992, 1994, 1997 and 1998. The Party rules have since been amended to provide that once a candidate has been reported by at least two of the last four panels, that candidate shall be considered as approved during each of the next four calendar years without having again to appear before the panel.)

14. In the case of incumbent Supreme Court justices running for re-election, the independent screening process is slightly different and resembles a form of retention selection. Under such circumstances, the independent screening panel evaluates whether the incumbent justice merits continuation in office based on his or her record, as opposed to measuring the incumbent's qualifications against those of candidates seeking initial accession to the Supreme Court. Thus, the independent screening panel is required to report out as approved any sitting Supreme Court justice that it so finds to merit continuation in office, and no other candidate may be considered for the seat held by that justice. This procedure protects an incumbent judge from adverse consequences if he has made politically unpopular yet correct decisions. It is also designed to insure that incumbent Supreme Court justices, who have been politically inactive for at least fourteen years, have a fair opportunity to obtain re-endorsement by the Democratic Party without opposition from other Democratic candidates.

The Delegate Selection Process

15. As noted above, the Democratic Party's Supreme Court nominees for the general election are chosen at judicial district conventions with the delegates and alternate delegates subject to election by the registered party voters in local Assembly Districts within the judicial

district. The function of a judicial delegate is to represent and vote on behalf of the Democrats from the local Assembly District at the judicial convention. The delegates are elected through the party primary process, as required by New York State Election Law.

16. In the spring of an election year, local political clubs in each Assembly District determine who they are going to run as judicial delegates. In the First Judicial District, choices for delegates are vigorously contested at local club membership meetings. It is also not unusual for competing slates of candidates to be presented in the primary. Individuals or groups that want to run for delegate or alternate delegate without a local club's support may also make preparations to petition for the September primary election.

17. Local Democratic clubs circulate petitions designating candidates for delegates in each Assembly District for signatures from Democratic voters residing in the Assembly District. While each delegate requires a minimum of 500 signatures, there is no limit to the number of delegate candidates that can appear on a single petition up to the number authorized for the Assembly District, and typically there is a slate of candidates on a petition for the entire Assembly District. Where there is more than one local club within an Assembly District, a shared slate with candidates from each club is not uncommon. Sometimes, however, where clubs cannot agree on a common slate, the clubs will petition separately and the registered Democratic voters residing in the Assembly District will determine the outcome in the primary election.

18. If the number of candidates on petitions filed in an Assembly District does not exceed the number of positions allocated, then the candidates do not appear on the ballot and are deemed elected. See N.Y. Election Law § 6-160. If the number of candidates designated by petitions exceeds the number allotted to the Assembly District, the contest is resolved in the

primary in September. In New York County, the election of delegates has been frequently contested in the primary.

19. In no way do the county party leader or the local district leaders control the local delegate selection process, as Plaintiffs assert. In my experience, the selection of delegates and alternate delegates is a very competitive process that occurs at the local club level. The registered Democratic voters who are members of their local political clubs choose the delegate candidates who will be on the petitions circulated by the clubs. The county party leader plays no role in this process.

The Road to the Convention

20. As the delegate selection process is going on and after the delegates are chosen, Supreme Court candidates are permitted to garner support from prospective and selected delegates. But the delegates are not necessarily committed to any single candidate and are not required to vote for any particular candidate.

21. During the Assembly District election in which delegates are elected, each delegate candidate's name on the ballot is not linked to any individual judicial candidate. This serves to underscore that the delegates at this stage are not necessarily committed to any single judicial candidate, that the delegates represent the registered Democratic voters in their respective Assembly Districts, and that who eventually becomes a judicial nominee is not a pre-ordained fact.

22. During the time period between the end of the independent screening panel process and the convention, it is not unusual to have several candidates with pockets of support in varying size and intensity. During this time, the players involved in the process (e.g., candidates, campaign managers, delegates) endeavor to reach consensus on particular candidates

with an eye toward forging a convention majority that will select the judicial nominees. This process involves extensive discussions and maneuvering, as the candidates garner support and build coalitions. As the convention gets closer, a convention majority often emerges.

23. Contrary to what Plaintiffs assert, the county leader does not dictate which delegates support which judicial candidates. Because the judicial selection process is a consensus building exercise, the county party leader cannot simply impose his will even if he wants to, particularly where there is widespread support for a particular candidate. Thus, the county leader leads by monitoring the process and building consensus. In this way, the county leader insures that no particular faction captures all of the party nominations and that all groups meaningfully participate and share in the convention outcome. The result has been a Supreme Court judiciary in New York County which reflects the great diversity of Manhattan along the lines of race, gender, religion, ethnic origin, and sexual orientation. Today, of the thirty-eight Supreme Court justices in New York County, twenty-two are women, nine are African-American, four are Hispanics, two are Asian, and three are openly gay (all females).

24. The judicial convention for the First Judicial District meets in September to select the party nominees for the open Supreme Court seats. The convention provides a forum for the judicial candidates and delegates to present their cases. Although a consensus on who the party nominees should be is often reached before the convention, floor battles at the convention are not unheard of.

25. Thus, it is not impossible for an insurgent candidate to be nominated instead of a candidate supported by the party leader. The key for an insurgent candidate to successfully win a nomination is to garner support by building coalitions in the same way that a candidate with the

party leader's backing forms coalitions. No candidate – insurgent or otherwise – can single-handedly capture the nomination. Coalition-building is a critical component of the process.

26. A prime example of how party members can take control from the party organizations and overcome the county leaders' wishes is the 1976 convention in the First Judicial District – which, at that time, included both New York County and the Bronx. At the 1976 convention, the delegates nominated Justices Alexander, Carro, Rosenberger, Rubin and Wallach over the Bronx and Manhattan county leaders' opposition. This was achieved through the election of delegates committed to choosing candidates screened by the independent panel process. (The 1976 convention was held before the adoption of the current New York County rules, but while similar rules for use of independent screening panels were adhered to by the reform clubs belonging to the New Democratic Coalition).

Benefits of the Convention System

27. As demonstrated by the discussion above, the convention system insures that qualified jurists are elected to the bench. The system also insures that the bench reflects the geographic, ethnic, and demographic diversity of the community. Indeed, as suggested above, the convention system has successfully resulted in just such a diverse judiciary in New York County.

28. The judicial convention also has the benefit of insulating Supreme Court candidates from potentially two levels of public political campaigning and the expense thereof – one for a primary to secure the nomination and one for the general election. In those judicial districts where Plaintiffs claim that one-party controls the judicial district, the need for public campaigning is limited. In other judicial districts where there is inter-party competition, such campaigning is limited to the general election. Thus, the convention process for Supreme Court

provides partial insulation from public campaigning by judges, some of whom may be incumbent Supreme Court justices who have been removed from the political arena for fourteen or more years. It also protects an incumbent justice from being defeated for re-nomination in the primary by an insurgent of lesser qualifications who is prepared to expend large sums in a demagogic campaign.

29. It should also be noted that a candidate for Supreme Court, without going through any judicial convention process, can obtain a position on the ballot as an independent candidate, with 4000 signatures required in New York City districts and 3500 elsewhere.

30. As for why Supreme Court justices should be chosen in a different manner than those for Civil Court where there is a primary election, most new candidates for Civil Court are seeking office from private life, while almost all candidates for Supreme Court are already on the bench, most of them already appointed by the Chief Administrative Judge for New York State to serve as Acting Supreme Court justices. The awkwardness of forcing sitting judges into public campaigns when seeking advancement is a significant compelling reason for distinguishing the two positions. Further, the rules governing the conduct of judges prohibit sitting judges from engaging in a wide range of political activity, and permit such judges to participate in their own campaigns *only* after they have announced their candidacies. This puts sitting judges at a significant disadvantage to non-judges, who are not restricted from engaging in political activity before they announce their candidacies.

Conclusion

31. Accordingly, I respectfully request that this Court deny the Plaintiffs' Motion for a Preliminary Injunction in its entirety.

32. To the best of my knowledge, the foregoing is true and accurate.

Sworn to before me this 12 day
of August, 2004

Carmela Galano

CARMELA GALANO
Notary Public, State of New York
No. 01GA5025891
Qualified in Nassau County
Commission Expires April 4, 2006

Robert J. Levinsohn

ROBERT J. LEVINSOHN

EXHIBIT A

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2003 Supreme Court Screening Panel**

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Cornell Law – 1991 (2nd Dept.)
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8/15/1955 Dem.

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Cornell Law – 1993 (1st Dept.)
4/13/1966 Dem.

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Duke U. Law – 1979 (1st Dept.)
1/27/1954 Dem.

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Hastings Law – 1977 (1st Dept.)
11/4/1949 Dem.

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Benjamin Cardozo Law – 1998 (2nd Dept.)
3/17/1960 Dem.

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Geo. Washington U. Law – 1990 (3rd Dept.)
5/7/1964 Dem.

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Northeastern U. Law – 1979 (2nd Dept.)
1/24/1951 Dem.

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Columbia Law – 2000 (1st Dept.)
9/18/1974 Dem.

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Rutgers Law – 1978 (1st Dept.)
8/10/1940 Dem.

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Northeastern U. Law – 1998 (1st Dept.)
9/6/1971 Dem.

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U. of Penn. Law – 1991 (1st Dept.)
11/22/1964 Dem.

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Cardozo Law – 1981 (1st Dept.)
5/15/1955 Dem.

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TAB 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BANKS, C. ALFRED SANTILLO, JOHN J.
MACRON, LILI ANN MOTTA, JOWN W.
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Plaintiffs,

— against —

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NEIL W. KELLEHER, CAROL BERMAN,
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Defendants.

Index No. CV 04-1129(JG)

**DECLARATION OF DOUGLAS A.
KELLNER IN OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTIVE
RELIEF**

DOUGLAS A. KELLNER declares as follows:

1. I am an attorney admitted to practice in the courts of the State of New York and I have practiced election law in New York for more than 25 years. I submit this declaration in opposition to plaintiffs' motion for a preliminary injunction.

Background

2. I have represented hundreds, if not thousands of candidates litigating issues concerning access to the ballot from the day I was admitted to the bar in 1978 until May 1993 when I was appointed as a commissioner of the Board of Elections in the City of New York, an office I have held since that time. Among my duties as commissioner is to participate in the rulings in all objections to designating and nominating petitions filed with the city Board of Elections. I have conducted dozens of sessions to train potential candidates of all parties, including many "insurgents" and independents on the procedures for gaining access to the ballot. I have been a member of the Special Committee on Election Law of the Association of

the Bar of the City of New York since 1983. I am also a member of the Election Law Committee of the New York County Lawyers Association and I have served as its chairman.

3. In 1981 County Leader Miriam Bockman appointed me as co-chair of the Law Committee of the New York County Democratic Committee, the youngest lawyer ever to hold that position. I served as Law Chair in New York County and as a member of the Law Committee of the New York State Democratic Committee until my appointment as election commissioner in 1993. I have been a member of the Judiciary Committee of the New York County Democratic Committee from 1982 until the present and I have had a significant role in drafting the guidelines and procedures for the Independent Screening Panel that must report on all candidates who wish to receive the New York County Democratic Party endorsement to run for Supreme Court justice. I have also served as Chair of the Rules Committee of the New York County Democratic Committee since 1983 until the present. In that capacity, I have drafted all of the amendments to the Rules of the New York County Democratic Party, including those rules governing the Independent Screening Panel.

4. I am intimately familiar with the judicial nominating process, particularly in the First Judicial District. I have attended every judicial nominating convention of the Democratic Party in the First Judicial District since 1976. From 1982 through 1992, I was appointed by the Chair of the New York State Democratic Party as the Temporary Chair to convene those eleven conventions. I have served as a delegate at numerous conventions.

5. I graduated from Columbia Law School, with honors, in 1977. I am admitted to practice in the United States District Courts for the Southern and Eastern Districts of New York, the United States Court of Appeals for the Second Circuit, and the United States Supreme Court.

6. I have testified as an expert witness in election matters approximately ten times in the last five years.

7. I have carefully read the declaration of Henry T. Berger and I disagree with his conclusions. Based on my experience, (a) I do not agree that New York's Supreme Court election statutes impose any significant burdens on candidates seeking access to the ballot;

indeed, I believe that the convention system makes ballot access much simpler for those candidates best qualified for election; (b) the system is rational and justified; and (c) the proposed system of direct primaries would impose even greater burdens and would give tremendous advantage to those candidates with access to substantial financial resources and would discourage well-qualified candidates without financial resources from seeking election.

Historical Background

8. Before directly addressing the current system for nominating candidates for election to the Supreme Court, it is worthwhile to review the history of ballot access and party participation in New York elections. I have extensively studied the history of elections and election administration in New York State. I have presented papers on the subject to the New York City Charter Revision Commission and other organizations.

9. Before 1880, New Yorkers used what political scientists call the “Massachusetts ballot” method of voting. Ballot access was not an issue because the government did not print ballots. Instead, voters were expected to write out their own choices for each office to be elected. Early in the 19th century, when voting by written ballot was first introduced in New York, civic organizations began printing ballots with their slates listed. One of the more successful local organizations was the Society of the Sons of St. Tammany and Columbian Order. Partisans passed out these “tickets” at the entrances to the polls. (This is the origin of today’s palm cards.) Voters could then choose which ticket the voter would place in the ballot box. The pre-printed ticket ballot saved the voter a great deal of time and allowed the voter to choose candidates personally unknown to the voter based on the identification of the people passing out the ticket. Indeed, such tickets were invaluable for voters who had only marginal literacy skills.

10. The local political organizations would send delegates to state and national conventions to agree on their candidates for state and national office. This was how the national political parties formed. The convention itself would determine which delegates it would allow to participate. As the parties became more institutionalized in the first half of the

19th century, the local organizations would advertise their affiliation with the national and statewide parties. This is how the Tammany Society eventually evolved into the local arm of the Democratic Party in New York City.¹ Partisans began to use the convention system for forming consensus on their candidates for offices where the districts were larger than the area that formed the base of the local political organization.

11. Partisans began to print their tickets in unique colors; by the 1840's, the Tammany ticket was always green. Of course, the use of colored tickets made it impossible to vote by secret ballot. Counterfeiting the ticket became common. The counterfeit ticket would list a few of the party's prominent candidates—just enough to fool the unwary—with the rest of the names coming from a rival slate. Another drawback was that nominations could be made on the eve of the election depriving the public of any means to become familiar with the candidates. As a first step toward reform, in 1880 the Legislature passed “an Act to secure uniform ballots and preserve the purity of elections,” L. 1880, chapter 366, that required all ticket ballots to be printed on white paper in black ink in uniform type without any distinguishing marks.

12. By this time, the Democratic and Republican parties had become well established and were recognized by voters although there was virtually no governmental recognition of the existence of the political parties. Anyone could run for office by passing out ticket ballots with the candidate's name printed on the ticket. Nevertheless, there was increasing attention to irregularities in the “primaries”—the process by which the parties chose their slates. Generally, the party members selected candidates for statewide and large district offices by electing delegates to conventions. Nominations for local offices were usually made directly at meetings of party members. Because these political organizations were private associations, there was virtually no remedy for irregularities in the nomination process other than to print and to pass out rival tickets on election day. The Legislature first

¹ From before 1870, when the New York County Democratic Committee formally organized, until the early 20th century, the district leaders who constituted the Executive Committee of the party organization were almost always the “sachems” of the “tribes” that constituted the Tammany Society, although the two organizations maintained a separate legal identity.

addressed this issue by enacting Chapter 154 of the Laws of 1882. This first law regulating “primaries” required inspectors of party primary elections to be sworn to faithfully perform their duties, made impersonation of members a crime and limited voting to citizens at least 21 years old. The legislation did not address what was probably the most significant abuse at the time, the right of the party to determine who it would allow as a member and who could participate in the primaries.

13. These modest reforms had relatively little impact. In 1890, the Legislature adopted the Ballot Reform Law, L. 1890, c. 262. For the first time, the law required county governments to print all ballots in the general election for public office and provided two methods for ballot access. An entity polling 1% of the vote for an office in the prior election could nominate a candidate for that office by a meeting of the party committee or convention. In the alternative, a candidate could be listed on the official ballot by filing a certificate of nomination signed and acknowledged by a number of voters: 1,000 for statewide office, 250 for county-wide or larger districts (except in New York and Kings Counties, where 300 was required), and 100 for assembly districts.² All voting was to take place in secret inside a “voting-booth.” This system of voting is generally described as the “Australian ballot” named after the place where it was first employed. Four years later, the Legislature authorized towns and cities to use the “Myers’ automatic voting cabinet,” a voting machine, in place of paper ballots. L. 1894, c. 764.³

14. Now that the government was in the business of printing ballots, there was even greater attention paid to the internal party processes for nominating candidates. In 1898, the Legislature provided for official party enrollment at the time voters registered for the general election. L. 1898, c. 179. Political parties could no longer exclude members from voting for arbitrary reasons. The government would conduct all primary elections for members of party committees and delegates to party nominating conventions.

² The signature requirements were substantially increased the following year. L. 1891, c. 296.

³ The law authorizing voting machines did not apply to New York and Kings Counties. L. 1893, c. 82 authorized the Myers’ machine for town elections.

15. In the first decade of the 20th century, the progressives under the leadership of Theodore Roosevelt gained control of the New York Republican Party. Similarly, the populist movement under the leadership of William Jennings Bryan began to influence the New York Democratic Party. Both movements pressed for direct primary elections where all of the enrolled members of the political party would be eligible to vote in the primary election to select their party's candidates. In 1911, as the progressive movement swept the country, New York County Democratic Leader Charles Murphy and Governor John A. Dix were finally won over to the cause and pressed the Legislature to provide for direct primary election to nominate the parties' candidates for local offices. New York enacted the Direct Primary Law of 1911. L. 1911 c. 891. That 1911 law provided for the direct primary election for all but statewide and town offices. "Designations" of candidates in the primary election were by the same method used in general elections since 1890. A candidate could obtain a place on the primary ballot by designation of a party committee or convention, or the candidate could submit designating petitions with the requisite number of valid signatures. In 1913, the direct primary was extended to all statewide offices, and designations by party committee or convention were eliminated. L. 1913, c. 800. All candidates would be required to submit designating petitions.

17. There was immediate criticism of the primary election process for candidates for election to the state Court of Appeals and to the Supreme Court.⁴ *See, e.g.* Albert S. Bard, "Some Observations on the Primary and Election Laws of the State of New York with Special Reference to the Nomination and Election of Judges" (address to the Association of the Bar of the City of New York), March 10, 1914, 15 ABCNY Reports #169. In that address, Mr. Bard noted that the requirement to circulate designating petitions and the cost of campaigning in the primary would discourage many highly qualified individuals from seeking election to judicial office.

⁴ Judges of the Court of Appeals were elected since the court was established by the Constitution of 1846. That same 1846 Constitution also provided for election of Supreme Court justices as well as almost all local judges and justices.

18. The Association of the Bar of the City of New York made known its opposition to the direct primary system for judicial offices. To be fair, the Association favored appointment or non-partisan election of judges. On the other hand, the Association also made known its view that if partisan elections were to continue as required by the state Constitution, then nomination by party convention was preferable to direct primary elections. *See, e.g.*, "Annual Report of the Committee on the Judiciary for 1919," 23 ABCNY Reports #225 at 136; "Report of the Committee on the Amendment of Law of the Association of the Bar of the City of New York," 24 ABCNY Reports #228 at 294-95 (1921).

19. The Legislature responded favorably to the pleas of the bar by abolishing the experiment of direct primary elections for the judges of the Court of Appeals and justices of the Supreme Court by enacting Chapter 479 of the Laws of 1921. Section 14 of that statute restored the convention system for making party nominations for statewide offices and for justices of the Supreme Court. Of course, candidates could still obtain a place on the general election ballot by circulating independent nominating petitions. The state law governing judicial nominating conventions has remained essentially unchanged since that 1921 statute, although the New York State Election Law has been re-codified several times since then.⁵

Democratic Judicial Conventions in the First District

20. My experience with judicial nominating conventions is generally limited to those held in the First Judicial District since 1976. Until 1981 the First Judicial District comprised Bronx and New York Counties. In 1982, Bronx County was formed into its own Twelfth Judicial District. As I indicated above, I have attended every one of these conventions, and I had substantial organizing responsibilities for the conventions between 1982 and 1992.

21. From 1976 until the mid-1980's there were three competing factions of judicial delegates at all of the Democratic judicial nominating conventions for the First District. None of the factions could assure a majority on its own and needed to win support of another faction

⁵ L. 1922, c. 599; L. 1949, c. 100; L. 1976, c. 233.

in order to nominate its candidates. The three factions could roughly be described as the Tammany “regulars,” the “reformers” allied with the New Democratic Coalition, and a smaller group of African-American and Hispanic delegates who refused to be identified with either of the other two factions. In some Assembly districts there were primaries between rival slates from these factions. Many of the conventions in those years were closely divided and no one could definitively predict the outcome of the convention until the roll was called.

22. The factional division of the judicial convention also reflected the factional division within the New York County Democratic Committee itself. In 1977, the reformers won control of the county committee and amended the party rules to include a strong provision in the rules that required the county organization to support only those candidates rated highly qualified by an independent screening panel. To assure the independence of the panel, the rules added the unprecedented requirement that leaders of bar associations, law schools and community organizations would name the members of the screening panel, significantly limiting the influence of party leaders in the deliberation of the panel. With minor modifications, that procedure remains in effect today.

23. In 1981, Miriam Bockman resigned as the leader of the New York County Democrats. In the 1981 election of the new Manhattan county leader, Herman “Denny” Farrell, who had been an organizer of the African-American-Hispanic coalition, made a commitment to appoint a reformer as chair of the party’s judiciary committee and to respect the independent screening panel process.

24. By the mid-1980’s, the alliance of the reform and minority factions generally stuck together. Nonetheless, the county leader could hardly exercise control over the judicial selection process. Candidates for nomination to the Supreme Court began to understand the critical role of the independent screening panel—a more difficult hurdle than actually winning a majority of the convention delegates. In addition, rivalries among the various Democratic clubs still generated primaries for election of judicial delegates.

25. I also note that the process of selecting delegates for designation on the ballot is not as straightforward as Mr. Berger suggests. In many Democratic clubs, there are

meaningful contests within the club to obtain the club's endorsement for candidates for delegate and alternate delegate on the club's designating petitions. In my own club, Three Parks Independent Democrats located on Manhattan's Upper West Side, club members campaign vigorously for the endorsement. The meeting each May for the selection of the club's delegate candidates is usually the most heavily attended meeting of the year. It is simply untrue that district leaders have unfettered control over their delegates.

26. Even after the clubs make their endorsements, there are often primaries for the actual selection of delegates. While this year is relatively peaceful with only one delegate primary in Manhattan, the fewest in 40 years, last year more than half of the Manhattan assembly districts had contests, some with more than two rival slates. I would estimate that, on average, there have been primaries in approximately one third of the twelve assembly districts in Manhattan in the last two decades.

27. The independent screening panel usually delivers its report listing the most highly qualified candidates for nomination to Supreme Court in the first week of September, about two or three weeks before the convention. Almost always there has been a vigorous campaign among the candidates reported by the panel for the support of the delegates. Candidates appear before many local Democratic clubs to obtain endorsement of the club members. Candidates usually hold an open house where delegates are invited to meet with the candidate and the candidate's supporters. Many delegates spend considerable time during this short campaign period to learn about the background and qualifications of the candidates.

28. Obviously, the delegates, party leaders, and campaign managers for the candidates spend substantial time discussing the level of support for each candidate. Because it is necessary to obtain a majority of the delegates in order to obtain nomination, and usually there is more than one vacancy to be filled, coalitions begin to form to assemble the necessary majority. The county leader, Denny Farrell, usually does play a significant role in helping to assemble the majority coalition. Contrary to Mr. Berger's assertion, however, that process almost always happens after the delegates have informally indicated their preferences. One of the key roles that Mr. Farrell has played is to assure that the ultimate slate nominated by the

convention reflects gender, racial and geographic balance. That role is one of the principal reasons that the First Judicial District has the highest ratios of female, African-American, Hispanic, Asian-American justices in the state. Special consideration has also been given to assure that highly qualified attorneys with alternative sexual preferences and persons with disabilities are represented on the Court.

29. By the time the roll is called at most conventions, everyone is well aware how most of the delegates are going to vote. Most candidates who know that they do not have sufficient support to obtain a majority do not press the issue and give a short withdrawal speech at the convention and most candidates are nominated unanimously. But this hardly means that the convention is undemocratic. The real voting takes place over the telephone in the week before the convention. I note that in the most recent Democratic National Convention, John Kerry received the votes of more than 98% of the delegates. Yet as we know, that final vote hardly reflects the robust and hotly contested primary campaigns that ultimately led to that result. That being said, I estimate that there have been contested roll calls at more than a third of the 26 conventions that I have attended; on several occasions there have been multiple ballots because no candidate received a majority on the first ballot.

30. During the years when I was co-chair of the Law Committee, I was often given the task of canvassing the delegates to determine their preferences. Many delegates were interested in the county leader's views, but even more delegates would use that opportunity to solicit support from the county leader for their favored candidates. It was not an infrequent occurrence that Mr. Farrell would have to adjust his own preferences to reflect the level of support among the delegates. Generally, Mr. Farrell has been careful not to commit to the nomination of candidates until he is confident that the candidate has the support of a majority of the delegates. There have been rare occasions, however, when, even after that process, the county leader could not assemble a majority for a favored candidate. Fortunately for the county leader, those occasions have been rare. After all, one can remain the county leader only by retaining the support and confidence of a majority of the elected district leaders.

The Other Conventions

31. I have much less familiarity with the inner workings of the other conventions throughout the state. Nonetheless, I wish to share some observations based on what I do know.

32. The Republican Party in the First District almost always schedules their convention to follow the Democratic convention. Because the Democratic candidates have always won contested elections in the last three decades, there is much less activity for the Republican nomination. Nevertheless, the Republican Party in Manhattan has a judiciary committee that meets to review candidates' qualifications and makes recommendations whether to cross-endorse the Democratic candidates. If they believe the Democratic candidate is highly qualified according to their criteria, they also nominate that candidate. Otherwise they nominate their own candidate. It has been rare, however, when any Republican candidate in the First District has ever actively campaigned for election.

33. Mr. Berger's generalized and stereotypical description of the role of a county leader does not match my observations of the process elsewhere. Mr. Berger neglects to point out that the district leaders themselves are elected by the members of the party in primary elections and that the district leaders, in turn, elect the county leader. They do see their role as providing *leadership*, shaping and maintaining the strength of their party. If county leaders are perceived to be performing a poor job in the judicial selection process, it does adversely affect their ability to remain leader.

34. While there may still be patronage in the Republican Party outside of New York City, the Court should recognize that New York City Democrats have virtually no patronage at their disposal in view of the fact that there has been a Republican governor since 1995, Republican mayors of New York City since 1994 and a Republican president since 2001.

35. Mr. Berger also ignores the role of competing factions within the party organizations outside of Manhattan. I am aware of significant divisions within the Democratic organizations in the Bronx and Brooklyn that spill over into the judicial nomination process.

Even in Queens, where there have been relatively few primaries for judicial delegate, I am aware that the party leadership must balance many competing interests before making their recommendations to the judicial convention delegates. While there is relative peace in Manhattan this year (the least combative in more than 40 years), there are judicial delegate primaries in five of the eleven assembly districts in the Bronx, nine of the 21 assembly districts in Brooklyn and one of the four assembly districts in Staten Island.

36. Although I like to believe that the independent screening panel organized by the New York County Democrats is the best system for screening the qualifications of judicial candidates, I am also aware that other county organizations have organized screening panels to assure that only the most qualified candidates are considered for nomination.

Ballot Access

37. Mr. Berger's analysis completely ignores the fact that any individual candidate for election to the Supreme Court can obtain a place on the general election ballot by circulating independent nominating petitions. New York Election Law §6-142 prescribes the number of signatures required to obtain a place on the ballot for the general election: 4,000 signatures are required for the four judicial districts within New York City; 3,500 signatures are required for the other judicial districts. It is noteworthy, that in many cases, the signature requirements would be much greater to obtain a place on the primary ballot if direct primary elections were used.⁶

38. Mr. Berger's lengthy analysis of the petition challenge process (¶¶ 24-32) would apply equally to challenges in a direct primary election.

39. His analysis is flawed, however. The Legislative intent was not to encourage individual candidates to run slates of delegates pledged to their candidacy. Instead, the system

⁶ See NY Election Law §6-136. The lesser of 5% of the enrolled members of the judicial district or the prescribed number of signatures would be required. The number for Democrats in the First (NY Co.), Eleventh (Queens) and Twelfth (Bronx) Districts would be 4,000. 8,000 would be required in the Second District (Kings and Richmond). EL§6-136(2)(k). Republicans and Democrats in the Tenth District (Nassau and Suffolk) would need 4,000. Signature requirements may be even higher in other districts.

was designed to delegate the function of selecting party nominees to representatives elected by the party membership. Under the convention system, individual candidates for election to the Supreme Court are not required to petition at all—one of the reasons that the Association of the Bar of the City of New York urged the Legislature to restore the convention system.

Direct Primary Election Would Impose Even Greater Burdens on Candidates.

40. New York State experimented with direct primary election of candidates for the Supreme Court from 1912 to 1920. The Legislature responded to objections to that system by restoring the convention system for nominations in 1921.

41. New York is in a relatively unique position because of its mixed system of judicial selection. New York uses the direct primary method for nominating municipal justices, county judges, judges of the New York City Civil Court, surrogates, and family court judges outside of New York City. As a consequence, the Legislature and political advocates have the benefit of comparing the processes.

42. The Fund for Modern Courts, Inc. has been a long-time advocate of appointment or non-partisan selection of judges. In 1986 the Fund prepared a comprehensive study, *The Illusion of Democracy: New York City Civil Court Elections 1980-1985*. M.L. Henry, Jr., the Executive Director of the Fund for Modern Courts explained the thesis for the study in the Preface:

A New York City Civil Court judge had this to say:

I'm not surprised that Supreme Court elections are not real elections because their districts are huge and the control of judicial conventions is in the hands of the party bosses. But instead of taking away from the voters the right to elect judges, why not find affirmative solutions? Why not reduce the area in which candidates run? Why not make Supreme Court justices run in primaries and in districts like Civil Court judges?

Id. at v.

Mr. Henry responded in the Preface:

The judge's comments had immediate appeal to me. I promised her that I would undertake a study to test her thesis—that primary elections and smaller districts give voters, rather than party bosses, control over their judges. This is the study that I promised.

Id. at v-vi.

43. These are some of the conclusions that the Fund for Modern Courts reached in their study of Civil Court elections:

The real source of competition, it is widely said, is the Democratic primary—but little competition exists for the Democratic Party nomination. In only 24 of 85 elections (28%) was there a Democratic party primary. When no primary was held, as in over 70% of the elections, voters had no real choice.

. . . As a real choice is rarely offered to the voters, the “election” of Civil Court judges is generally nothing more than appointment by powerful political party leaders. . . .

. . . The average amount of money raised for a Civil Court election increased between 1980 and 1985 from \$12,150 to \$40,001, an increase of 330%. Since most of the money comes from candidates and their families—and lawyers—successful candidates may have to be wealthy—or dependent on lawyers.

. . .

Women and minorities had less success in winning election to the Civil Court than in being appointed to the Criminal or Family Court.

Id., “Executive Summary” at ix-xii.

44. The report contained a single recommendation:

In 1978, New York State began selecting Judges of the Court of Appeals on “merit.” A bipartisan commission nominates candidates for the Governor to appoint. Mayor Koch by Executive Order also uses a merit system to select judges for the Criminal and Family Court. The system should be expanded to the entire judiciary.

45. The trend of skyrocketing costs for judicial elections has not abated. Civil Court candidates now routinely spend \$100,000 or more in primary elections, even in small municipal court districts. In the last primary contest for New York County surrogate, the winner spent more than \$300,000 and her leading opponent spent nearly \$500,000.

46. Obviously, if New York were to switch to direct primary elections, the critical factor in contested races would be the ability to raise a huge campaign war chest. This would clearly have an adverse effect on the ability of highly qualified candidates of modest means to stand for election. I agree with many observers who believe that this would also have a disproportionate impact on minority candidates who often have less access to substantial campaign funds.

The New York System Is Rationally Based

47. The voters of New York State determined that they should elect the justices of the Supreme Court when they adopted the Constitution of 1846. Although many have challenged that system of electing judges, it remains in place today. As political parties have evolved since 1846, New York has determined that a system of partisan elections is the best method for selecting these judges. The Federalist Society published a white paper last year “The Case for Partisan Elections” that compares the various systems for selecting judges and concludes that, while not necessarily perfect, partisan elections are the best method for selecting the judiciary.⁷ The report makes some pertinent observations on the issue:

Political scientists have determined that party label is probably the most important factor in voters' decisions in judicial races. According to Stumpf and Culver, “In partisan [judicial] races, the political party label may give most voters all the information they seek.” Philip Dubois puts it this way: “when judicial elections are highly competitive and controversial, voters demonstrate a remarkable ability to learn about candidates, to correctly match them with their positions [on issues], and to vote accordingly.”

There is much empirical support for this common-sense approach taken by most voters in casting votes for judicial candidates. Nationwide, Republican state judges *are different* from Democratic state judges. “[R]esearch has repeatedly confirmed that there are basic differences between the Democratic and Republican judges who sit on state appellate courts” — namely, that “Democratic judges (tend) to support a liberal viewpoint compared to their Republican brethren.”

. . .

Adamany and Dubois provides the following bottom-line for the political science research on nonpartisan judicial elections:

Modern legal scholars and social scientists no longer deny that judges make policy. In a republican system, policymakers must be accountable to the people, either directly or indirectly Accountability requires institutional arrangements that strengthen voters' ability to select officials who will, in the main, govern consistently with the majority's policy preferences. Concurrently scheduled partisan judicial elections more readily allow voters to hold judicial policymakers accountable than do nonconcurrent or nonpartisan voting arrangements, separately or combined.

⁷ The paper can be found at the Federalist Society website at [http://www.fed-soc.org/Publications/ White%20Papers/judiciaelection.htm](http://www.fed-soc.org/Publications/White%20Papers/judiciaelection.htm).

48, After experimenting for nine years with direct primary elections, the Legislature made a conscious decision in 1921 that it made more sense for elected party delegates to have the responsibility for nominating the party's candidates for election to the Supreme Court. The Legislature did this to spare candidates the cost and effort of gathering designating petitions and to mount a campaign. Nevertheless, the Legislature has left open the option for any candidate to avoid the partisan nomination process and to appear on the general election ballot by circulating nominating petitions.

49. Similar to the disparagement that conservatives have placed on the word "liberal," plaintiffs here attempt to cast negative connotations on the concept of a "party leader." Leadership is an important quality and an effective political organization cannot survive without it. The leaders play a critical role in forming consensus, shaping their party's image, and assuring balanced representation of the varied interests of the party membership. The Legislature has created a system where elected representatives of the party's enrollees make the party's nomination of judicial candidates who must stand before all of the voters at the general election. If the voters are dissatisfied, they can change the party leadership, or they can vote for competing candidates in the general election.

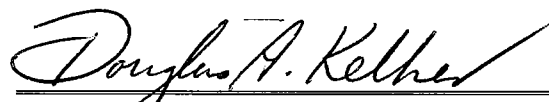
Conclusion

50. Based on the foregoing, I conclude that (a) New York's Supreme Court election statutes do not impose any significant burdens on candidates seeking access to the ballot; indeed, I believe that the convention system makes ballot access much simpler for those candidates best qualified for election by allowing them to avoid the burden of circulating designating petitions and raising funds for a primary campaign; (b) the system is rational and justified; and (c) the proposed system of direct primaries would impose even greater burdens and would give tremendous advantage to those candidates with access to substantial financial resources and would discourage well-qualified candidates without financial resources from seeking election.

51. Therefore, I urge the Court to reject plaintiffs' motion for a preliminary injunction and to dismiss the complaint.

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

Dated: August 13, 2004



Douglas A. Kellner

TAB 3

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

-----X
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,

Civil Action No. 04cv1129 (JG)

Plaintiffs,

v.

NEW YORK STATE BOARD OF ELECTIONS;
CAROL BERMAN, 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.
-----X

DECLARATION OF DENNIS E. WARD

DENNIS E. WARD, having been duly sworn, declares as follows:

1. I am an attorney in good standing licensed to practice law in the State of New York. I graduated from the State University of New York at Buffalo with a B.A. in 1973, and a J.D. in 1976. I was admitted to the New York State Bar in February 1977 and have practiced in the area of election law for approximately twenty-seven years. Currently, I am a partner at the law firm of Ward Brenon & DiVita LLP located in Buffalo, New York.

2. I respectfully submit this Declaration in opposition to Plaintiffs' Motion for a Preliminary Injunction. I make this Declaration based on my personal knowledge.

3. I have been a resident of Erie County, New York for forty years and have been actively involved in local politics for over thirty years.

4. I am currently the secretary of the Erie County Democratic Committee and have served in this position for about two years. I have been a member of the Erie County Democratic Committee for about twenty-six years. I am also the Chair of the Town of Amherst Democratic Committee and have served in this capacity for the past eight years.

5. I have been involved in judicial politics in the Eighth Judicial District, which includes Erie County, for over twenty years. I have served as a judicial delegate and alternate delegate a total of approximately seven times. As a judicial delegate or alternate, I represented the interests and ideals of the Democratic voters in my Assembly District and voted for judicial candidates that I believed reflected those interests and ideals.

The 2000 Judicial Election in the Eighth Judicial District

6. I was involved in the Supreme Court contest in the Eighth Judicial District in the year 2000 when a slate of insurgent candidates won the Democratic Party nomination over the Erie County Democratic Party leader's opposition.

7. The Eighth Judicial District is comprised of eight counties, including Erie County, which is the largest constituent with approximately two-thirds of the Judicial District's population and approximately two-thirds of the judicial delegates. The Eighth Judicial District is further divided into local Assembly Districts, which, as I discuss below, also play a role in the judicial selection process.

8. Supreme Court justices in the Eighth Judicial District are chosen by judicial delegates at a judicial convention held during the fall of any given year where there are one or more open seats for the Supreme Court bench. A Democratic candidate for Supreme Court that declares his or her candidacy typically undergoes a review process conducted by the candidate's local bar association. For example, in Erie County, a Supreme Court candidate typically submits

to an extensive and comprehensive evaluation by the Bar Association of Erie County, which ranks the candidates under a superior, well qualified, qualified and not qualified rating system. In recent years, other minority interest bar associations have participated in reviewing candidates for Supreme Court, such as the Minority Bar Association and the Women's Bar Association.

9. Judicial delegates to the judicial convention are elected by enrolled Democratic voters residing in the local Assembly Districts at the primary election in September of a given election year. Delegates are elected to represent the residents of their respective Assembly Districts at the judicial convention and in general, support those Supreme Court candidates whom the delegates believe are the most qualified and will best serve the interests of their constituencies. Because judicial delegates are elected to represent the interests of their constituencies, they typically are not committed to voting for any particular judicial candidate at the time of their election, although they may be leaning toward a candidate that will best represent their constituency.

10. In the 2000 general election, there were four seats for Supreme Court on the ballot in the Eighth Judicial District, including one seat that was occupied by an incumbent justice running for re-election – Justice Joseph Forma.

11. I was elected as a judicial delegate from the 142nd Assembly District in the primary held in September of 2000, and went on to serve as the presiding officer at the judicial convention. Notably, every Assembly District in the Erie County and Niagara County portions of the Eighth Judicial District, including my Assembly District, had a contested primary in 2000 where rival slates of candidates vied for delegate and alternate delegate positions.

12. At the time of my election as a judicial delegate, I had not pledged any of my votes to any particular candidates. I was interested, however, in supporting a slate of qualified

candidates that was diverse along geographic, gender and racial lines, and that reflected the interests of my Assembly District.

13. As the judicial convention approached, I participated in building a coalition and consensus among other judicial delegates who also had an interest in supporting a diverse slate of candidates. As a part of a party reform group, which we called the Task Force to Renew the Democratic Party, the other delegates and I agreed that, in addition to backing Justice Forma in his bid for re-election, we wanted to support a minority candidate, a candidate from outside Erie County, and another qualified candidate who did not necessarily fall within any specific category. After much discussion and deliberation, we chose to support, from the eligible candidates reviewed by our group and the local bar associations, Paul Crapsi, a white male and sitting Family Court Judge from Niagara County, and E. Jeannette Ogden, an African-American female and sitting Buffalo City Court Judge from Erie County. The female delegates within our coalition felt and argued that the fourth candidate on our slate should be a female, so we also then chose to support Sheila DiTullio, a white female from Erie County, who was a sitting Erie County Court Judge.

14. Our primary adversaries at the Eighth District judicial convention were delegates and slate of candidates backed by the then-Erie County Democratic Party chairman, G. Steven Pigeon. Pigeon endorsed a slate of four candidates, which also included Justice Joseph Forma. With the exception of Justice Forma, our coalition opposed the nomination of the candidates that Pigeon supported. All of the candidates that Pigeon endorsed were from Erie County.

15. The contest between our slate of candidates and Pigeon's slate of candidates was close and ended up in a floor fight at the judicial convention. Ultimately, our slate of candidates

prevailed in securing the party nominations by building a consensus majority among the delegates.

16. Our victory over the party leader's opposition was due, in large measure, to the ability to form a coalition among candidates and their supporters. If these candidates had run individually without a coalition, they would no doubt have had a far more difficult time defeating the candidates for the nomination who were backed by then-Chairman Pigeon. Indeed, the support that each individual candidate had was far outweighed by the delegate support that Pigeon's slate of candidates had garnered.

17. Ultimately, in the general election, only one candidate on our insurgent slate – incumbent Justice Joseph Forma, who the Republicans cross-endorsed – succeeded in winning a Supreme Court seat. The Republican judicial candidates won the three other seats.

Value of the Convention System

18. I am opposed to Plaintiffs' efforts to abolish the judicial convention system and replace it with a direct primary system. In the Eighth Judicial District the convention system is necessary to ensure that the Supreme Court bench reflects the diversity of interests within the Judicial District. Because delegates are representatives of the enrolled Democratic voters residing in the local Assembly Districts, the delegates can, and most often do, lobby and vote for the candidates that best reflect the interests and ideals of the delegates' respective constituencies.

19. The convention system also permits delegates from the different Assembly Districts to form coalitions to ensure that candidates from areas that have smaller voting blocs have an opportunity to secure the party nomination. This was the case in the 2000 judicial contest in the Eighth Judicial District. Paul Crapsi, the candidate from Niagara County – a far smaller county than Erie County – had a very limited base of support going into the judicial

convention. In fact, Niagara County had only about eight of fifty-four delegates at the judicial convention, and there was no guarantee that those eight delegates would have supported Crapsi. Nonetheless, Crapsi was able to secure the nomination for an open Supreme Court seat because he garnered support from the candidates and delegates with whom he and his supporters had formed a coalition. Had Crapsi and his supporters been denied the opportunity to build alliances, it would have been extremely unlikely that Crapsi would have won the nomination, given his home county and the limited support that he had.


20. In addition, the convention system promotes the important goal of nominating a diverse slate of judicial candidates, not just along geographic lines, but racial and gender lines as well. Again, the 2000 judicial contest in the Eighth District is a good example of this. As I noted above, two of the candidates that won the Democratic Party nominations were females, and one of the candidates was African-American. This diversity was a direct result of the delegates' conscious decision to support a racial minority and a female candidate.

21. The use of the convention system is particularly important in Judicial Districts like the Eighth District where the voting bloc for one county far outnumbers that of the other counties combined and the overwhelming majority of Democratic voters are white. Under the type of direct primary system that Plaintiffs advocate, a candidate from outside of Erie County or a minority candidate would likely face insurmountable obstacles to obtaining the Democratic nomination for Supreme Court in light of the Eighth Judicial District's demographics. But as the 2000 judicial contest in the Eighth District shows, a convention system permits such candidates an opportunity to capture the nomination through coalition and consensus building among both the candidates and the judicial delegates elected by the people. This, in turn, results in a

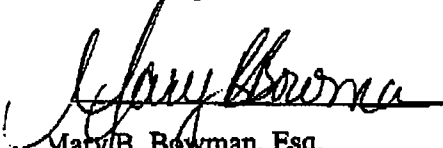
balanced Democratic ticket in the general election for the open Supreme Court seats, and if successful at the polls, a more balanced and diverse Supreme Court bench.

22. Thus, in my view, the convention system of selecting Supreme Court justices is a valuable means of enhancing the voice of smaller counties and achieving the type of diverse representation that is consistent with Democratic ideals, and should be preserved. Accordingly, I respectfully support the request that the Court deny Plaintiffs' Motion for a Preliminary Injunction in its entirety.

23. To the best of my knowledge, all of the foregoing statements are true and correct.


DENNIS E. WARD

Sworn to before me this 13th
day of August 2004



Mary B. Bowman, Esq.
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 6/16/ 2007

TAB 4

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

-----X
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,

Civil Action No. 04cv1129 (JG)

Plaintiffs,

v.

NEW YORK STATE BOARD OF ELECTIONS;
CAROL BERMAN, 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.

-----X

DECLARATION OF EMILY GISKE

EMILY GISKE, having been duly sworn, declares as follows:

1. I am a resident of Greenwich Village, New York and am actively involved in judicial politics in both the 66th Assembly District, which encompasses Greenwich Village, and New York County.

2. I respectfully submit this Declaration in opposition to Plaintiffs' Motion for a Preliminary Injunction and make this Declaration based on my personal knowledge.

Background

3. I graduated from George Washington University in 1982 with a B.A. in public policy and from the New School University with an M.A. in urban affairs and policy analysis in 1984.

4. I have been active in politics since I interned with Pat Caddell, the then-Democratic pollster for President Jimmy Carter, during the 1980 Presidential campaign. I have been a member of the Democratic National Committee since 2000, and have been a Vice-Chair of the New York State Democratic Committee since 1996. I have also been an active member of the political club, the Gay and Lesbian Independent Democrats (“G.L.I.D.”), for 10 years.

5. I have been a resident of what is now the 66th Assembly District in the First Judicial District of New York State since 1986. The 66th Assembly District falls within the First Judicial District, which is comprised of New York County.

6. I have been involved in judicial politics for approximately eight years. I have served as an alternate delegate, representing the Democratic voters residing in the 66th Assembly District, approximately seven times. I have voted at the judicial convention two or three times. I am currently running unopposed for an alternate delegate seat in the 66th Assembly District.

7. In serving as a delegate alternate, I am elected to represent the registered Democratic voters in the 66th Assembly District.

The 2002 Judicial Election

8. In 2002, I was involved in the judicial contest for Supreme Court that led to Roslyn Richter’s successful bid for the Democratic nomination and election as a Supreme Court justice. In that year, there were six open seats for the Supreme Court. There were four incumbent justices seeking re-election – Justice Richard B. Lowe III, Justice Leland DeGrasse, Justice Carol Huff, and Justice Helen Freedman. In addition, a number of new candidates were considered for the nominations as a result of the independent screening panel adopted by the New York County Democratic Committee.

9. The independent screening panel evaluates the qualifications of judicial candidates in New York County and reports out three eligible candidates for each open seat for the party nomination for Supreme Court. The purpose of the independent screening panel is to ensure that the best qualified candidates are considered by the delegates.

10. The candidates who emerged from the independent screening panel that year were John Bradley, Laura Drager, Saralee Evans, Thomas Farber, Marcy Friedman, Judith Gische, Ira Globerman, Debra James, Shirley Kornreich, Jose Padilla, Jr., Richard Price, Rosalyn Richter, Marilyn Shafer, Karen Smith, Faviola Soto, John Stackhouse, Troy Weber and Louis York. Additionally, four candidates, who had previously been reported out of the independent screening panel twice out of the past four years, were automatically deemed to have been recommended by the panel. Those candidates were Carol Edmead, Relando Acosta, Richard Braun, and Doris Ling-Cohan.

11. In the 2002 contest, I served as an alternate delegate on a slate of eleven delegates and eleven alternate delegates in the 66th Assembly District. The slate that I belonged to was supported by the G.L.I.D. and was one of three rival slates in the 66th Assembly District that year. The two other slates were supported by either (1) the Village Independent Democrats or (2) the Village Reformed Democratic Club and Downtown Independent Democrats.

12. Our slate had the endorsement of two prominent local gay and lesbian politicians – State Senator Thomas Duane and City Councilmember Christine Quinn.

13. In the 66th Assembly District, where many gay, lesbian, bi-sexual, and transgender registered Democrats reside, the G.L.I.D. slate's highest priority was that if elected, it would vote for an openly gay or lesbian judicial candidate, who emerged from the independent screening panel.

14. While many of the delegates favored Rosalyn Richter – an openly lesbian, disabled judge who had previously been reported out of the independent screening panel – we were not pledged to any particular candidate, because there were several open seats and we did not know who was going to emerge from the independent screening panel. As it turns out, Rosalyn Richter, was reported out of the independent screening panel that year.

15. As a result of the primary election, ten of the eleven delegates from the G.L.I.D. slate were elected to the Judicial Convention. The G.L.I.D. slate provided Rosalyn Richter with a solid bloc of delegates supporting her as their first choice for one of the six open seats for the party nomination. Rosalyn Richter also had the support of some delegates from other Assembly Districts. Although her support was not even close to the majority necessary to win the nomination for one of the open seats, Rosalyn Richter was able to parlay the solid bloc of support she possessed into a larger coalition with other candidates, allowing her to achieve one of the nominations and eventually go on to be elected to the Supreme Court. The candidates with whom Rosalyn Richter formed a coalition were the candidates who ultimately won a nomination and a seat on the Supreme Court – Carol Edmead, Relando Acosta, Doris Ling-Cohan, Richard Price, and Troy Webber.

16. The coalition and consensus-building among the delegates supporting Rosalyn Richter as their first choice and the delegates supporting these other candidates occurred during the time period after the independent screening panel process and leading up to the Judicial Convention. Indeed, by the time the Judicial Convention was held, Rosalyn Richter had garnered a significant bloc of support such that the convention was pro forma with respect to her nomination.

The Advantages of the Convention System

17. One reason for Rosalyn Richter's success was that she had previously run for Supreme Court. Although her previous candidacies were unsuccessful, she was able to gradually build a base of support among active Democrats and gain name recognition, particularly in the gay and lesbian community. Rosalyn Richter's ability to run for Supreme Court multiple times has been facilitated by the convention system, which alleviates the financial burden of running a primary campaign over the course of years.

18. Other examples of candidates who have secured the nomination after having lost their bid on one or more occasions are, among others, Richard Braun, Eduardo Padro, Alice Schlesinger, Richard Price, Relando Acosta, and Carol Edmead. Like Rosalyn Richter, these candidates were able to build up support over time without the burden of financing a public primary campaign. If judicial candidates were required to run in a primary, which would entail the expenditure of large sums of money, I believe that the diverse bench that we now have would be replaced in time by a homogeneous bench of wealthy individuals.

19. The 2002 Judicial Convention further demonstrates the advantage a convention provides in ensuring diversity on the bench along the lines of geography, race, gender, and sexual orientation. The six judges who were successful in the 2002 judicial contest were from various Assembly Districts in New York County and included an African-American female (Carol Edmead), a Hispanic male (Relando Acosta), an Asian-American female (Doris Ling-Cohan), a white male (Richard Price), a lesbian, disabled female (Rosalyn Richter), and an African-American female (Troy Webber). This diversity is a result of the opportunity for delegates from local Assembly Districts to vote for candidates who reflect the interests and ideals of their respective constituencies. The convention system also allows these delegates to form coalitions

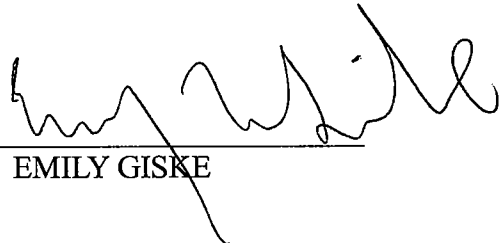
with other delegates from different Assembly Districts so that a consensus can be reached on a diverse slate of candidates.

20. The convention system also ensures that qualified incumbent justices remain on the bench. At a convention, delegates have the ability to simply re-nominate a sitting justice for re-election. Indeed, the 2002 Judicial Convention saw the re-nomination and eventual re-election of three sitting African-American Supreme Court justices – Justice Lowe, Justice DeGrasse, and Justice Huff. Had these justices been required to run in a judicial-district-wide primary in 2002, they would have been at a disadvantage because they have been out of politics for some fourteen years, would have had to engage in county-wide public campaigns due to the low visibility of judicial races, and shoulder the burden of raising significant funds to run in the primary.

21. In sum, in my opinion, the current political party process for nominating candidates for the State Supreme Court is fair and effective in ensuring a qualified and diverse bench while safeguarding qualified incumbent justices from an overly-political process.

22. Accordingly, I respectfully request that the Court deny Plaintiffs' Motion for a Preliminary Injunction in its entirety.

23. To the best of my knowledge, the above statements are true and correct.



EMILY GISKE

Sworn to before me this 12th
day of August 2004



Notary Public

TAB 5

OFFICIAL BALLOT FOR THE GENERAL ELECTION
City of New York - County of Kings - November 4, 2003

	A Republican	B Democratic	C Independence	D Conservative	E Working Families				WRITE-IN CANDIDATO DESIGNADO POR EL VOTANTE
1	Bruce M. Balter 1A Republican	Bruce M. Balter 1B Democratic		Bruce M. Balter 1D Conservative	Margarita Lopez Torres 1E Working Families				
2	Theodore T. Jones, Jr. 2A Republican	Theodore T. Jones, Jr. 2B Democratic		Theodore T. Jones, Jr. 2D Conservative	Theodore T. Jones, Jr. 2E Working Families				WRITE-IN
3	Michael L. Pesce 3A Republican	Michael L. Pesce 3B Democratic		Michael P. Tempesta 3D Conservative	Rosemary Palladino 3E Working Families				WRITE-IN
4	Herbert Kramer 4A Republican	Herbert Kramer 4B Democratic		Mario Romano 4D Conservative	Herbert Kramer 4E Working Families				WRITE-IN
5	Martin M. Solomon 5A Republican	Martin M. Solomon 5B Democratic			Robert Newman 5E Working Families				WRITE-IN
6	Michael V. Ajello 6A Republican			Michael V. Ajello 6D Conservative	Alexander Eisemann 6E Working Families				WRITE-IN
7		Arthur M. Schack 7B Democratic		Arthur M. Schack 7D Conservative	Lyle Silversmith 7E Working Families				WRITE-IN
8	Ralph J. Porzio 8A Republican	Raymond Guzman 8B Democratic		Ralph J. Porzio 8D Conservative					WRITE-IN
9	Helene Donlan Sacco 9A Republican	Bernadette F. Bayne 9B Democratic		Helene Donlan Sacco 9D Conservative					WRITE-IN
10	Michael S. Reinhardt 10A Republican	Lila Gold 10B Democratic		Michael S. Reinhardt 10D Conservative					WRITE-IN
11	Philip J. Smallman 11A Republican	Shawndya L. Simpson 11B Democratic	Philip J. Smallman 11C Independence	Philip J. Smallman 11D Conservative					WRITE-IN
12	Stella Harmatiuk 12A Republican	David Yassky 12B Democratic		Stella Harmatiuk 12D Conservative	David Yassky 12E Working Families				WRITE-IN

1. BALLOT PROPOSALS ARE LOCATED ON THE OTHER SIDE OF THIS BALLOT.

1. LAS PROPUESTAS DE BALOTA APARECEN EN EL DORSO DE ESTA BALOTA.

MARKING INSTRUCTIONS:
INSTRUCCIONES DE MARCADO:

Correct Mark:
Marca correcta:

BALLOT PROPOSALS ARE LOCATED ON THE OTHER SIDE OF THIS BALLOT.

LAS PROPUESTAS DE BALOTA APARECEN EN EL DORSO DE ESTA BALOTA.

Handwritten: SP
 NEW YORK COUNTY OF KINGS ELECTIONS
 TEL: (212) 487-5300

ALL VOTERS INSTRUCTIONS

This ballot must be received by the Board of Elections NOT LATER THAN 9 P.M. ON NOVEMBER 4, 2003 except that ballots contained in envelopes showing a cancellation mark of the U.S. Postal Service or a foreign country's postal service, or showing a dated endorsement of receipt by another agency of the U.S. government not later than the day before election, will be counted if received not later than seven days following the day of election.

GENERAL ELECTION INSTRUCTIONS

1. Mark in blue or black, pen or pencil.
2. To vote for a candidate whose name is printed on the ballot, completely fill in the voting oval under the name of the candidate.
3. To vote for a person whose name is not printed on the ballot, write or stamp the name and fill in the oval in the blank space at the right end of the row in which appears the title of the office.
4. To vote on ballot proposals completely fill in the "Yes" or "No" oval in the box that contains such proposal.
5. Any other mark or writing, or any erasure made on the ballot outside the voting ovals or blank spaces provided for voting will void this entire ballot.
6. Do not overvote. If you select a greater number of candidates than there are vacancies to be filled, your ballot will be void for that public office or party position.
7. If you tear, or deface, or wrongly mark this ballot, call the Board of Elections at (718) 797-8800 for instructions on how to obtain a new ballot. Do not attempt to correct mistakes on the ballot by making erasures or cross outs. Erasures or cross outs may invalidate all or part of your ballot. Prior to submitting your ballot, if you make a mistake in completing the ballot or wish to change your ballot choices, you may obtain and complete a new ballot. You have a right to a replacement ballot upon return of the original ballot.

INSTRUCCIONES PARA TODOS LOS VOTANTES

Esta papeleta dehera ser recibida por la Junta de Elecciones A MÁS TARDAR EL 4 DE NOVIEMBRE 2003 a las 9:00 p.m., excepto por aquellas papeletas que se reciban en sobres con el matasellos de la Oficina de Correos de los E.E.U.U. o de cualquier servicio postal extranjero o que muestre fecha de recibo endosado por cualquier otra agencia gubernamental de los Estados Unidos del día anterior a las elecciones, las que se consideran validas si se reciben dentro de siete días despudes de celebradas las elecciones.

ELECCIÓN GENERAL INSTRUCCIONES

1. Marque con lápiz o bolígrafo de tinta azul o negra.
2. Para votar por un candidato cuyo nombre esta escrito en la ficha electoral, llene completamente el ovalo de votar que esta abajo del nombre del candidato.
3. Para votar por una persona cuyo nombre no esta impreso en la ficha electoral, escriba el nombre y llene el oval en el espacio en blanco que esta al final del lado derecho de la línea en la cual aparece el título de la oficina.
4. Para votar por una proposición llene completamente el oval que tiene el "Si" o "No" en la caja que contiene dicha proposición.
5. Cualquier otra marca o escritura, o cualquier borradora echa en la ficha electoral, fuera de los óvalos para votar o espacios en blanco proveídos para votar, invalidaran la ficha electoral por completo.
6. No vote más de lo necesario. Si usted selecciona un número de candidatos mayor que el de las vacantes que deben ser llenadas, su boleta será nula con respecto a ese cargo público o posición partidaria.
7. Si usted rasga o daña o marca indebidamente esta boleta, llame a la Junta Electoral al (718) 797-8800 para recibir instrucciones sobre cómo obtener una nueva boleta. No trate de corregir los errores en la boleta haciendo borrones o tachaduras. Los borrones o las tachaduras podrían invalidar toda o parte de su boleta. Antes de remitir su boleta, si comete un error al llenar la boleta o desea cambiar las opciones que ha seleccionado en su boleta, podrá obtener y llenar una nueva boleta. Usted tiene el derecho de obtener una boleta de reemplazo al devolver la boleta original.

1 Yes No
SI **NO**

PROPOSAL NUMBER ONE, AN AMENDMENT
Exclusion of Indebtedness Contracted for Sewage Facilities
 The proposed amendment to Article 8, section 5 of the Constitution would extend for ten years, until January 1, 2014, the authority of counties, cities, towns and villages to exclude from their constitutional debt limits indebtedness contracted for the construction or reconstruction of sewage facilities. Shall the proposed amendment be approved?

2 Yes No
SI **NO**

PROPOSAL NUMBER TWO, AN AMENDMENT
Elimination of Small City School Districts from Constitutional Debt Limitations
 The proposed amendment to Article 8, section 4 of the Constitution would eliminate school districts that are colerminous with, or partly within, or wholly within a city having less than one hundred twenty-five thousand inhabitants, from the entities subject to a general constitutional debt limitation. Shall the proposed amendment be approved?

3 Yes No
SI **NO**

PROPOSAL NUMBER THREE, AN AMENDMENT
A QUESTION - CITY ELECTIONS
 This proposal would amend the City Charter to establish a new system of city elections for the offices of Mayor, Public Advocate, Comptroller, Borough President, and Council member. The September primary election would be open to all voters and all candidates, regardless of party membership or independent status. The top two vote getters would compete in the November general election. In both elections, candidates could indicate their party membership or independent status on the ballot. Candidates participating in the voluntary campaign finance program, which provides public campaign funding, could not accept contributions from political parties or party committees. The new system would replace the current system of political party nominations through primary elections in which only party members may vote. The changes would take effect after the 2005 Citywide election. Shall this proposal be adopted?

4 Yes No
SI **NO**

PROPOSAL NUMBER FOUR, AN AMENDMENT
A QUESTION - CITY PURCHASING
 This proposal would amend the City Charter to:
 • remove from the Charter detailed requirements for specific purchasing methods; • increase qualifications for City purchasing officials; • provide for citywide coordination to enhance opportunities for small businesses and minority and women-owned businesses; • reduce required procedures for security-related contracts; • reduce impact on City contractors, including not-for-profit organizations, of delays in contracting and payment; and • consolidate financial audit requirements for City contractors. Shall this proposal be adopted?

5 Yes No
SI **NO**

PROPOSAL NUMBER FIVE, AN AMENDMENT
A QUESTION - GOVERNMENT ADMINISTRATION
 This proposal would amend the City Charter to:
 • authorize the Mayor to issue rules governing the professional conduct of administrative law judges and hearing officers in the City's administrative tribunals, require the coordination of such tribunals, and expand the authority of the administrative tribunal of the Department of Consumer Affairs to hear all matters within the agency's jurisdiction; • enhance the enforcement authority of the Conflicts of Interest Board by allowing increased penalties for violations of the City's ethics laws; • replace the current sixteen member Voter Assistance Commission with a seven member panel, which would include the Public Advocate, an appointee of the Council Speaker, and five appointees (one from each borough) of the Mayor, with Council advice and consent. The coordinator of voter assistance would be appointed by the Mayor, with Council advice and consent. The Commission; and • require annual publication only of the Mayor's Management Report. The Preliminary Mayor's Management Report would no longer be required. Shall this proposal be adopted?

6 Yes No
SI **NO**

PROPOSAL NUMBER SIX, AN AMENDMENT
A QUESTION - CLASS SIZE CHARTER COMMISSION
 The proposed local law would create a Charter Commission of the City of New York to review the entire Charter of the City of New York, including an examination of the City Charter provisions that may relate to class size of the New York City public schools. The Commission could consist of 19 to 23 members, appointed by the New York City Council. The members would include, as far as practicable, two members of the Council, two representatives of organizations of parents of students of the New York City public schools, two representatives of organizations of education advocates, two representatives of community or civic organizations, two representatives of labor unions, two representatives of business organizations, two academics, three educators, and one representative of the construction industry. The Comptroller of the City of New York would serve as an additional member of the Commission. Shall the proposal local law be adopted?

PROPOSTA NÚMERO UNO
Exclusión del endeudamiento contratado para realizar
 La enmienda propuesta al Artículo 8, Sección 5 de la Constitución de 2014, la autoridad de los condados, ciudades, pueblos y aldeas al endeudamiento contratado para la construcción o reconstrucción de instalaciones de alcantarillado.

PROPOSTA NÚMERO DOS
Eliminación de los distritos escolares de ciudades pequeñas
 La enmienda propuesta al Artículo 8, Sección 4 de la Constitución de Nueva York eliminaría los distritos escolares que son colerminos con, o en parte dentro de, o totalmente dentro de una ciudad que tiene menos de ciento veinticinco mil habitantes.

PROPOSTA NÚMERO TRES, UNA PREGUNTA
Esta propuesta enmendaría la Carta de Constitución del Gobierno de las Ciudades de Nueva York para establecer un nuevo sistema de elecciones para las oficinas de
 Esta propuesta enmendaría la Carta de Constitución del Gobierno de las Ciudades de Nueva York para establecer un nuevo sistema de elecciones para las oficinas de Alcalde, Defensor del Consejo. La elección primaria de septiembre estaría abierta a todos los votantes y a todos los candidatos, independientemente de su afiliación partidista ni su estatus independiente. Los dos votantes con mayor número de votos competirían en la elección general de noviembre. En ambas elecciones, los candidatos podrían indicar su afiliación partidista o su estatus independiente. Los candidatos que participen en el programa voluntario de financiamiento de campañas, el cual provee financiamiento público para las campañas, no podrían aceptar contribuciones de partidos políticos ni de comités políticos. El nuevo sistema reemplazaría el sistema actual de nominaciones de partidos mediante elecciones primarias, en las cuales solo los miembros de los partidos políticos pueden votar. Los cambios cobrarián efecto después de las elecciones de 2005.

PROPOSTA NÚMERO CUATRO, UNA PREGUNTA
Esta propuesta enmendaría la Carta de Constitución del Gobierno de las Ciudades de Nueva York para:
 • eliminar de la Carta los requisitos detallados aplicables a métodos de los funcionarios a cargo de las adquisiciones municipales; • aumentar las calificaciones para los funcionarios de compras de la ciudad; • proporcionar coordinación para mejorar las oportunidades de las empresas pequeñas y de los negocios independientes para los contratos relacionados con la seguridad; • reducir el impacto de los retrasos en el pago de los contratos de los contratistas del gobierno municipal, incluyendo a las organizaciones sin fines de lucro; y • consolidar los requisitos de auditoría financiera para los contratistas de la ciudad.

PROPOSTA NÚMERO CINCO, UNA PREGUNTA
Esta propuesta enmendaría la Carta de Constitución del Gobierno de las Ciudades de Nueva York para:
 • autorizar al Alcalde a emitir reglamentos que rijan la conducta de los funcionarios administrativos del gobierno municipal que amplían la autoridad del tribunal administrativo del Departamento de Asistencia al Consumidor; • mejorar la autoridad de la Junta de Conflictos de Intereses (Comisión de Conflictos de Intereses) para que considere todo asunto dentro de la jurisdicción de la Junta de Conflictos de Intereses; • aumentar el poder de la Junta de Conflictos de Intereses para imponer sanciones más elevadas por violaciones a las leyes de ética que rigen a los funcionarios; • reemplazar la Comisión de Asistencia al Ciudadano actual de dieciséis miembros por un panel de siete miembros, que incluiría al Defensor Público, un representante de los padres de los estudiantes de la ciudad, un representante de los sindicatos, un representante de los educadores, un representante de los académicos, tres educadores y un representante de la industria de la construcción. El coordinador de asistencia a los votantes sería nombrado por el Alcalde, con el consentimiento del Consejo. La Comisión; y • requerir la publicación anual solo del Informe de Gestión del Alcalde (Informe de Gestión del Alcalde). El Informe de Gestión del Alcalde (Informe de Gestión del Alcalde) no estaría más requerido. ¿Debe adoptarse esta propuesta?

PROPOSTA NO. 6, UNA COMISIÓN DE LA CARTA PARA EL
La ley local propuesta crearía una Comisión Revisora de la Carta de Nueva York para examinar toda la Carta Orgánica de la Ciudad de Nueva York, incluyendo una revisión de las disposiciones de la Carta que podrían relacionarse con el tamaño de las aulas de las escuelas públicas de Nueva York. La Comisión podría consistir de 19 a 23 miembros, designados por el Consejo Municipal de Nueva York. Los miembros incluirían, en la medida de lo posible, dos representantes de organizaciones de padres de estudiantes de la ciudad, dos representantes de organizaciones de sindicatos, dos representantes de organizaciones de educadores, tres educadores y un representante de la industria de la construcción. El Comisionado de la Ciudad de Nueva York serviría como miembro adicional de la Comisión. ¿Debe adoptarse esta propuesta local?